

1930

Kenya

No. 16004 (Part 2.) C0533/394

SUBJECT

REVISION OF RECORDS SECTION

This file should be returned to
Queen Street when no longer required.

Kisumu circumcision ceremony

Previous

Part 1.

Subsequent

P. Q. file

See 10005/1/20 Jan

17.75/31

States as to legal position and proposed amendment of the Code of Criminal Law. Important that no public announcement be made in this connection pending result of proposed consultation with other B.A. Courts, as to a similar amendment of their Codes. Comments generally as to the means to be followed for abolition of the practice. Considers it would be most inopportune at present to take immediate action as suggested by the S. of S.

- (1) These papers were reviewed after they had left Sir J. Wilson in order to add No. 17.
- (2) A Shick, with Sec. of State have got to see No. 12 & minutes thereon: also the views of Mr. Macaulay B.A. in view of the report in para 5 of No. 17 that nothing should be said publicly as to the intention of the Gov. in regard to the amendment proposed in the new Penal Code, & these views to diff. to Gov. to see.

- (3) As to No. 17
 - (a) Para 2-4. We already have in No. 12 the details of the particular case referred to. The question of "consent" is obviously difficult in the circumstances: we have realised all along that the girls themselves would be the obstacle to abolition of the rite. But the important point is that if the girl does not consent, she has the full protection of the law, &

The penalties for performing
the operation are then very
severe.

(b) Para 5 & 6.

This is already dealt with
in No. 12. The technical
point about "main" is
interesting.

The Sps. will certainly wish
to give their approval to the
short amending Order proposed
in para 5. We will make
the more formal form of the
operation a "main".

(c) Paras. 7 to 11.

I think that with our present
knowledge we shall all agree
that we must not attempt
precipitate action. The
case of a girl who does
not consent will be amply
provided for; the case
of serious mutilation will
(even with the girl's consent)
be provided for. For the
rest, it must be a
matter of education &
preparation, as Kenneth
himself agreed when he led
his talk with the Sps.
as to the case of Miss

Yes G.S.

Stamp (para 10) Mr. Mowbray
file which on the 8 April 3
that she was notorious for
her trials against the
circumcision rule.

(d) The memorandum which
forms the first vol. to the
Sops., prepared by the S. M. S. S.,
is interesting & informative.
It will be seen that opinions
vary widely among the doctors
as to the after effects of circumcision
upon women & that an attempt
is being made to collect reliable
data.

(e) Para 12.

The notes of the meeting with the
Kenya Treasury Council show
21.0.4

(f) As to action -

? We can now ask No 12 & No 17
together. Though the Governor
for the full statements furnished
today that the memorandum by the
Sops. has been read with
much interest. Will the
position under the law as
to (i) consent (ii) penalties
regarding the action be met
required for increasing on
21.0.4

practicalities which have been
 performed with the
 one result. With the
 system generally as
 explained in No. 17
 and upon the passing
 of an amendment Ord. as
 proposed in para 5
 and the say that says
~~open~~ that as a ~~result~~
 the ~~result~~ is ~~to~~ ~~be~~
 not generally, but that the
 basis that every thing possible
 will be done for the purpose
 through the medical
 dept. working in cooperation
 with the Administrative
 officials, which will be
 directed towards improvement
 in ~~the~~ hygiene generally
 & the bringing home to the
 notice of the danger
 consequent upon the severe
 form of the operation

[?] a reply is sent in this
 sense, we shall be accepting
 the view that the simple
 form of disinfecting
 will be immediately to have
 beneficial effect, except
 the possibility of it being

(Compare 25
 of small
 memorandum)
 3 pages
 10/1/30

order to be a personing
 so as to see that we can
 on should, expect that view
 I read the papers through
 attention with particular
 reference to this point.
 On political grounds, the
 Dept. at any rate is
 convinced that no attempt
 should be made to ~~pervert~~
 the simple form ~~but~~ whether
 the Directors of health will
 be content is another
 matter. J

All Parkinson
 10.11.30

10-4-30

Sec of State
 (through Dr Shields)

Jaipur

JH/6

14.4.30

Jaipur but in reply you I would point
 out that we have reason to believe that
 talks by medical officers and Nurses
 comes to be the best method of education
 and would be acceptable even to the
 younger men of the tribe (vide statement
 with Kanyata) 15.4.30

So proceed P. 16/4

18. *Gov. Conf. - 12-19-19* *known* 29-4-30

19. African Women's Assoc. 23rd. Apr. 30.

Requests for copy of portions of the E.A. Penal Code bearing on the circumlocution question.

W. H. Shible
acc'd
30/4/30

20. *to Mrs Macaulay Bowe* *Shible*
Government

Mrs. Bowe has returned the copy of the Penal Code under cover of a private letter to Dr. Shible.

W. H. Shible
16-5-30.

21. Cutting from the "East African Standard" dated 31st. January, 1930.

W. H. Shible

22. *Business, House S.C.*

Mr. Parkinson.

We have dispensed No. 32 together and I have prepared the annexed draft reply for concsn. (The new Penal Code is below the file: the references to the proposed new ordinance concerning the definition of "accuse" are in paragraphs 5 and 6 of No. 17. Details as regards the Indian Penal Code are taken from paragraph 11 of No. 12).

M. H. C.
8/7/30

W. H. Shible
not the position that
I must draw special

attached to the (b) and 5
parts of the Gov's despatch
in No. 17 in the file.
Can the Director be
replied upon to keep
the copy up to himself?
I am not too certain of
this, having regard to
his intense interest in the
subject, and it is up
to us to do whatever
favorable ends in such
difficult matters as
the female circumlocution
ordinances. It is possible
whether we are justified
in saying to the Director
all that is set out with
(b) - perhaps it will
suffice to state that for
I J. C. on margin

W. H. Shible
would add to the
As on the 7th
1930

W. H. Shible
W. H. Shible
19/7/30

W. H. Shible
10/7/30

W. H. Shible s.o. to the Quakers of Akkol - 14/7/30
(22 amend.)

24.

Duchess of Atholl. s/o. 21st. July 30
Refers to the position under the new Code.
To Private Sec. to the Duchess of Atholl.
(24. ack.)..... 25th. July 30.

DESTROYED UNDER STATUTE

We must assume that
the copy of no. 23 was not
sent to the Comtee.

The draft submitted

It agrees to the info that the
event - the depiction of "rain"
and censor have passed on to
the members of the Comtee in
Confidence. It seems advisable
to do otherwise.

It sends a copy of the
news of the D.M.S.P. - Dr
Hamber agrees that there is
no objection

It deals with the question
of the adequacy of the
minutes - Sir E. Resley
has seen the

S. W. M. R.
H. P. M. R.
25/7/30 30.7.30

s.o. to Duchess of Atholl - 31/7/30
(no. 24 revised)

(see medical
grounds)

B.S.

J.S.
2/7

27.

Duchess of Atholl. s/o. 12th. August 30. 6
Requests permission to send a copy of paras
15 to 23 of the memorandum to the African
Womans Aid Committee

Dr. Staddon.

On both the points in para. 1
& para. 3, see require primarily
your advice.

I see no objection to
the dissemination of paras 15-23
of 1 & 2. Think on the whole
that we need consult the
local Govt before giving permission.

But if we agree give permission
let the Govt tell them - s.o. to
be done.

G. Entwistle

20.8.30

Para. 1 of no. 27. In para. 10 of
Dr. Glick's memo. (depiction of "rain")
it is proposed to add something
to the following effect - has fallen
the words to which the Duchess
of Atholl refers. This is only a
tentative suggestion by Dr. Glick
and the phrasing is incorrect as the

Duncan points out I think
to "bees" meant to write my
part of them" that is to say
anything in excess of simple
circumstances. The Gov. reads
with the point. K^o 17 p. 3
pau. 5. The sentence wanted
X in red might be included
in the reply on this point.

K^o 17 p. 3

H. Stanton

20.8.30

I attach draft for canon.
If anything is to be said to
the Governor it should presumably
take the form of a letter from
or which to Sir C. Grey sending
a copy of the letter with the
Duke of Atholl. Explaining
his. It was not felt that the
up. Regarding a possible amendment
of "Canon" could be withheld from
to special as she has a
matter I feel that my conservative
is not breaking the matter by

Rushan, in fact.

10/10/30

20/8/30

I quite agree that Sir J. Giff
should be supplied with copies
of the correspondence with
the Duke of Atholl - &
the file might be circulated
for a diff. letter. But
I think we should also find
out how the matter was
started and submit diff.
tel. for review.

I am not sure that
we shall do any good by
the caveat in the diff.
about para. 15-23 of
Dr. Gillis' memorandum.
Once such an extract
goes to a Society, it
must be used publicly?
I should therefore omit
as shown in diff. letter.

See Parliament

23.8.30

J. Gray

25.8.30

Diff. Approved

25.8.30

H. M. C.

To Gov. Kenya. Tel. No. 153. Conf. cons. 26/8/30

29. To Quidess of Atoll - 26/8/30
(No. 27 amended)

Refer for info to Gov

30. To H. M. Moore - S.O. 10 SEP 1930
Cw/cs. 22, 23, 24, 26, 27 + 29)

31. Gov. Kenya. Tel. 295. Conf. 9th Sept. 30.

States that it did not appear desirable to amend Order for purpose of substituting "member" for "membrane".

We made the enquiry for our
- no ref - no action
required.

Wait for despatches

15/11

NECP

13.9.30

atwell

32. Gov. Grigg. Tel. 313. 23rd. Sept. 30.

Trs correction to No. 31.

? but

Gov. Grigg
24.9.30

Wait for despatches

NECP

24.9.30

atwell

33 H. H. H. - house % _____ 9 October 1930
acknowledges to 30: 7

Platz
Platz
6 x 30
ation

See on to printing certain
course on this of 15743/29
a 700057/1/30. 1930

~~33a~~

Platz
20.11.30

N.B. The reply to no. 18
will have to be printed

34. Duches of ...
Duches of ...
to do (34 added) ...

~~35~~
DESTROYED UNDER STATUTE

~~W. Allen~~
we have discussed. It
seems clear that ...
overlooked the passage at the top of
page 5 of the D.M.S.'s memo.
I submit of it for ...

Platz
W. Allen
20.11.30
24/11/30
10

Put by
all
25-11-30
advised

See No. 33
...
...
...
...
...

34 of Gov Home Conf 154 _____ 8 November
considers unwise to proceed with proposal to
frame definition of main to amend Penal Code, for
reasons stated, re list of penalties imposed by Indian
tribunal for contravention of resolution re practice

All to be forwarded
of 18/11/30 or 10057/1/30

In this despatch, the O.A.G. states that he does not propose to proceed with the suggestion made in paragraph 5 of No.17 that the Criminal Code should be amended by a provision which would specify definitely that the main purpose of the operations should be to secure "aid". He gives detailed reasons for this, and states that any amendment would be unwise in view of objections by the States, and would certainly open to be challenged. In the circumstances, I presume that the Government would not wish to press the suggestion.

The position is, however, somewhat complicated by the fact that in No.23 (paragraph (G) (6)) the address of Athol ^{is} told of the suggestion. The information was given her confidentially, and in No.26 she was allowed to pass it on to her Committee on the Status of African Women, on the understanding that it was treated

be conducted. I have been
is that this rate is in a
par with "saltae" & might
rightfully be abolished
by law forthwith,
whatever the consequences.
If now we cannot proceed
with the proposed definition
of "ma" - which is
nothing like the more brutal
form of the operation from
simple clitoridectomy,
the desirability of all
other operations will
be very doubtful.
I fear. All the very
argument used in
para. 4 of this despatch
will be regarded as a
reason for doing
something drastic, not
for stopping the proposed
operation.

As the "clitoris"
increases it becomes
hard & less pliable
to the touch, with
its increased size
all your medical
knowledge will enable
you to advise on the

matter. Please note, in my
correction, the last word.
Dr. G. J. P. which
suggests that at any rate
the Embu L.N.C. have
been able to differentiate
with precision between
harmful & harmless
operation in a simple manner.

All Parkinson
15.12.30

Investigation has now
shown that the operation
performed among the Kikuyu
amounts to something more
than simple clitoridectomy.
The Embu L.N.C. has (in
paper) restricted the authorized
operation to removal of the
glans clitoridis which is
perhaps something less than
"simple clitoridectomy" but
an anatomical ground I
should think it dangerous

have in the hands of a skilled operator, to ensure that the results of the operation were so restricted.

From the medico-legal point of view, and exclusive of the political considerations mentioned in Sec. 6 of No 37, there are I think good grounds for the Government's decision not to proceed with the proposed amendment of the Penal Code but to rely upon the effects of education and propaganda.

H. Stanton

15.12.30

L. Chittowles

Dear Sir, with the backing of Dr. Stanton, I think we must support the Govt. of Bengal whatever the Congress says. But I do not like to send out a copy of this paper with all the references to other colleagues as suggested in bundle above - nor to reach Ministers with a definite decision.

(1) ... said to the Public
confidently, when action is
taken a 7000730 form
the full substance of
this Dept. with omission
of passages bracketed
& with necessary
re-writing of para 1 -

"Do not mention the
S. of. if there is to
be a definite
decision yet."
W.S.

then say that, in the
circumstances, P. S.
think she will agree
that the Gov. is the
right one to proceed
with the proposed
amendment of the Code,
but to rely upon the
effects of education &
propaganda - X

then wait at least 2 weeks
to see what she says

See also a 7000730 form - All Parkman

15.12.30

I would agree that the Government
cannot in the long run be prudent one
but it is clear that my few words
are not without and, therefore, the
education of the public must be
the basis of any real program to
be made.

to 7000730
form

to be made
Board of State (through or direct)
16.12.30
S. of. Sec.

W.S.

This is rather difficult!

I am afraid that, with the example of the Eureka Native Tribunals before us, it will be difficult to say that we could not enact something on their lines which, while not specifying the authorities to take action in cases which showed minimal severity.

The only alternative seems to be: -

- (a) An ^{by Stat.} encouragement of Native Councils to proceed on lines of Eureka.
- (b) An energetic educational campaign waged by or under the supervision of the Govt. medical officers.

I still think that the first method is possible, though I realize the difficulty. The second alternative might be accepted by the Duches of Ashill, or as paving the way to the imposition of a general law.

T. D. 16. 12. 30.

I don't think that criminal prosecution is the best way of dealing with this, even if it were politically practicable.

Proceed as proposed by Mr Parkinson, but could we not include (a) as well as (b) of Dr. Skell?

P 19/12

In last word

In writing, please add, (in connection, as X tentative type set) King's Post, which also find

This is rather difficult!
 I am afraid that with the example
 of the Embu Native Tribunals before
 us, it will be difficult to say that we
 could not enact something on their
 lines which, while not specifying
 in a technical way, would yet enable
 the authorities to take action in cases
 which showed unusual severity.
 The only alternative seems to me to be:-

- (a) An encouragement ^{by Govt.} of the Native Councils
 to proceed on lines of Embu.
- (b) An energetic educational campaign
 waged by or under the supervision
 of the Govt. medical officers.

I still think that the first method is
 possible, though I realise the difficulty.
 The second alternative might be accepted
 by the Duches of Atholl, or as paving
 the way to the imposition of a general
 law.

T. D. 18.12.30

I don't think that criminal prosecution
 is the best way of dealing with this,
 even if it were politically practicable.
 Proceed as proposed by Mr Parkinson,
 but could we not include (a) as
 well as (b) of Dr. Shiel's?

P 19/12

In last word
 in writing please add, in common,
 as X. Inclusive type met
 Kanga for which also find

It is possible to include other
 L.V.C. to follow the lead
 of the Embu Council, though
 we must admit ~~the~~ the difficulty
 that restriction of the
 operation to what the Embu
 Council has now laid
 down requires a skilled
 operator (see 7 of Dr
 Stanton's minutes)

recd
 19.12.30

Dr. Shiel

I have put in words in the
 typed draft to the Duches of Atholl
 to do more justice to you (b). When
 you get her reply we can put the
 point more definitely to the Governor.

W.D. 22.12.30

~~38 To Mr Parkinson~~

Recd to Mr
 Parkinson
 note on 18/12/30

38 To the Duches of Atholl 50
 (w/c's small in 37) Comp

JAN 1931

see note on 18/12/30

P.T.O.

Duchess of Atholl
State further as to the operation

Dr. Strachan
Dr. Strachan sent an X-ray
photo for advice & opp. reply.
The ph. were not available
at the time (31 Dec), but
was that Dr. Strachan gave to
the Duchess, & I think we
might regard that as
covering the letter & wait
to see what more she has
to say in answer to Dr. Strachan's
letter, please, let us have
any advice wh. you may
be, esp. as to the
last sentence.

[Copy of Dr. Strachan's already
made will have to go to
Henry for inf. ref. Dr. Strachan -
but that will wait at
least 2 weeks - see
minute 17 15.12.30]

all Parkman
2.1.31

I understand from No. 29 14
that on the one hand the
Duchess is advised by Dr. Ethel
Renthon that simple clitoridectomy
is not a serious operation and
on the other hand she is
advised by a woman
obstetrician that it is a
serious operation which should
be made a penal offence. The
latter is a "council of perfection"
which takes no account of
the facts of the situation under
discussion; it is as though
she were advised that the
rite of male circumcision
among Jews in his country
should be made a penal
offence.

The technical aspect of the
matter is I think quite clear
and there is no need to
seek advice from the Board.

... who know
nothing whatever about
it. The Board here or the
London members of it (D. Young
Beckwith) would be much
more likely to give me
intelligent advice.

H. Stanton
- 5.1.31

40 Dishes of Atholl _____ 3rd January '31
acknowledge to 38, which will be placed before
Committee before a reply is sent

I have shown it Stanton to
40 which was received after the
foregoing minutes were written.
This Card comes ^{to} seems to be
having a rather wide circulation &
there seems ^{to} be more trouble
brewing but I am awaiting the
further news.

H. P. Allen
9/1/30

J. Sheets
I agree. The suggested
reference to medical bodies
you are obliged to call on 38
has been omitted. Wed 9.1.30

Yes! Publy!
10.1.31
25/ 15

See
against 3
All minutes of 1/9/30
N.B. -
sent to report
then reply to
38 received
tagged

AD
16

BLAIR CASTLE,
BLAIR ATHOLL.

3rd January 1931.

3c

Dear Mr. Drummond Shiels,

No 38.

Many thanks for your letter of the 1st January, telling me of the further despatch which you have received from the Acting Governor of Kenya on the question of the amendment of the Penal Code. It raises such important questions that I am sending your letter on to Colonel Wedgwood, and I think he will probably feel that your letter must be laid before our Committee before we can send a reply.

Copy Case book (12) on 190/3/31 - 12/3/31

I am much obliged to you for sending me lists of penalties imposed by ^{the} Embu Native Tribunals since 1926, and Minutes of Meetings of the Embu Local Native Council.

I note that one of the offences for which penalties are being imposed is that of performing a second operation at circumcision. I had not realised before that such a thing might happen. It seems to me very terrible.

I am also obliged to you for sending me a copy of the Memorandum drawn up by the Colonial Office, in reply to the Memorandum sent by our Committee last spring to Lord Passfield. *It* *also* *will* *be* *laid* *before* *our* *Committee*

T. Drummond Shiels Esq., M.D., M.P.,
Colonial Office,
London, SW.

*Ex preserved with
best wishes for G 51,
Katharine Atholl*

TELEPHONE
NO 12 BLAIR ATHOLL
1931

TELEPHONE,
FLAXMAN 8807.

Admission to the ...

17 39

88, ELM PARK GARDENS,
S.W.10.

23rd December 1930.

RECEIVED
11
30

No. 36

Dear Dr. Shiels,

I am sorry not to have been able to reply before to your letter of the 24th November, but Dr. Bentham, to whom I sent it, has been unwell, and has only just been able to return it.

She is satisfied with the definition of "maim" as proposed under paragraph 10 of the memorandum you sent me, i.e., with the proposed addition at the end of the paragraph. But I feel obliged to say to you that I do not feel at all happy at a word which ^{does not} include cliterodactomy.

I was having a talk with a woman who has had a great deal of consultant obstetrical practice two or three days ago, and asked her how she viewed this operation. She was very strong that it concerned an extremely sensitive part, and that therefore the operation was by no means so small a matter as Dr. Gilk's memorandum would lead one to believe. It is also obvious, I think, that there is no guarantee that an African untrained woman / will

will stop short at any particular point, and Dr. Arthur has assured ~~them~~^{us} that he believes the lesser form of the operation to be a myth, or words to that effect - by which I mean ~~that~~ he has told us that he believes that the resolution of the Native Councils limiting the form of operation have had little or no effect.

Dr. Philp, also, late of the Tamu Tamu Mission, whom I saw in the Spring, was very strong as to how impossible it was to trust an old woman with a knife in her hand. He spoke from actual experience of having seen the operation.

I feel, therefore, that I should like to feel that further consideration was given to the nature of this lesser operation before a definition of "maim" is adopted, which will exclude it. I have not been able to consult my Committee about this as I met this obstetrician too late, and I am bound to say to you that Dr. Bentham does not view this operation as seriously as this other ^{woman} doctor. But I feel sure that if there is any doubt about it amongst medical people, the Committee would wish it to be further enquired into before any decision is taken. *Could the S.M.A. on the woman's Medical Federation be asked for an opinion?*

T. Drummond Shields Esq., M.D., M.C., M.P.,
Colonial Office,
S.W.1.

Goswami *J.M.D. Hill*

C. O.

X16004/30 K.

S.O. for Dr. Shiela sig.

Mr. Eastwood 22.12

Mr. Allen 27.12 CONFIDENTIAL.

Mr. Parkinson 23.12.30

Mr. Tansley

Downing Street,

1 JAN 1931
December, 1930.

X Sir C. Bottomley. 23.12.30

Sir J. Shuckburgh.

Sir G. Grindle.

Perm. U.S. of S.

X Parly. U.S. of S. 24.12.30

Secretary of State.

*see to 40
Add to 1 on 17075/37*

Dear Duchess,

DRAFT.

(23)

HER GRACE THE DUCHESS OF ATHOLL,

D.B.E., M.P.

You will remember that on the 14th July I wrote you setting out the present legal position about female circumcision in Kenya. In the course of that letter I told you that the Kenya Government were thinking of further amending the Penal Code to make quite sure that the more brutal forms of the operation would legally be deemed a "crime" even if the girl consents. In my letter of the 31st July I told you that there would be no objection to your communicating this information to your Committee on the understanding that it was treated by them as confidential.

Let draft in 70005/30/1

copy to Gov. Conf (C) on 17075/31 - 12/31/31

List of Penalties
1st encl. to 37.

Resolution of Embu Council
2nd encl. 437

Extract from Minutes of Meeting
3rd do. 437

(26)

Officials available

Make extra copy to send to Kenya. (as was to C.O. (C))

*Rec'd to read with the file
for minute 21/1/31*

2. We have now got a further long

despatch from the Acting Governor on the

subject

subject which gives us not a little difficulty.

Mr. Moore says that at the time the proposal

to amend the law further was made, it was

generally supposed by Administrative Officers/

that there would be no difficulty in framing a

definition of pain which, while covering the more

brutal forms of the operation, would not embrace

the form of the rite as generally practised among

the Kikuyu.

3. As a result of the more careful enquiries

which have now been made it appears fairly certain

that, although the severity of the operation may

differ in different districts, it generally

amounts to something more than simple clitoridectomy.

Thus the Director of Medical and Sanitary Services

~~writes~~
reports as follows:-

"The sub-Committee of the Central Board of Health appointed to investigate the processes and results of labour and childbirth among African women, both generally and with special reference to the results, if any, of female circumcision, to which reference has been made in previous correspondence, has collected a certain amount of information which is now in the process of being examined statistically. The numbers are very small and the figures cannot be accepted as conclusive though they may be significant. The results indicate that there is considerable variation in the effects, as regards childbirth, of female circumcision among the Kikuyu, and therefore that there is a variation in the extent of the operation, but only three individuals out of three hundred and seventy four were reported as having undergone clitoridectomy only. Four were stated to be uncircumcised."

Naturally there is

4. ~~You will, of course, appreciate~~

the very great difficulty in arriving at the real facts in any given area without actual physical examination, which it would be quite impractical to undertake, while the numbers at present examined by the sub-committee referred to above are clearly insufficient as a basis for any generalization. The evidence, however, such as it is, goes to show that the extension of the definition of "maim" to cover all cases more severe than simple clitoridectomy would very probably have the effect of making the performance of a very large proportion of the operations, as now customarily performed among the Kikuyu, an offence punishable under the Penal Code. Such a situation was never contemplated at the time the proposal further to amend the Penal Code was made, and I feel ^{the} ~~sure~~ *Policy Director is of opinion* sure you will agree with me that in the circumstances it would be unwise to proceed further with the proposal at present.

in the quotation in the preceding paragraph.

with the fact by Government Director to the Secretary

5. Quite apart from the technical

difficulty

difficulty of framing the necessary definition, which according to the advice of the Attorney General of Kenya and the Director of Medical and Sanitary Services would be considerable, there is the very real practical objection to putting a provision on the Statute Book which cannot be really enforced in the absence of support from native public opinion.

There is, however, the further consideration that any attempt to amend the Penal Code in the manner proposed would undoubtedly have a most disturbing effect on the Kikuyu at the present time. The Provincial Commissioner reports that the present situation in the Reserve is most satisfactory, and that he has every reason to believe that it will remain so, provided nothing is done to lend colour to the suggestion that the Government proposes to interfere with the customs of the tribe in respect of their women. It would be quite impossible to explain to the native mind the legal niceties involved in any definition of "rain" that might eventually be evolved, and it would be easy for interested persons to spread

with a view to its ultimate abolition.
T.B.J.

the rumour that the Government intended rigorously to suppress circumcision in all its forms.

7. In these circumstances ^{the Acting Governor} I feel sure that the wiser course to pursue is to endeavour to reduce the rite to its mildest form by means of education and propaganda and such administrative action as can be undertaken with the assistance of the native authorities themselves.

8. You may be interested in the attached list of penalties which have been imposed by the Embu Native Tribunal since 1926 on natives who have contravened a resolution passed by the Local Native Council of the Embu District in that year. A copy of the resolution in question is also annexed, together with an extract from the minutes of a meeting of the same Council held in February last, from which it will be seen that native opinion in that area is tending towards restricting the operation to its mildest form. The licence of operators by

These figures

the Council is a measure which will aim at the protection of those operated upon from any excessive incision. The Acting Governor is convinced that steady progress towards a modification of the rite and its eventual gradual abandonment may be hoped for through careful influence upon and by the native authorities, whilst active penal repression by Government at this stage would have the reverse effect.

In view of what I have written above I feel sure you will agree that the Government would be right not to proceed with

the proposed amendment of the Code, but to rely upon the effects of education and propa-

ganda. I hope that they may find it possible to persuade other Local Native Councils to follow the lead of the Embu Council; though we must

admit the difficulty that restriction of the operation to what the Embu Council has now laid down requires a skilled operator since none

but

such administrative action as can be undertaken with the assistance of the native authorities kanceloco

See minutes we have added this last part in view of Govt's interest all

but a skilled operator can ensure that the results of the operation are so restricted.

Yours sincerely,

(Signed) F Drummond Shields

2237

KENYA.

No. 154

CONFIDENTIAL.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
1 DEC 1930
COL. OFFICE

A Hornby
31 October 1930.

*Copies sent to the Director of Health: 28.3. DEC 1930
Lindsay (Conf.) in 1725 31. 12 MAR 1931*

My Lord,

I have the honour to refer to the Governor's Confidential telegrams No. 343 of the 23rd of September and No. 295 of the 9th of September in which it was explained that it was not proposed further to amend the Penal Code in the manner foreshadowed in paragraph 5 of the Governor's Confidential Despatch, No. 44 of the 15th of March, 1930, pending the results of an enquiry instituted by the Medical Department as to the nature and scope of the operation as practised among the Kikuyu and its effects on child-birth.

2. At the time the proposals contained in the Governor's Confidential Despatch of the 15th of March were made it was generally supposed by Administrative officers that there would be no difficulty in framing a definition of maim which, while covering the more brutal forms of the operation, would not embrace the

form....

-1-

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
THE COLONIAL OFFICE,
LONDON.

31st October, 1930.

form of the rite as generally practised among the Kikuyu.

3. As a result of the more careful enquiries which have now been made it appears fairly certain that, although the severity of the operation may differ in different districts, it generally amounts to something more than simple clitoridectomy. Thus the Director of Medical and Sanitary Services reports as follows:-

"The sub-committee of the Central Board of Health appointed to investigate the processes and results of labour and childbirth among African women, both generally and with special reference to the results if any, of female circumcision, to which reference has been made in previous correspondence has collected a certain amount of information which is now in the process of being examined statistically. The numbers are very small and the figures cannot be accepted as conclusive though they may be significant. The results indicate that there is considerable variation in the effects, as regards childbirth, of female circumcision among the Kikuyu, and therefore that there is a variation in the extent of the operation, but only three individuals out of three hundred and seventy four were reported as having undergone clitoridectomy only. Four were stated to be uncircumcised."

4. Your Honours will, of course, appreciate the very great difficulty in arriving at the real facts in any given area without actual physical examination, which it would be quite impractical to undertake, while the numbers at present examined by the...

21st October, 1930.

the sub-committee referred to above are clearly insufficient as a basis for any generalization. The evidence, however, such as it is, goes to show that the extension of the definition of "pain" to cover all cases, more severe than simple Clitoridectomy would probably have the effect of making the performance of a very large proportion of the operations, as now customarily performed among the Kikuyu, an offence punishable under the Penal Code. Such a situation was never contemplated at the time the proposal further to amend the Penal Code was made, and I feel sure Your Lordship will agree with me that in the circumstances it would be unwise further to proceed with the proposal at present.

5. Quite apart from the technical difficulty of framing the necessary definition, which I understand from the Attorney General and the Director of Medical and Sanitary Services is considerable, there is the very real practical objection to putting a provision on the Statute Book which cannot be really enforced in the absence of support from native public opinion. This aspect of the case has been fully stated by the Acting Governor of Uganda in paragraph 11 of his Despatch No. 398 of the 30th of September, 1930, to Your Lordship, a copy of which he has sent me, and I have nothing to add to his remarks.

6.....

21 on 70065/3. General

(with printer -

copy on 28477/30
no. 16

31st October, 1930.

6. There is, however, the further consideration that any attempt to amend the Penal Code in the manner proposed would undoubtedly have a most disturbing effect on the Kikuyu at the present time. The Provincial Commissioner, Mr. Horne, informs me that the present situation in the Reserve is most satisfactory, and that he has every reason to believe that it will remain so, provided nothing is done to lend colour to the suggestion that the Government proposes to interfere with the customs of the tribe in respect of their women. It would be quite impossible to explain to the native mind the legal niceties involved in any definition of "rape" that might eventually be evolved, and it would be ~~only too~~ easy for interested persons to spread the rumour that the Government intended rigorously to suppress circumcision in all its forms.

7. In these circumstances I feel sure that the wiser course to pursue is to endeavour to reduce the rite to its mildest form by means of education and propaganda and such administrative action as can be undertaken with the assistance of the native authorities themselves.

8. [In this connection I transmit for Your Lordship's information] a list of penalties which have been imposed by the Kaka Native Tribunals since 1926 on natives who have contravened a resolution passed

By.....

26

-5-

31st October, 1930.

by the Local Native Council of the Embu District in that year. A copy of the resolution in question is annexed hereto, together with an extract from the minutes of a meeting of the same Council held in February last, from which it will be seen that native opinion in that area is tending towards restricting the operation to its mildest form. The licence of operators by the Council is a measure which will aim at the protection of those operated upon from any excessive incision. ^{It is felt} I am convinced that steady progress towards a modification of the rite and its eventual gradual abandonment may be hoped for through careful influence upon and by the native authorities, whilst active penal repression by Government at this stage would have the reverse effect.

9. In view of what I have written I have not consulted the Governors of Tanganyika and Uganda on the question of further amendments to the Penal Code, but copies of this despatch are being sent them for information.

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

W. H. Moore

ACTING GOVERNOR.

LIST OF PENALTIES IMPOSED BY THE
EMBU NATIVE TRIBUNALS SINCE 1926.

Date	Offence	No. of Acc'd	Court	Sentence
27. 9. 26.	Performing a second circumcision	5	Chuka Tribunal	Fine Shs. 80/- in default <u>3 months R.I.</u>
3. 1. 27.	---"---	1	---"---	Transferred to D.C.'s Court. No record there in; presumably discharged.
16. 8. 27	Performing a circumcision not being a registered circumcisor	4	---"---	Fine Shs. 80/- in default <u>3 months R.I.</u>
16. 8. 27	---"---	2	---"---	<u>Discharged</u>
9. 9. 27	---"---	7	---"---	Fine Shs. 80/- in default <u>2 months R.I.</u>
10. 10. 27	---"---	1	Mbere Tribunal	Fine Shs. 30/- in default <u>2 months R.I.</u>
19. 11. 27	Performing a second circumcision	1	Embu Tribunal	2 months R.I. and fine Shs. 20/- in default <u>1 month R.I.</u>
18. 1. 28	Performing a circumcision not being a registered circumcisor	2	Mbere Tribunal	Fine Shs. 30/- in default <u>2 months R.I.</u>
8. 5. 28	Performing a second circumcision	3	Chuka Tribunal	<u>Fine Shs. 100/-</u>
27. 6. 29	Performing a circumcision not being a registered circumcisor	2	---"---	<u>Fine Shs. 100/-</u>
19. 8. 29	Performing a second circumcision	3.	---"---	<u>Fine Shs. 100/-</u>
7. 3. 30	a) Performing a circumcision not being a registered circumcisor, b) Performing a second circumcision c) Making an incision of greater extent than lawful.	1	Embu Tribunal	Fine of Shs. 150/- in default 2 months R.I. on each charge.

Public Record Office
Reference
C.O. 533
394

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Date	Offence	No. of acc'd.	Court	Sentence.
12. 7. 30	a) Performing a circumcision not being a registered circumcisor. b) Performing a second circumcision	2.	Kambu Tribunal	Fine Shs. 150/ in default 2 months K.L. on each charge.
13. 8. 30	a) Performing a circumcision not being a regular circumcisor b) Performing a second circumcision	2.	" "	fine of Shs. 150/- in default 2 months K.L. on each charge.
13. 9. 30	Performing a circumcision not being a registered circumcisor.	1.	" "	Pending.
13. 9. 30	Abetment of above.	1.	" "	Pending.

Extract of Resolution No. 3 of 1926.
Cliterodectomy.

" No person other than one duly authorized by the Embu Local Council shall, within the Embu District, perform or assist in the performance of the operation of Cliterodectomy.

2. No person subject to the jurisdiction of the Embu Local Native Council, in the Embu District when performing or assisting in the performance of cliterodectomy shall make an incision of greater extent or depth than is necessary for the removal or excision of the clitoris.

Any other incising or mutilation of the private parts of a woman shall not be performed or permitted to be performed.

3. No person may perform more than one operation of cliterodectomy and no person may permit more than one such operation to be performed on any woman to whom he is in the position of parent or guardian.

4. Any person affected thereby who shall refuse neglect or fail to comply with the aforesaid Resolutions shall be guilty of an offence punishable under Section 8(2) of the Native Authority Amendment Ordinance of 1924. "

SD. V. COLE
VICE PRESIDENT.

Held at Embu on 26th. February 1950.

at 10 A.M.

Extract of Minute No. 2/50.
Female Circumcision.

The President pointed out that Resolution No. 3 of 1926 regarding female circumcision, although it made illegal any cutting of the external parts, might be interpreted by operators as permitting such an amount of internal cutting as might easily cause considerable interference with the normal function of women.

He suggested that the Council should give a ruling interpreting the law as permitting removal of the glans clitoridis only, since any deeper incision would cause the removal of parts the cutting of which it was not the intention of the resolution to allow.

The meaning of such a ruling was carefully explained to the Council.

Several members, representing the five tribes of the District, spoke strongly in favour of such a ruling and the Council unanimously agreed.

The President promised to convey the ruling to Kiama, who would be informed that the word 'clitoris' in Section 2 of Resolution No. 3 of 1926 was to be interpreted as meaning 'glans clitoridis' only. The President also agreed to have registered operators instructed accordingly.

The Medical Officer informed the Council that in his opinion if this ruling were put into practice they could rest assured that their women would suffer no harm from circumcision.

SD. H.E. Lambert.
PRESIDENT.

C.O.

Mr. Eastwood. 20/11.

Mr. Allen 20/11.

Mr. Parkinson 21.11.30

X Sir C. Bottomley. 21.11.30

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

X Parly. U.S. of S.

Secretary of State.

Downing Street.

24 November, 1930.

s.o. for Mr. Shiels.

Confidential.

T.D.S. 21.11.30

Duchess of Atholl,

I have now looked into the

DRAFT. for conson.

point raised by you in your letter of the 18th November about the definition of the word "maim" in the Kenya Penal Code.

Her Grace,

The Duchess of Atholl
D.B.E., N.P.,

The definition of "maim" in the Penal Code is :-

"Maim means the destruction or permanent disabling of any external or internal organ, member or sense".

In order to make it perfectly

Recire. quickly to me.

A.O.C.P.

ack 25.11.30

clear that the position as to female circumcision will be covered, it is proposed, as stated in paragraph 10 of the memorandum of the Director of Medical and Sanitary Services to add to the definition something to the following effect -

"The operation of female circumcision which involves the removal of the labia majora, labia minora or any of them is a ~~m~~^maim", and ~~so~~^{as} I said in my letter

of the 26th August, there is no reason to doubt that

(29)

if any amendment on those lines were being drawn in final form ^{the words} "any of them" would be rendered "any part of them", ^{those bringing within the definition} that is to say anything in excess of simple cliterodectomy. *The object for is one that we anticipate that this rendering will be adopted.*

If I understand you rightly, what Dr. Bentham now suggests is that in the main definition the word

"part" should be substituted for the word "member".

If however some such addition as I set out above is

made to the definition, there will be a ^{clear} definite

statement that the more extensive forms of

circumcision constitute a ~~m~~^maim, and I do not think

that there should be any need for an alteration

in the wording of the main definition. It has

always to be borne in mind that that definition

is intended to apply to other things besides female

circumcision.

circumcision.

(26)

May I remind you of what

I said in my letter of the 31st July that

it is undesirable to have any public

statement as to the proposed addition to

the definition of "main" until a decision

has been actually reached.

I am
Sincerely
Yours

TELEPHONE,
FLAXMAN 8807.

33 3/4

98, ELM PARK GARDENS,
S.W. 10.

10th November, 1930.

Dear Dr. Drummond Short,

Now that you are back in Palestine, and I hope a student to London, (may I say how sorry I was to see that you were unwell?) may I continue our correspondence on the subject of the new penal code for Kenya where we left off some time ago.

I think I had told you that Dr. Ethel Bentham did not feel sure that the operation of female circumcision, even in its most serious form, would come within the wording you gave me. I am sorry that I did not explain before that this referred to the definition of "maim" contained in paragraph 10 of the Memorandum of the Medical Officer of Health for Kenya. Dr. Bentham has since re-iterated this opinion, and suggests that if the word "part" could be substituted for "member" the operation might then be covered. Could this point be examined?

I must say further, that I find it difficult

to regard even the lesser form of the operation
as "compulsively typical" - the term by which it is
described in paragraph 2 - , and even if it were I do
not see what guarantee there can be that any native
operator would stop short of the severer operation.
My information is that the rules in regard to this
matter, of which you send me a copy are a dead letter.

But in this ^{particular} case, I am only expressing
my personal feelings.

Yours sincerely
W. H. D. D. D.

Hope your daughter is better.

T. Drummond Shiels Esq. M.D. M.C. M.P.
Colonial Office,
S. W. 1.

Mr. Allen.

I attach ~~is~~ a blank file covering the Kenya correspondence which it seems necessary to ~~send~~ print. It consists of :-

No. 2 on 15943/29 and its enclosures (which should eventually be returned to their files).

This is referred to in No. 12 on 16004/30 (see below).

No. 3 on 15943/29 and its first (but not its second) enclosure, (this enclosure should also be returned to the file ^{eventually} of ~~origin~~).

No. 5 on 16004/30 and its enclosure, 1.6., No. 2(a) on 16004/30. It does not seem necessary to print the telegrams referred to at the beginning of this despatch.

No. 12 on 16004/30, omitting para. 13 and all enclosures.

No. 17 on 16004/30, with all the enclosures except the report of the inquest proceedings (this entails a small erasure in paragraph 9 of the despatch).

(In order to make a complete set of the enclosures I have not removed the original of the D.M.S.S. memo. from the file. This should eventually be returned).

No. 18 on 16004/30. ~~The~~ reply to No. 18 when it is received.

I notice that there has been no comment on any of these despatches as yet. Presumably such comment will be made at some stage.

The duplicates have been registered on 25477/30 B.A. which is below, but any comments made on this file should be copied on to that file.

E. S. Adams

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RECEIVED
14 NOV 1930

35 33

GOVERNMENT HOUSE,
KENYA,
EAST AFRICA.

9th October, 1930.

Handwritten signature
(... ..)

Dear Sir Cecil,

NO. 30

Thank you for your letter No. 16004/30 of the 10th September, 1930, sending me copies of correspondence which Dr. Shields had with the Duchess of Atholl on the question of female circumcision in Kenya.

As you know, questions of further amendments to the Penal Code have been the subject of recent telegraphic correspondence. I hope to be able to send off a despatch to the Secretary of State shortly, as soon as this subject has been considered in Executive Council.

Yours sincerely,

Handwritten signature

SIR GECIL BOTTOMLEY, K.C.M.G., C.B., O.B.E.,
COLONIAL OFFICE,
DOWNING STREET, S. W. 1.
LONDON.

32 36

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 23rd September, 1930.

(Received Colonial Office 12.34 p.m. 23rd September, 1930)

(No. 31)

No. 315 Confidential My telegram No. 295 Confidential Delete all words after ordinance and substitute "further" definition of word "main" was altered by Select Committee by substitution of "member" for "membrane" and alteration now embodied in penal code. Regret if words now deleted from telegram under reference which was sent under a misapprehension were misleading.

1600/125 37
2

TELETYPE from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 9th September, 1930.

(Received Colonial Office 9.23.30. 9th September, 1930)

Not

No. 295. Confidential.

Your telegram of 27th August Confidential No. 153 as stated in paragraph 3 of my despatch of 15th March Confidential No. 44 considerable difficulty was anticipated in defining the more brutal form of operation which should be deemed a maiming and as explained in paragraph 4 of my despatch of 14th August No. 121 an enquiry has been instituted by Medical Department as to the nature and scope of operation as practised amongst Kikuyu and its effect on childbirth. Pending result of that enquiry which is not yet concluded it did not appear desirable to amend Ordinance merely for purpose of substituting member for membranes. Despatch follows.

7000/306
Sub file
(no. 11)
h. m. c.

Enc. enclosed - file no 32

Further definition of word "maim" was altered by select case of substitution of "member" for "membrane" & alteration now embodied in penal code

Mr. Lee 5/24/30

Mr. [unclear] 5/19

Mr. [unclear]

Sir C. Bottomley

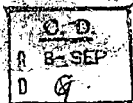
Sir [unclear] Edinburgh

By [unclear]

Kenya U.S. of S.

Party U.S. of S.

Secretary of State



s.o. for Sir C. Bottomley's signature.

Downing Street

10 September, 1930.

DRAFT.

Ut. Out.

Sir E. H. A. Gifford, K.C.M.G.,
K.C.V.O., D.S.O., M.C.

H. M. M. Moore, S. Cong.

[Mr. E. G. Gifford will leave
left when the annex is
so I will be addressed
to the annex.]

Dear Moore

Before he left for Geneva,

Dr. Shiels asked me to send you the
enclosed copies of correspondence

which he has had with the Duchess of
Atholl on the question of female
circumcision in Kenya as he thought that
you would like to have them on record.

You will see that the Duchess
Commissioner *in confidence*
(and her *also*) were given the informa-
tion about the proposed amendment of the

definition of "maim" in the Penal
Dr. Shiels' report
Code referred to in paras. 5 & 6 of your
Conf. Moore
official despatch of the 15th March.

Dr. Shiels felt that, in all the
circumstances, it was not possible to
withhold this, especially as the

Duchess

Fr. The Duchess of Atholl
3rd July

To do. 14 July

Fr. do. 21st July

To do. 31st July

Fr. do. 12th August

To do. 26th August

(17)

O O

Mr. J. Shackburgh
Mr. G. Grindle
Sir G. Bottomley 25.8
Parly. U.S. of S. 25/8

Confidential

Ford's Shields signature

26th August 1952

Dear Mr. Shackburgh

Sir J. Shackburgh
Sir G. Grindle
Parly. U.S. of S.
Parly. U.S. of S.
Secretary of State.

2/15

DRAFT cons. v minutes

THE PROGRESS OF ATHLETICS

I have received your letter of the 12th August relative to female circumcision in Kenya.

As regards the amendment of the definition of "main", you will see an earlier reference to para. 10 of the memo. of the Director of Medical and Sanitary Services that the wording there given does not purport to be exact; and there seems no doubt that if an amendment on those lines were being drawn in final form, "any of them" would be rendered "any part of them", that is to say anything in excess of simple clitorodectomy. It is understood that the appropriate wording of any such amendment would be drawn up

Copy to Kenyan Income Tax Dept.

(in No. 17)

Received from
J. G. Ford

by the Director of Medical and Sanitary

purchase was at point of this very
considerable in not pressing the matter
in the House in the last
weeks of the session.

Yours sincerely

It was I also felt

but not only was there
no objection to his proposal
but also that had been
one of the considerable
reasons of Sir G. Grindle

Yours sincerely

W. C. Bottomley

(Signed) W. C. BOTTOMLEY.

Attorney General

Sanitary Services and the Ag. Governor

in consultation ^{and the actual photo-ry would, of course,} but their ~~could~~ only ^{be decided upon when more} information had

been obtained as to the nature of the operation commonly performed both among the Kikuyu and ^{any} the other tribes in Kenya which practise the rite.

There is no objection to your sending paras. 19 to 23 of the memo. to the Chairman of the African Women's Aid Committee at

Edinburgh. ~~but in doing so~~ I should be glad if ^{in doing this,} you would make it clear that the information ^{is not to be}

is communicated on the understanding that it will not be used publicly as ^{Official} emanating from the Director of Medical and Sanitary Services.

E. J. Vary that, on the Jackson w. claim that she has full info. with photographic evidence & we do all want to support that there will be publicity & local exposure.
at

See minute ? over.
at

I am sorry not to have replied sooner to your letter, but it has been following me about the country, but since I am here in London.
Yours sincerely
(Sgd.) T. Drummond Shields

12th August, 1930.

Dear Dr. Drummond Shiels,

I am sorry not to have replied sooner to your letter of the 31st July, for which many thanks.

Of course I quite understand the wish of the Governor of Kenya that there should be no public announcement in regard to a possible amendment of the definition of "maim".

I am sorry that I had not fully taken in that it was ~~not~~ in regard to the definition of "maim" in section 221 of the new code that consideration was being given to the possibility of clearer definition. In regard to the further definition ^{of this} proposed at the end of paragraph 10. of the Kenya Medical Officers Memorandum, is the wording "any of them" quite clear? I hope it means that the removal of any part would be considered a "maim".

I am sending on your letter and Memorandum to Dr. Ethel Bentham. You can rely on both being treated

(No 21)

Answer 16/8/30
Copy to Hon. Mr. Moore 10/8/30

Interac. and
1/1/31
no. 26

as strictly confidential by members of our committee.

I wonder if I might send a copy of paragraphs
^{of the Memorandum} 15 to 23 ^{to} the Chairman of an African Women's Aid
Committee which has recently been set up in Edinburgh
to study conditions relating to welfare of women and child-
ren in Africa, and to ~~raise~~ ^{raise} money to help ~~where~~ ^{where} necessary.
They are considering raising money to help in maternity
and child welfare work ^{in Kenya} and the paragraphs in question give
a very clear and comprehensive account of the existing
provisions. I do not think there is anything confidential
in them, and should therefore like to send that part of
the Memorandum to this lady, if I have your permission
to do so.

Yours sincerely
Katharine Atholl

T. Drummond Shiels, Esq. M.D. M.P.
Colonial Office,
S.W.1.

26 41

Mr. Lee

Sir C. Bottomley

Sir J. Stuckburgh

Sir G. Grindle

Permt. U.S. of S.

X Parly. U.S. of S.

Secretary of State

T.D.T. 50.7.30
75.

For Dr Shiels' signature.

Downing Street

CONFIDENTIAL

31st July, 1930

DRAFT.

Her Grace
The Duchess of Atholl, M.P.

Dear Duchess

Copy to Home Sec. Inverness. 5.10 SEP 1930

I have now looked into the points raised in your further letter to me of the 21st of July regarding female circumcision in Kenya.

It is, of course, important to respect the Governor's strongly expressed wish that there should at present be no public announcement in regard to a possible amendment of the definition of "maim". For

Handwritten:
K...
Cin no 7 - duplicate!

I am not entirely clear which "wording" she had in mind. If it is Section 214 of the new Code (i.e. that providing punishment for "^{harm}grievous hurt") the Governor and his legal officers are satisfied that the wording would cover the case of a circumcision operation performed on a girl against her consent expressed or implied.

See para 121
No 17

(13)

If Dr. Bentham had in mind a case in which a girl gave her consent, the position is, as I explained in my letter of the 14th of July, that the Governor and his officers are considering whether further legislation is necessary to insure that the more brutal forms of the operation would legally be deemed a

of the new Code. If, therefore,
Dr. Bentham's views concerned the
wording of Section 221, the answer is
that the local Government is still
considering the question whether the
wording of that Section is adequate to
secure the purpose contemplated.

Generally, I am sure that
the local Government is as anxious as
we are that the provisions made in the
new Code should be effective to cover
these cases, and as you will see, they
are giving the matter (which is not free
from difficulty) their very careful
consideration.

Yours sincerely,

*Clivedon 31 July (No. 26)
Copy to Hon. Mr. Moore 15.7.38*

TELEPHONE
KIA 2222

RECEIVED
25 JUL 1938
CO

98, ELM PARK GARDENS,
S.W. 10.
RECEIVED
25 JUL 1938
S. A. 20910

Dear Dr. Drummond Shiels,

Many thanks for your letter of the 14th
July. I am very sorry that owing to great pressure of
work last week, and absence during part of it, I was unable
to thank you for it sooner.

I would like to know what the position will be
under the new Code. It respects to cases in which the circum-
cision operation is performed on a girl against her wishes.

I note that the question as to whether the
more brutal forms of the operation would legally be deemed
a maim, even with the consent of the girl, is now under
consideration.

I shall certainly treat this information
as confidential. I hope you will not mind my communicating
it to our Committee under the same condition.

I am told that the Medical Officer of Kenya
was asked to write a memorandum on the various aspects
of the circumcision question. Would it be possible for
me to see a copy of it?

defer on reading your letter to

Dr. Drummond Shiels, M.C., M.P.,
Colonial Office,
S.W. 1.

on - come to

don't like the first one but

come within

clo this for tomorrow

O.O.

See minute dated 9.7.30

23

M. ...
M. ...
O. ...

for Dr. Drummond Shiels, Sir

Sir C. Battimley

Sir J. Shuckburgh

Sir G. Grindle

CONFIDENTIAL

Head, U.S. of S.

Chief, U.S. of S.

Secretary of Staff

103. 11250
CS

DOWNING STREET

14 July, 1930

Tom Mac

BAFT.

MAJOR THE DUCHESS
OF ATHOLL, M.P.

Copy to ... 10 SEP 1930

You wrote to me on the 3rd July, to enquire what penalties were provided in the new Penal Code recently enacted in Kenya for a person convicted of performing a circumcision operation on a girl against her wishes. I have now looked into the matter and find that the position in regard to this, and the other questions mentioned in your letter is as follows:-

(a) If the girl does not give consent expressed or implied, a charge would lie under section 214 of the new Code, which reads as follows:- "Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for

and the Government is also asking the other Governments whether they will agree to introduce similar Ordinances in their Dependencies. In

~~view of this, the Government is very anxious that no public announcement with regard to such further provision should be made at present, and I must~~

therefore ask you to regard the above information, in so far as it relates to ^{each provision} the proposed amending Ordinances, as confidential.

(c) Section 335 of the Indian Penal Code provides a maximum penalty for voluntarily causing grievous hurt of seven years rigorous imprisonment and a fine, and a charge would lie under this section if an operation were carried out against the victim without implied consent. If the hurt is caused by a dangerous weapon (viz. an instrument for cutting) the term of imprisonment may extend to ^{ten} 10 years under section

98, ELM PARK GARDENS,

9-W-10

3rd July 1930

Dear Dr. Drummond Shiels,

I had wanted to put down a Question to you for answer yesterday, asking you what penalty the new Criminal Code in Kenya provides for anyone who performs the circumcised operation on a girl against her wishes, and if it takes any note of the operation, ^(also a shot for) even if performed with the consent of a girl. But I hesitated to put down this Question, as I am told that public opinion in Kenya is sensitive on this subject just now, and I therefore want to ask if you will be so kind as to give me the information personally. I should be very grateful if you would.

I may say that I met the Chief Justice of Kenya the other day, and found him rather hazy on the subject. The only thing I could gather from him was that the new Code was to come into operation on the 1st July.

The statement has just been made to me that the Indian Penal Code, hitherto in force in Kenya, has permitted a maximum penalty of 7 years in prison for the performance of this operation against the girl's consent. I am sure that this Code has permitted a further punishment because

SEP 10 1930

Prof. H. H. ...

the hurt caused by the operation was carried through
by a cutting instrument. ^{really} you be so kind as to
tell me if this was ^{any}

Handwritten signature and scribbles

Dr. Drummond Shiels, M.C. M.P.
House of Commons,
S.W. 1.

**REPLY OF THE KIKUYU
CENTRAL ASSOCIATION.**

**Allegations of Seditious
"A Libel on Natives."**

ENQUIRY WELCOMED.

President of Donatus Ophald
D. O. Ophald

The Kikuyu Central Association strongly repudiates that seditious tendency which exists anywhere in Kenya and says the suggestion is an unjustified libel on the peaceful natives of the Colony and a prelude to suppressing them.

In a letter to the "Standard" published below, the Association declares that the allegations regarding threats to missions are unfounded.

An enquiry by Government into the alleged "unrest" to nip the "bug" in the bud is welcomed.

The Association further states that it is in full accord with the statement that a person who has a conscientious objection to forming a militia is perfectly entitled to refuse to supply to it.

The letter to the "Standard" is as follows:

Sir—My Association which is the representative body of almost the whole of the Kikuyu tribe has read the account of the proceedings of the meeting of the Ruiri Farmers' Association published in today's paper and is absolutely disappointed at the attitude towards the native population.

The Association passed a resolution as follows:

That the Association is a widespread considerable apprehension exists throughout the Colony as to the seditious tendencies of a section of the natives in the country which has now developed in threats of violence to many of the missions of the Colony, believing that the native unrest is largely fomented by Communist Agents; this Association calls on Government to take the strongest possible action against them, most of whom are already known to Government; and that this Association requests Government to explore the possibility of organising the Intelligence Department of the Defence Force with a view to meeting the danger.

My Association strongly repudiates the allegation that missions

are in any section of the population of the Colony. It is an unjustified libel on the peaceful natives of the Colony and a prelude to a policy of suppressing the natives and discouraging them from asking for their rights as sons of the soil, especially in regard to land and representation on the Councils of the territories.

It is a prelude to a heresy which would be the ruin of the nation regarding sedition.

The allegation regarding threats of violence to many of the missions of the Colony is equally unfounded. The Natives, on the other hand do sincerely acknowledge the efforts on the part of the missionaries to help in their upliftment.

Reference is made to Communist Agents. We natives have not even heard what Communists are, and have not at all come into contact with any Communist agents, if there are any at all in the Colony.

These exaggerated statements simply bolster us and strengthen the impression in our mind. Now things are grossly misrepresented against innocent people who are just beginning to look to the Imperial Government for a redress of their grievances, and are employing constitutional means throughout.

We not only welcome the suggestion regarding an enquiry being held into the whole question of "unrest," but urge the Government to immediately hold an enquiry so that the panic which certain people are creating in the minds of Europeans and Natives be nipped in the bud.

As regards the custom of Clotomulsion, my Association wishes to make it clear that it is deeply repugnant to the life of the native and it has a definite place in the social, economic and moral life.

My Association is in full accord with the statement that a person who has a conscientious objection to the ceremony is perfectly entitled to refuse to submit to it. No sort of force or compulsion is used against such persons.

We do not lend our support to the allegation that the white woman, Mungu, has any particular sympathy with the Native women. This statement appears to be based on some sort of misunderstanding.

It is impossible to expect to prohibit the custom in its entirety at the present stage of development of the natives of the country.

At the end I again strongly repudiate the allegation regarding sedition or even an attempt to undermine the constituted authority by the Kikuyu tribes. It is nothing but gross exaggeration and misrepresentation of facts.

Mr. De Fontaine D.C. Port Hall
for fighting their cause in Mariguana scheme.

Yours etc.
JESSE KARIOKI
Acting President, Kikuyu
Central Association.
Nairobi,
January 30, 1930.

100-4-18 COLONIAL BUSINESS REPLY

No. 418

BEAUFORT & CO. LTD.
SOLICITORS

100-4-18

Rates of Exchange

100-4-18 1930

Mr. Parkinson
For Dr. Shiga's signature

Sir Q. Grindle
Permit, U.S. of S.
Party, U.S. of S.
Secretary of State

DRAFT
MRS. MACAULAY BOWIE

London Street

1 May 1930

Dear Mrs. Maonblay Bowie

I am sorry not to

have replied sooner to your

letter of the 23rd of April which

reached me while I was away from

London for the Easter recess.

I enclose a copy of

the ~~Kenya~~ Code which I

have borrowed from the Colonial

Office library for you. I should

be glad if you could return this

to me at your early convenience.

The sections in which you will

be interested are 323, 324, 325

and 326.

I am sorry that I cannot

at the moment send you a copy of

the new Kenya Penal Code. We

are expecting to receive copies

William (Bill) (K...)

from the Colony shortly after I will

take a note that one shall be sent

by you to see when copies reach

Yours sincerely,

W. T. R.

10 Walker Street

Edinburgh

1949

23.4.1932

Dear Dr. Drummond Smith

Is it possible for you to give

me for me to purchase a copy of the
present (Indian Penal) code in force in

Bungo & that proposed to come into
force in July? If this is impossible

may there be a copy of those provisions
bearing on female circumcision

& the position of women among these

tribes? I shall be so grateful for this information.

It will be of the greatest use to

reference in the committee

Yours sincerely

J. Mandayam

Education, African Women's Fed.
Committee

C.O.

X.16664/BG.K

60 18

Mr. Eastwood

Mr. Allen 19/4.

For mail of 22 April

Mr. C. M. ...

Mr. ...

DOWNING STREET,

22 April, 1930.

Sir J. Shackleton

Sir G. Grindle

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Sir,

DRAFT.

KENYA

CONFIDENTIAL

Gov.

No. 17

I have the honour to acknowledge the receipt of your confidential despatch No. 44 of the 15th March on the general subject of female circumcision, and also of your despatch No. 12 No. 98 of the 20th February regarding the partition case of an operation performed on a Kikuyu girl.

1. I wish in the first place to thank you for the full statements furnished by you. I have also read with much interest the memorandum by the Director of Medical and Sanitary Services enclosed in your confidential despatch No. 44 of the 15th March.

2. I am glad to receive the assurance that under the law as it stands, if the operation is performed

5 copies of this despatch should go to Kenya 1 top & 4 files

without

without the ~~patient's~~ ^{galt's} consent, the operator
and all who abet the operation are liable
to the penalties provided for causing hurt
or grievous hurt as the case may be. I note
from para. 12 of your despatch No. 98 of the
20th February that under the existing Code
the maximum penalty for voluntarily causing
grievous hurt is, in addition to a fine,
rigorous imprisonment for seven years, which
may be extended to ten years if the hurt is caused
by a dangerous weapon, such as an instrument
for cutting.

I note also that under the new
Penal Code the maximum penalty for causing

grievous harm will be seven years imprisonment.
In these circumstances, I agree that the

penalties are adequate when the operation is
performed without the ~~patient's~~ ^{galt's} consent, and that
there is no necessity for them to be increased.

As regards the general legal position,
I observe that, under the existing law, a

conviction for grievous hurt cannot be obtained
against anybody performing the operation of
circumcision, if the ~~patient's~~ ^{galt's} consents; but that,

in the new Penal Code with the addition referred

No. 12

to in para. 8. of your despatch No. 98
of the 20th February becomes law, consent
to an operation which constitutes a main
will be no defence to a prosecution.

I concur in the view that the word

"member" should be substituted for

"membrane" in the definition of "main"

in the new Code; and I approve

the proposal referred to in paragraph

11 of your despatch No. 98 of the 20th

February and para. 2. of your confidential

despatch No. 44 of the 15th March) to

introduce when the new Code is introduced

an amending Bill to declare specifically

that the more brutal forms of the

operation shall be deemed to be a crime

5. I realize the many difficulties

with which the problem is beset and

I agree that the abolition of the rite

can

can only be gradual and that no general attempt should be made to abolish immediately the milder forms.

I trust however that ~~any such~~ ^{such} ~~steps~~ ^{steps} ~~will be~~ ^{will be} ~~carried out~~ ^{carried out} by the Medical Dept. working in co-operation with the Administrative Officers, to impress upon the natives the necessity for an improvement in hygiene generally and to bring home to them the dangers consequent upon any but the milder forms of ~~the operation~~ ^{the operation}. It is clearly

desirable that everything possible should be done to convince the natives themselves in order that they may appreciate the reasons for declaring the severer forms of ~~the operation~~ ^{the operation} illegal and their co-operation be secured.

There seems no doubt that educational talks by medical officers and nurses would be a most valuable form of propaganda and would be welcomed even by the younger members of the Kikuyu tribe.

In this connection I would invite reference to para. 3. of my despatch No. 123 of the 6th February.

I have, etc.

(Signed) CASFIELD

can only be gradual and that no general

attempt should be made to abolish

immediately the milder forms.

I trust however that ~~everything possible~~ ^{everything possible}

~~will be done~~ ^{will be done} by propaganda carried out by

the Medical Dept. working in co-operation

with the Administrative Officers, to impress

upon the natives the necessity for an improve-

ment in hygiene generally and to bring home

to them the dangers consequent upon any but the

milder forms of ~~disinfection~~ ^{disinfection}. It is clearly

desirable that everything possible should be

done to convince the natives themselves in

order that they may appreciate the reasons for

declaring the severer forms of the operation

illegal and in order that co-operation be secured.

There seems no doubt that educational talks

by medical officers and nurses would be a most

valuable form of propaganda and would be welcomed

even by the younger members of the Likuyu tribe.

In this connection I would invite reference to

para. 3. of my despatch No. 123 of the 6th February.

(5)

I have, etc.

W. G. PASSFIELD



GOVERNMENT HOUSE
NAIROBI

5
No. 1000

I have the
 ... No. 26
 ... of female ...
 ... I desire
 ... grave misapprehension
 ... copy of the Deprt. ...
 ... Lord's ...
 ... many references
 ... the Kyambu case, of ...
 ... despatch, it is
 ... evident that there is ...
 ... as it stands in Kenya ...
 ... who is unwilling to ...
 ... This
 ... is erroneous. The operator and all who abet
 ... the operation, if it is ...
 ... consent, would be liable to the penalties provided
 ... for causing hurt, or grievous hurt, by the Indian
 ... Penal Code. In the Kyambu case the responsible persons
 ... were accused of voluntarily causing grievous hurt ...

THE RIGHT HONOURABLE
 LORD PASFIELD, P.C.,
 SECRETARY OF STATE FOR THE COLONIES.

4, DOWNING STREET,
 LONDON, S.W.

they were acquitted by the Magistrate on a charge because of a fact that the girl, although at first unwilling, eventually gave her consent to the operation. The Supreme Court, to which the case was stated, could not reverse the verdict on the issue of fact.

Our Lordship will appreciate the... whether... expressed or implied... just emerging from a state of barbarism are in a very... state of development and this is particularly true of the women. For instance, when asked if they wish to undergo what appears to the European mind... definite... such as carrying heavy... they are quite unable to articulate the... of the question. They merely reply "It is our custom" or "It is the breaking of... liberty... it is... with..."

From this arises one of the greatest difficulties in dealing with such a custom as female circumcision. The chief opponents to any reform are the victims themselves and their attitude is due to the fact that they are bound by custom. Few reach the stage of contemplating any departure from custom; those who do are very easily persuaded by their more conservative relations and friends that any such departure would be a sacrifice; it is for this reason

that almost every girl gives her consent to the operation. It is none the less the case, however, that any who definitely refuse can always have the protection of the Law if they will avail themselves of it.

5. In this connection my attention has been drawn to an apparent error in clause 5 of the proposed Code of Criminal Law in which the word "membrane" has been inadvertently included in the definition of "main" instead of the word "member", which is used in the definition of "main" according to English law. After full discussion my Executive Council has advised that the word "member" should be substituted for the word "membrane" in this definition. When the Code has been passed I propose, subject to Your Lordship's concurrence to pass a short Ordinance amending the Code by a provision which will specify definitely that the more brutal forms of the operation shall be deemed to be "main". The effect of the amendment will be that consent will be no defence to such an operation.

X
The Director of Medical & Sanitary Services will assist the Attorney-General in fixing the appropriate wording which can only be finally decided upon when more information is forthcoming as to the nature of the operation commonly performed both among the Kikuyu and the other tribes of Kenya which practise the rite.

I need hardly remind Your Lordship that this rite is not peculiar to the Kikuyu alone, but is very generally practised both in West Africa and the Sudan as well.

6. I propose to consult the other East African Governments as to whether they will agree to a similar amendment to their Penal Codes and I would urge upon Your Lordship that it is important that no public announcement should be made in this connection in the meantime.

7. In the second place while I appreciate Your Lordship's views as to the aims to be aimed at, I would stress that this abolition can only be gradual and I am convinced that it is quite impossible to achieve it by legislative imposition alone. To be effective any such legislation - indeed the remedy is legislation - must have the full support of the natives concerned and this support cannot be expected until the natives have arrived at a much higher level of general development. Enactments that had not the approval of the people themselves in such a matter as this would excite profound and widespread resentment and would be universally evaded and would in fact do more than anything else to prevent the attainment of the desired object.

8. It seems, therefore, that apart from specific legislation to deal with cases of compulsion or of serious mutilation the only means that can at present be brought into operation to discourage the practice are education in its widest sense and propaganda. In this connection a great deal is being done both by Government and by Missionary organisations and I submit for Your Lordship's information a memorandum which has been prepared by the Director of Medical

& Sanitary Services indicating the nature and scope of the work which is being undertaken.

9. Those who are in a position for immediate results would do well to reflect upon the nature of the opposition and upon the mystical significance attaching to the rite. Your Lordship is aware of the shocking murder of an elderly European lady missionary at Kijabe in January. From the inquest proceedings, a copy of which I enclose, it appears probable that it was accompanied by attempted mutilation and that it was a political crime which arose from the attitude of the Mission towards the native custom of female circumcision.

10. Apart from the considerations enumerated above which, as I know Your Lordship appreciates, would even in normal times make it necessary to conduct any propaganda campaign against the rite with the very greatest care and circumspection, the existing political situation in Kenya, which will be dealt with in a separate despatch, such that, in my satisfied and consultation with my advisers that it would be most inopportune at the present time to take any immediate action such as you suggest in the third paragraph of your despatch.

The precipitate action adopted by certain missionaries has so worked upon the feelings of the tribe that any attempt on the part of Government to inaugurate at the present time a campaign directed against any form of the operation would undoubtedly be misrepresented or misunderstood, and might indeed quite possibly lead to serious breaches of the peace.

No 1 on 16/26/30

No 3 on 15/23/30

6.

for your lordship's
board of an interview which
the subject of the Mysore Missionary Council

to
most obedient
servant,

James
Fraser

GOVERNOR.

MEMORANDUM

The custom of circumcision prevails among the Bantu tribes of Kenya as among tribes of a similar origin in other parts of Africa.

2. The extent and nature of the operation performed on women varies widely among the different tribes which practise it and even in different districts. The range is from a comparatively trivial clitoridectomy to the mutilation which is practised in certain parts of the Kikuyu Reserve. The operation is performed before the onset of puberty.

3. In considering the influence and factors which are being brought to bear on the native populations of Kenya and which have a tendency to discourage the practise of circumcision of women it is necessary to remember the mystical significance attached to the rite. There is a close association between the operation of circumcision and entry into the full life of the tribe. An uncircumcised person, man or woman, is not considered a member of the tribe and is therefore a being entirely apart from the rest of the community to which, in fact, he or she does not belong. An uncircumcised woman of a tribe which practises the circumcision of women cannot obtain a husband in the tribe.

4. There is also apparently an associated idea of propitiating the spirits by the dedication of some useless portion of the body, thus insuring the existence of the tribe as a unit.

5. Every member of a tribe practising circumcision is deeply convinced of the necessity of the operation. The younger members who have yet to undergo

what may be, in fact, a severe ordeal, though they may possibly regard the actual operation with dread, would not, in the vast majority of cases, amount to refusal.

At least one instance has occurred when young uncircumcised girls have broken out from a mission station in order to undergo what to them is perhaps the most important event of their lives. Added to the mystical beliefs attached to the custom there is the superstition that an uncircumcised woman cannot bear children.

6. The deep feeling with which the matter is regarded is exemplified by the resentment which has been aroused by disciplinary action which has recently been taken in expelling from the membership of churches of certain denominations such as refused to renounce adherence to the custom of female circumcision. This is referred to later in greater detail.

7. It followed from the foregoing that the influence which can be brought to bear with the object of combating the practice must be largely educational. It will, of course, be understood that by education is meant the whole range of development in regard to every activity of life. The immediate aim in those tribes amongst which the custom is deeply imbedded, must be to modify the actual operation with a view to eliminating the dangerous elements thereof. There is no royal road of progress and the process must be long and difficult.

8. The question as to the best means to adopt has been the subject of serious consideration by Government. The advice of the majority of administrative officers of experience, both individually and in conference is to the effect that measures of repression would not only fail but might be the cause of outbreaks of violence and even of bloodshed. The Conference of

East African Governors debated the subject and came to the conclusion that reliance must be placed at the present time mainly on the effect of education. It should be noted here, however, that a number of local native councils have passed rules regulating the operators at female circumcision ceremonies and providing that nothing more than a simple clitoridectomy shall be performed. A copy of the standard rules is appended. The effect of the rules has probably not been very great and it is doubtful whether such would have been passed by certain local native councils except under the influence of the presiding District officer. In such proceedings for infringement as have taken place, considerable fines have on occasion been imposed and paid, apparently cheerfully. There may be an educative value in the rules.

9. It is perhaps desirable that reference should be made here to the legal position as it now stands with regard to the Indian Penal Code. This is perhaps best illustrated by reference to a recent case. A charge of grievous hurt was laid against the operators who performed the major form of circumcision on a certain girl. On that charge a conviction was not obtained. A case was thereafter stated at the instance of the Attorney General. The Appeal Court upheld the Magistrate's decision on their construction of Section 38 of the Indian Penal Code which reads as follows:

"Nothing which is not intended to cause death is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith and who has given a consent, whether express or implied, to suffer that harm or to take the risk of that harm"

The case was reported in detail, in all its issues, to the Secretary of State in Despatch No. 98

of February 20th, 1930.

10. At the Governors' Conference, to which reference has already been made, it was considered that though the main line of attack against the practice of female circumcision must be by education and propaganda, yet Government should endeavour by legal prosecutions to put down open cruelty. The resolution runs as follows:-

"That those who perform any but the simplest operation of circumcision upon women and all who aid and abet the operation should be prosecuted under the criminal law which should if necessary be amended."

The position as it exists today will be altered under the proposed new Penal Code and the difficulty experienced in connection with the prosecution quoted above will be removed. The Select Committee on the draft code in its Report recommended the inclusion of the following two additional clauses:-

"220. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess according to the nature and quality of the act which constitutes the excess."

"221. Notwithstanding anything contained in Section 220, consent to a person to the causing of his own death or his own main does not affect the criminal responsibility of any person by whom such death or main is caused."

The definition of "main" in the draft code

is:-

"Main means the destruction or permanent disabling of any external or internal organ, member or sense."

There is a suspending clause in the draft Penal Code and, in order to make it perfectly clear that the position with regard to female circumcision will be covered, it is proposed to amend, as near as possible to the date on which the Code comes into force, the definition of "main" by adding something to the following effect:-

"the...

"The operation of female circumcision which involves the removal of the labia majora, labia minora or any of them is a main"

11. Any influence which tends to raise the standard of civilisation amongst the backward peoples among whom the circumcision of women is followed will tend toward the abandonment of the custom. There is undoubtedly growing up, even among the younger generation, a feeling not in favor of the custom of male circumcision and it is among individuals living under strong mission influence that it has been attained to adult age. The practice of being permitted to the operation. The practical difficulty of finding husbands is increased.

12. In a memorandum of 1930 it is necessary to specify the various educational institutions both Government and Missionary, the latter largely by means of funds provided by Government in operation and expelling their effect.

13. The appropriation for recurrent education for 1930 amounts to 893,193 of which 236,794 is earmarked for allocation to Missions. It is perhaps desirable to remark that a close supervision be kept over the educational activities of the various missions and that only those judged to be satisfactory receive subsidies. It is, of course, not considered that the money available is sufficient for the educational needs of the natives but the position must be governed by the general financial situation. The appropriations for native education are increasing in amount and the natives themselves are assisting through the medium of rates levied by the local native councils.

14. In spite of this increase in expenditure it is necessary to sound a note of warning. The policy of the Kenya Government in its later years, been to emphasize

the need of training boys as artisans. That policy has no doubt been a wise one but it may be that we have laid too much emphasis on the so-called practical side of life and not sufficient on the humanities. In the second place insufficient attention has been paid to the education of women. The amount allowed is still very small (only £2,000) but it will be possible to extend the work when the Secretary of State has considered and decided upon the scheme for the re-organisation of African schools submitted to him in Despatch No. 421 of July 13th, 1929. The third point is the most disquieting. The attitude of certain of the Churches in making the question of circumcision a religious test during the last few months has undoubtedly raised the resentment of the Kikuyu and it is unquestionable that the action of these Churches in excommunicating some of their members (who have for years been acceptable members of the Church) because they declined to accept a newly imposed test is having exactly the opposite effect to that which the Missionaries desire. The actual result unquestionably is that the practice of female circumcision holds a stronger place among the Kikuyu today than it did six months ago. These Missionaries have lost sight of the fundamental principle in dealing with native development and that is that progress must be slow and gradual.

15. The native hospitals both in the Reserves and in the towns are powerful educational factors. By their influence large numbers of natives come directly into contact with the best features of civilisation either as patients or as employees. The latter receive instruction in the care of patients and the principles of simple hygiene. The sum total of the effect of residence in hospitals and of the training given therein

* doubled the provision for training of women.

is undoubtedly very potent in combating the more undesirable features of the native mode of life. There are 12 hospitals today, 11 native hospitals created and maintained by Government. Of these 12 consist of permanent buildings and are equipped and staffed to provide the common facilities for treatment. Additions are being made and replacement of temporary structures is being effected. Equipment generally is being modernised. The immediate building programme of Government for which funds are available comprises the erection of six hospitals in centres at which medical aid has not hitherto been available and the complete re-erection of three now existing. Provision for staff has been made.

16. Accessory to the Government Hospitals in the Reserves is a system of sub-dispensaries manned by dressers trained in simple diagnosis and simple treatment. These sub-dispensaries are under the close supervision of the medical staff of the several hospitals and their effect is felt within a radius of 10 miles.

17. The influence of hospitals as an important factor in achieving progress has been very considerably increased of recent years, as additional staff became available, by the adoption of a policy of combining practical education in simple hygiene with the more ordinary duties of treatment of the sick. Medical officers on tour or visiting the sub-dispensaries select as object lessons the common diseases of the district and explain to the population the causation thereof and the simple means of prevention which can be taken. The adoption of even the most elementary means of prevention of disease means an advancement in the scale of civilisation. Considerable and even remarkable results have been achieved.

18. In addition to the Government native hospitals

the reserves were not in existence at the time of the Mission
All receive first-class service and are well attended to.

20. The additional activities of the Medical Department in Native Reserves, to which reference has already been made, are being made more effective by the posting, as staff becomes available, of nursing sisters part of whose duties shall be to pay special attention to the instruction of women and children in a manner

similar to that already described, in fact to start the beginnings of health visiting in the Reserves where sufficient is

efficient advancement appears to have already taken place to allow such to be undertaken.

21. The Hospitals attached to Missions are staffed with nursing sisters who in common with the rest of the European female staff exert a direct influence on women and children.

22. A more direct influence is brought to bear by the training of native women in nursing, either general or maternity. Training in general nursing is carried out to a greater or less extent at most of the Government and Mission Hospitals throughout the country. One or two of the Mission Hospitals employ a considerable female staff. Marked success has been attained at the Government Native Hospital in Mombasa where it has been found possible to train women up to the stage where they are competent to take charge of wards and of the male dressers employed therein. A general difficulty is experienced in obtaining women who have a sufficient preliminary general education to allow of nursing training to be superadded. Even when there are found, the calls of marriage or of family ties seriously interfere with a course of any length. The only source of supply of African women with the necessary preliminary education is the Missions and it is from them and largely through their good offices that the present students are recruited. The question of the training in nursing of native women was considered recently by a special sub-committee of Legislative Council on which sat a prominent missionary. The conclusion arrived at was that the supply of suitably educated African women is inadequate and does not allow of organised training in central institutions to be undertaken. Until considerable improvement has been effected in the social and educational status of native women the supply is not likely to be

institutions and contributions are made by some native councils out of their local funds.

25. With regard to the after effects of the circumcision of women no exact knowledge is available. The operation of female clitoridectomy can hardly be followed by undesirable results other than might occasionally result from sepsis. The severe form of operation practised in the Kakuyu Province is undoubtedly followed in a proportion of cases by undesirable results. Opinions vary enormously as to the effects on the population. One medical officer employed by a Mission situated not far from Hall has expressed the opinion that 10 per cent of the female population are affected in after life in connection with childbirth or otherwise. Another private practitioner closely connected with the activities of the Nairobi native maternity hospital, considers that the after effects of circumcision are negligible. In the absence of statistics relating to the population as a whole it is impossible to draw accurate conclusions. The figures relating to admissions to Hospitals do not form an accurate basis for consideration of conditions existing among a people whose instincts and mode of life lead them to seek assistance from strangers only in emergency and as a last resource after native methods have failed. Accurate knowledge with regard to the facts relating to childbirth among the native peoples of Kenya is non-existent. A special sub-committee of the Central Board of Health has been established to investigate the matter with especial reference to the after effects of circumcision. The subject is being approached by the collection of data relating to cases attended by medical practitioners.

STANDARD RULES.

(Vide paragraph 6 of the Memorandum.)

1. No person other than one duly authorized by the Local Native Council shall, within the District perform or assist in the performance of the operation of clitoridectomy.

2. No person subject to the jurisdiction of the Local Native Council, in the District when performing or assisting in the performance of clitoridectomy shall make an incision of greater extent or depth than is necessary for the removal excision of the clitoris.

Any other incising or mutilat of the private parts of a woman shall not be performed or permitted to be performed.

3. No person may perform more than one operation of clitoridectomy and no person may permit more than one such operation to be performed on any woman if she be in the custody of a parent or guardian.

4. Any person affected thereby who shall refuse, neglect or fail to comply with the aforesaid Rules shall be guilty of an offence punishable under Section 8 (2) of the Native Authority Amendment Ordinance of 1924.

DILIPU KIMANI LN NIBOGI 1. 2. 23, A,

WAKACU

NIBOGI MURANI

NOEK

JAMES SPURE

MARU GAWINGI

ANDREW MIBARE

JOHN MUVIA

THEBAK KBA

ONEJIMU

EIDON MARINI

JAYDI FUCHIHI

JAMES KIMANI

KIMANI KIMANI

MUSA RICHARD

MUNEE GACHIG

ZELGHA

ELIZABETH GICHOKO

MUTUA NZOMI

JULIA MIBANI HO MIBANI

MANGARA

CHIRAPO

MUNO DHIRAO

GICHOKO MURANI

GATEE MURANI

WIKONYO MURANI

KARAO

SINDI

MURANGO KIMANI

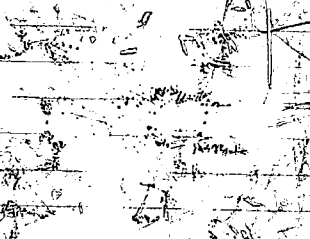
USUKA

MUNYA MURANI

JUSTUS MURANI MURANI

Report Report

10/10/10



7
10
assisted. He also did further examination in Nairobi. I therefore cannot give a positive opinion in agreement with Dr. Vint on all points, but I see no reason to disagree with him.

In my opinion the tissues were stretched. In my opinion caused the mucous membrane of the vagina to break. This might have been done by a prod with a blunt instrument, on which I include penis. I will not deny the possibility of cutting with a sharp instrument, although it impressed me rather as being blunt instrument. I saw no evidence of bruising in that region.

The only case of this kind in which I have ever been called on before was a case of outrage on a girl of about seven or eight years old. In that case there was bruising.

In this case there might have been bruising without my noticing it.

Qd. Did you see any trace of semen?

A. Slides were taken by Dr. Vint. I did not see them, there was nothing visible to the naked eye. I made no examination of the sheet.

On the mat near the bed I saw some red earth and some powdered grey lime stone. Perhaps a little more than a quarter of a pound altogether. My impression is that the red earth and grey limestone were somewhat separated. I saw the stone lying outside the window and assumed that it might have been caused by the stone being thrown in. I thought it might have been thrown out again.

I don't remember touching anything except the little ring at the top of the clock. I moved the clock from the small table to the side board and back again. The boy Rakoi told me that it was usually kept on the side board, and without thinking I put it there. Then it occurred to me it should not have been touched and I put it back again. Rakoi volunteered that statement.

Inquest held under sec 145 of G.P.O. in regard to the death of Miss Hulda Jane Stumpf at Kijabe Mission on the night of January 2/3, 1950.

At Kijabe - 20-1-50.

Lee Harper Downing, sworn, states:

I am a Field Director of the Africa Inland Mission and also Superintendent of Kijabe Station. Miss Hulda Jane Stumpf joined the Staff of the Mission and came to Kijabe in 1907. With the exception of a few terms which she served in our Mission on the Belgian Congo from about 1920 to 1922 and two furloughs and a few months in Ukamba, she has been at Kijabe all the time. She was a Stenographer, a typist and was what we called a "paid correspondent" keeping our Home Office in England and America informed of any interesting incidents.

I knew her very intimately. She preferred to live alone, and it was at her own request that she came to this house. She never mentioned having been disturbed at night, so far as I recall. When she first took a house boy for herself it was KEU.4942, Dishon Kimani wa Njeroge. This boy worked for her until 11-9-29. He is now working on a farm in Gilgil District as a teacher. Since Dishon left Wakaba and Njerogi worked for her. She sometimes complained in the office that they were not satisfactory servants. Miss Stumpf would have been 64, I believe, about January 9th. Her place of residence when in America had been Indiana, Pennsylvania.

It was about 7.15 on the morning of January 3rd, when I first heard of her death. Ndee, one of our house boys, told me. I was in the bath room shaving. He came up the stairs and told me, but gave no details.

I went to my wife's bedroom and told her what Ndee said, and I went to the telephone and told Dr. Davis. I finished shaving and came down to this house (Miss Stumpf's) and my wife had preceded me by a few minutes, and she had

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I knew her very intimately. She preferred to live alone, and it was at her own request that she came to this house. She never mentioned having been disturbed at night, so far as I recall. When she first took a house boy herself he was KEU 4902, Dishon Kimani wa Njeroge. This boy worked for her until 1-9-29. He is now working on a farm in Gilgil District as a teacher. Since Dishon left Wakaba and Njeroga worked for her. She sometimes complained in the office that they were not satisfactory servants. Miss Stumpf would have been 64, I believe, about January 9th. Her place of residence when in America had been Indiana, Pennsylvania.

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I went to my wife's bedroom and told her what Ndee said, and I went to the telephone and told Dr. Davis. I finished shaving and came down to this house (Miss Stumpf's) and my wife had preceded me by a few minutes, and she had

already been into the room and was at the door, and said "He's been murdered." Then the Doctor came and we went in practically at the same time. So far as I know, my wife went back towards our house. She was in a dazed condition.

We entered the bedroom by the kitchen door. Miss Stumpf was lying on the bed and her left leg was hanging out of the bed. Her foot was resting on the floor. The bed clothes were covering her face.

Ex. A. (Exhibit A. Photograph produced by Capt. Cochrane) This is an exact picture of what I saw. So far as I know nothing had been stolen from this room. Dr. Davis turned the bed clothes back from her face and exposed her body down to below her breast, and examined her heart with a stethoscope, and having done that he replaced the bed clothes. The position of the body was not changed at all.

Ex. B. (Exhibit B, also produced by Capt. Cochrane) This corresponds to what I saw when the bed clothes were turned back.

Ex. C. (Exhibit C, also produced by Capt. Cochrane) This corresponds to the condition of the room as I saw it.

Ex. D & E. (Exhibits D and E) these are the pictures of the House.

I noticed that the window which was close to the bed head had been broken. It was a window consisting of 8 panes, four up by two across. The middle four and the frame work had been broken away and the hole thus made was about 24" by 18". The panes were evidently 12" by 9". There were no jagged edges except at the bottom part of the hole (exhibit F illustrating this). I was not in the room very many minutes, not less than five minutes and not more than ten. I don't think I touched anything, but I walked around noticing things. So far as I know Dr. Davis touched nothing except to the extent described already. I went to the office and sent off a telegram. I think Dr. Davis came but when I did.

Miss Stumpf was hard of hearing. But she could take down my letters from dictation. But I can remember natives

she had two other boys, but I never knew them. I know she did not get on well with them. One was called Njerogi but I don't know the name of the other. They left on or about 15th December, and after that she only had a little boy called Kakof. He was her employ up to the time of her death.

There is a boy who cuts wood named Wangi.

Miss Stumpf's relations are in America. She has a sister in Florida. So far as I know she had no close friends outside the Mission.

I heard of the murder at 7.15 A.M. on January 3rd. My husband told me. He said that "the boys say Miss Stumpf is dead." I left the house in less than three minutes after I heard it. I came here, and I went round by the kitchen door. On the path near our house I met Andrew Bara and John W. Jeri and Ndete wa Kago.

Andrew is the head teacher in the school here and an Elder of the church. John is a student in the Bible school and also in the church. Ndete is an Elder of the church, twelve miles away. All of them have argued against circumcision of native women. They are men that we can trust absolutely. I should say, so far as we can trust any men. They did not make any remark to me. I said to them, "Have you been in the house, and they said "No", and when we reached the door they stepped aside and I said "Come. I do not want to go in alone." They followed me in, so that we could all see through the window. I saw the glass and the dirt on the floor before I saw the bed. Then I saw the bed. I went up and touched Miss Stumpf's knee, and I found it was as cold as it was possible to be. I came out the same way as I went in, and outside the kitchen door I met Dr. Davis alone. I went on, and a few yards away, by the flower bed, I met my husband. I did not go round by the outside to look at the window (an answer to a question).

communicative about herself. I have no recollection of seeing her on the second. On January 3rd Mrs. Downing telephoned, saying, as I recall, that Miss Stumpf had been found dead in her bed. I took my stethoscope and came straight here. Mrs. Downing was afraid of me, perhaps 25 yards. She went ahead of me and I met her coming out, and then

As I recall, three boys came (John among them) and the scene seem correct as I

While I was in the room, I saw the body as it was. I did not unfasten the pin. I unfastened the pin after the pin was unfastened.

I am not quite sure about the names of the men. I only remember Andrew and John. I don't recall it.

The blind of the window was not down. I did not even notice that there was a blind.

I was sure she was dead from the look of her face, even before I listened to her heart. The heart had stopped beating.

There was some discoloration on the lower position of the left side of the neck. I am not prepared to give any opinion at what time death occurred.

As soon as I came on I noticed the clock on the table by the middle window. It showed twenty minutes past five and had stopped.

Dr. Vint did the postmortem. I only stood by and

Qd. If a man was sexually excited and attempted to commit rape, if he was frustrated, would you not expect that he would spend himself?

A. A certain amount of friction would probably be necessary.

On 6 P. M. on January 5th I examined Kimani Kihaha. On the summit of the left shoulder I saw blood, which I immediately assumed to come from an abrasion on the shoulder, but I did not actually examine so as to see the abrasion. The boy said it was through carrying a box, or at least that is how Mr. Griffin interpreted it to me. He did all the talking. The conversation was in Swahili, which I do not understand. On the right arm, high up on the outer border near the shoulder, I noticed a recent scratch. I should say about two or three days. I think it could have been as much as a week. There were two small blood clots on the scratch.

The two wounds - that on the right arm and that on the left shoulder - appeared to me of about the same age.

The scratch on the right arm was slightly broader at the top than at the bottom, which gave me the impression that the wound had started at the top and ended at the bottom.

I examined Miss Stumpf on 14th May 1929. She appeared to be about 63, and I believe that she was actually 65. She was in good health for her age. It was a routine examination.

Read over correct.

Sd/- S. H. Fazan.
D.C.

20-1-30

Resumed 21-1-30.

Musa Gichoya, sworn, states:

I am cook to Mr. Downing. I left my kitchen at 7 P.M. and went to the Church on January 2nd, and

I left it about 8:30 P.M. and came along by the road about 50 yards below Miss Stumpf's house and went to my home. I saw a light in the bedroom of Miss Stumpf. There was no light showing in the sitting room.

I did not see Miss Stumpf, but only the light. There was no blind covering the window, I saw nobody near the house.

Often when I pass I see her at the table in the window of the bedroom. This time I did not see her.

Read over correct.

Sd/- S. S. PAZAN,
D.C.

21-1-30.

Kakoi Gasinjiri, apparent age about 14, sworn states

was working for Miss Stumpf as boy. I had been working for her for 1 month and 2 days. I and another boy named Mwangi did all her work. Mwangi only cut wood.

Miss Stumpf came from her Office at Mr. Downing's house at about 2 P.M. on January 2nd. She had a high tea which is the custom of the Mission, at about 5 p.m. I went home about 8:50 p.m. leaving her at the table eating. I sleep in a hut down the hill (By Police about two hundred yards away).

So far as I know, Miss Stumpf was not ill. I did not leave my house that night, and next morning about 6 a.m. I came up the hill along the path in front of the house. I came to the house, entering by the kitchen door. The door was open and Mwangi was inside, boiling the water. We greeted each other. I took the maize for the chickens. I noticed nobody nor anything unusual. I passed and repassed Miss Stumpf's window but I did not notice that it was broken. When I got back to the kitchen after feeding the chickens I made coffee, and I knocked on the door between the kitchen and Miss Stumpf's bedroom. There was no answer. She usually

answers "Yes Kakoi," and I put the coffee down, and then she puts on some clothes and comes and gets the coffee herself. She comes out by the door leading from the bedroom into the sitting room and then unbolts the door between the sitting room and the kitchen, so that I may clear the evening meal away and lay the breakfast.

Then I went with Nwangi to gather some fire from the garden of the second house from here (belonging to Mrs Downing). We came back with the fruit, and I set it on a table in the kitchen. Then I knocked again at the door, but I got no answer. Then I knocked loudly. Nwangi told me to do so. There was no answer. Then I opened the door and took about two steps, and then I caught sight of her foot resting on the floor. Then I saw the window had been smashed. Glass and dirt were lying about on the mat along side the bed.

Miss Stumpf was lying with her head towards the foot of the bed. She usually had three pillows, and lay with her head at the window end.

I ran out at once and looked through the window and she was dead. We left the house, and I went with Nwangi, Elima Downing and went off at a slow run to Mr Downing's. I found Ndebe, Mr Downing's boy, in the veranda. I told him Miss Stumpf was dead. He expressed incredulity. I assured him it was true, and told him to tell Mr Downing. I stayed on the veranda until Mrs Downing came and I followed her down here, and Andrew, Joanna, and Ndebe joined us on the way. We all came in by the kitchen door.

Mrs Downing went into the room, and touched Miss Stumpf's leg, and said that she was dead. And we all went out. She went home and we remained outside. Then Dr Davis and his wife came.

When I left Miss Stumpf over night at her evening meal, the door between sitting room and bedroom was half open, propped open with a Kikuyu stool turned upside down, and it was like that when I saw it again in the morning.

I did not come back till next morning. I came at day break and lit the fire. I passed behind the house but I did not notice the broken window.

I opened the kitchen door with the panga which is kept in the veranda for the purpose. It shifts a nail which ~~locks~~ secures the door.

I put the kettle on the fire. Kakoi came soon afterwards. He went to the veranda and took out some coffee. Then he went to feed the chickens. Then he came to the kitchen, and ~~he~~ he ~~took~~ took the coffee and got the fire going. Kakoi knocked again and I did not go in till the door came.

Read over correct.
Sd/- J. H. Pagan.
D.C.
21-1-30.

at adjourned to a date to be fixed for evidence of ~~the~~ ~~State~~ and Government Analyst, and any other witnesses ~~to~~ to be produced.

Sd/- S. J. Pagan.
D.C.
21-1-30.

Inquest resumed 11-2-50:

Postmortem report produced by Court.

Francis William Vint, sownr, states:

I am M.B., B.C.H., B.S.G., and an Asst. Bacteriologist Nairobi. I do practically all the Police cases in Nairobi.

This is my postmortem report. It is simply a summary of what I actually found, and the only opinion is under "Cause of Death" recorded as "Asphyxia (suffocation)" and I remain of that opinion.

The bloodshot condition of the eyes was certainly due to suffocation and the dilation of the pupils was probably due to fright. It is a similar condition which I saw frequently with men killed during the war.

The bruise under the left eye was very slight. The skin wasn't broken over it.

I think that the breaking of the nose was done by pressure. The reasons for thinking that are three (a) The type of bruise (b) The way in which the tip of nose was tilted over and (c) The absence of bleeding from the nose.

The injuries described in para 4 of the Postmortem report must have been done by pressure. I conceive of any other explanation.

My opinion is that the injuries described in para 5 of the Report were caused by somebody kneeling on her chest. It would be ~~likely~~ ^{hard} to have symmetrical bruising in any other way. It would probably be either that or somebody holding her down by the shoulders. There was a mark of toes between her left arm and her body, and I therefore concluded that bruises were made by kneeling and that the man was facing her head.

The bruise described in the first part of para 6 was not severe. It might even have been done the previous day, possibly by knocking herself against the handle of a door. It is impossible to say anything about that bruise.

probable. I make no distinction as to what I should expect between (a) and (c).

The direction of the cut was upwards. I should have expected it to be downwards. I draw no conclusions from it. By Court. In regard to the injuries to the head and the causing of death by suffocation, can you give an opinion as to whether from the evidence to be deduced medically from the injuries it is more likely that the intention was to cause death simply to stifle cries?

A. It depends on the state of excitement of the man. He could have stifled her cries quite easily without killing her. In the excitement of the moment quite likely he would kill her.

Qd. Do you think that the natural consequence of the act was such as would cause death?

A. I could not say.

Qd. On the hypothesis that this might be a case of attempted circumcision, and that the assailant made an attempt in that direction and was interrupted, would such a thing, even if completed, be likely itself to cause death in any case?

A. Not immediately. I cannot say what the ultimate result would be.

Qd. The hand was actually found open on the bed. Would you expect the hand to be clenched in a case of suffocation?

A. I could offer no opinion.

Qd. Was it possible to say from the condition of the body at what time death took place?

A. Probably early in the morning, considering rigor mortis had not yet passed off. In this country it passes off quickly. In cases of death by violence it comes on quicker and passes off quicker. In view of the temperature of Kijabe I should think three to four hours about the minimum for a corpse to get cold, but I should not regard two hours as absolutely impossible.

produced (A knife given to the D.C. by Chief Koinange as being a knife ordinarily used for female circumcision).

81
It would not be impossible for the wound to have been caused by such an instrument.

Read over correct.

Sd/- S. H. Fazan.

Sd/- F. W. Vint.

Dr. W. H. Vint, Deputy Director of Laboratory Services Kenya. I am frequently called in on these cases - more so in the past than just now.

I have read Dr. Vint's post mortem report. The part of the report that Dr. Vint has done is fine. It was the description of the vagina and uterus. I saw the body of the girl and

in the report I think it rather legs the "tears" I think "wound" would have been better, but for the rest I agree with it.

I agree that the facts reported the conclusion - namely death by suffocation is correct. I see no reason to comment on the question of the open heart.

On the hypothesis of attempted rape I think it remarkable that the wounds showed no bruising round them that suggests cutting rather than tearing. Had it been associated with bruising the wound might quite well have been a tear. As it was a very superficial wound I think it is much more likely to have been done with a blunt than a sharp instrument. If it was a sharp knife it must have been very sharp to have penetrated as superficially as it did.

Slitting would most probably be accompanied by bruising.

Q. Do you then consider that a blunt instrument is the most probable.

A. I think that is the most probable explanation but I would not like to rule others out.

Q. Would you conclude a Penis as a blunt instrument in this connection or not ?

A. No.

Q. Do you think the hard piece of skin under a native circumcised penis might do it ?

A. I think it very unlikely. I have seen two or three cases of rape of native girls and have never seen such an injury as this.

Q. Did you make a microscopic test ?

A. No. There was no evidence of semen visible to the naked eye.

Exhibit H produced.

Q. Could this conceivably have done the injury ?

A. I should say it quite conceivably could have done a class of a blunt instrument.

Q. Have you formed any opinion from the examination which you made as to whether the facts fit in better with attempted rape or with any other hypothesis ?

A. It is very difficult to say. There is absence of all the ordinary signs of a attempted rape - semen, bruising about the legs, particularly as she seems to have bled after the wounds were inflicted. And I don't think one would have expected to find the wound which existed.

Q. In the absence of a struggle, would you still expect bruising ?

A. No, nor a wound.

Q. I take it that neither the absence of bruising nor the absence of semen can be regarded in any way as conclusive

A. No.

The position of the wound as revealed in the photograph is rather against attempted rape.

I have never seen a native circumcision performed by a native. Probably a young native male has not seen one either. I understand that it is usually performed before backwards, in which case the position of this wound would be unusual.

Qd. If you had never heard of the circumcision issue and if the case had been brought on you as a case of attempted rape, would it have occurred to you then that it was not a case of attempted rape?

A. I think it would have done. The wounds are most unusual.

Qd. Do you consider the wound was before death or after death?

A. Before or immediately afterwards. It could not be made more than a matter of an hour after death, because there would not have been so much bleeding.

Qd. Could one and the same man have done both the suffocating and the injury to the vagina?

A. I could not say on the medical evidence for certain. From the post-mortem report I should say that whoever smothered her used excessive violence such as he should have known would be likely to cause death - that is if one excludes the state of excitement in which he was, in which case he might not realise that the violence used was excessive.

Qd. Do I understand you to mean that a man in his normal senses using that degree of violence would realise that a natural and probably result of his conduct would be to cause death?

A. I should say "might be" rather than "would be". The mutilation to the vagina as it exists would not have caused death.

Q. Could the wound have been caused by a finger nail?

A. I don't think so.

Read over correct.

Sd/- W. H. Kauntz

Sd/- S. H. Fagan.

Berenice Conger Davis, ^{sup} ~~sup~~ ^{mother} ~~mother~~

... wife of Dr. Davis, Medical Officer in the Mission, was the fourth European to see the corpse. I think it was about 7.15 when I saw it. Mr. and Mrs. Downing and Dr. Davis had already been in, Dr. Davis had already been in by himself, then he went in a second time with me.

I know the room. I did not notice any of the furniture out of place. She had been preparing to clean house. She herself had rolled up some blankets and there was more or less disorder on that account.

I don't know whether she had taken any curtains. She had not taken the blinds down. I have been in the room before.

I don't think I should have noticed the clock in a previous occasion. On this occasion I did not notice it and it was on the table. The time was between 5.30 and 5.35. I don't think it was going but I am not sure. I remember that later on when photos were being taken it was noted and somebody remarked that the clock had started again. Except for the corpse, the bed, the rug, the window, and the debris of glass and dirt I noticed nothing unusual.

I never was in Miss Stumpf's house very much. It was tidy when I was in there. Her clothes on this occasion were on the chair, untidily. A stocking was in her hand. That was about 3 yards from where the chair was.

I went in by the kitchen door into the bedroom. I went out the same way. I went round by front door from the outside and I noticed a key sticking through and protruding. I did not investigate whether that door was

locked or unlocked.

Xd. Did you touch or look at the door between the sitting room and the kitchen?

A. No.

Xd. Did any native come into the room while you were there?

A. No.

Xd. Did you notice any pillows?

A. Yes. I saw two pillows by her legs on the bed, but I cannot remember precisely how they lay.

Xd. Have you any opinions about this case?

A. I have often wondered if a woman had anything to do with it, and I thought that more than one had something to do with it.

Xd. Is there a girl named Elizabeth in the mission? Uncircumcised?

A. There is such a girl. She is uncircumcised, but they say she has now been circumcised. I have knowledge of feeling against the mission - the part of some natives and I am inclined to believe that she may have something to do with Miss. Stamp's death, but I can't give any reason except things that were said.

Xd. Have you ever seen this boy before (Mutua Nzomo)?

A. Not that I can remember.

Xd. What was the position of the clock when you first saw it?

A. On the table, with its back to the window and facing the bed.

Read over correct.

Sd/- Wernice C. Davis.

Sd/- S. H. Fagan.

Helen Virginia Blakesley, sworn, stated:

I have charge of the native girls school at Kijabe. I have been in charge of the school for three years this last term. I have also been in charge of it before.

I know Miss Ximani Messenger. She was in charge during my absence. She was particularly interested in a girl

called Elizabeth, whose mother died at her birth. Her father had been adopted into the Kiberiko Mbari by a process of blood brotherhood. I don't know whether there are any surviving blood relations. The father asked his Messenger about 1912, as far as I can remember, to look after the child, and he said she would on condition that he would give up the child and subsequent marriage. He made the statement that at that time and when she was very young she was in her care. He was very anxious that she should not be circumcised, the thought being that she was to get to be properly married. In January 1929, Miss Stump visited at the A. T. E. at Lumbe.

Miss Stump wanted Elizabeth to attend girls school until she was married. Miss Stump told me when she came back from Lumbe that Bill Stump had told Miss Stump that Dishon was to marry her prior to Miss Stump's departure. She wrote to a house at Aidama during the time.

Miss Stump sent Dishon to me one morning about April to say that he wished to marry Elizabeth to marry him and would give a tall wife in the morning. They had their first meeting to see him frequently after that. The father had some years previously. Dishon left Miss Stump about October or November to go and earn money for the marriage price. He went to a shamba upcountry, I think at Gilgil.

When the circumcision shauri came up in November and the schools were unsettled, the girls in the school had charge of were very unsettled. Elizabeth became very disobedient and unruly. She would not go to classes. I asked her whether the reason was that she did not wish to marry Dishon, and if so she had better go and tell Mr. Downing, because no

girl in the school need marry any man she did not wish to marry. She said she felt that she was being put into a hole from which she could never get out as, if no marriage price was paid to the Kheriko clan, she would not be able to appeal to them if things went wrong with the marriage.

I believe in my own mind that the question of circumcision was troubling the girl more than the marriage price and she went and was circumcised in November, or at least it was in November that I heard of it. One of the Kheriko women named Julia Kagori was held her while she was being circumcised. I don't know who was the actual operator.

Mangara is the brother of Elizabeth's mother. Elizabeth has not come back to the Mission since she was circumcised.

I do not remember to have seen the boy now in Court (Mutua Nzomo)

Sd/- S. H. Pagan.

Kakoi Gashingiri, re-called by Court, affirmed states:

I left Miss Stumpf at about 5:30 and went out by the kitchen door. I closed the door between the sitting room and the kitchen but did not bolt it.

Xd. Was it bolted or unbolted when you found it in the morning?

A. I did not try. Ordinarily the door is bolted, and Miss Stumpf comes and opens it, and I take the plates and clean them.

Xd. Did Miss Stumpf want water to wash in the morning?

A. I leave it ready in the evening. I do not go into the bed-room of a morning.

Xd. Did you meet any one on the way to give Mr. Downing the news?

A. No. But I met Andrew, papa Ndebe, and Johanna on the way back. They already had the news. I don't know from whom they got it.

Xd. Was Onesimus not there ?

A. No.

Xd. When did you return from Mr. Downings ?

A. With Mrs. Downing when she went down to Miss Stumpf's house.

Xd. What about the looking-glass, which you said was not in the house ?

A. It was on a chair near the bed, back upwards.

Xd. Where is its usual place ?

A. No.

Xd. Who cleaned the clock ?

A. I did it twice, and then Miss Stumpf told me not to do so, as the case should break.

Xd. Was this clock in the house when you joined Miss Stumpf's service ?

A. Yes.

Xd. Did you ever see Miss Stumpf cleaning the clock ?

A. I saw her do so four times.

Xd. Was the lamp ever cleaned ?

A. Miss Stumpf used to clean it and put in the oil.

Xd. Do you know Chirano ?

A. Yes. He milks the cows.

Xd. Did you see him on the morning of the murder ?

A. I saw him as I was going to Mr. Downings to take the news. I did not tell him about the murder. Mwangi did that.

Xd. Do you know this boy ? (Mutia Nzomo)

A. Yes. I have generally seen him by himself, but once I saw him with Njao wa Darao.

Xd. Did you ever see him go to Miss Stumpf's house ?

A. No.

Ed. What was his work?

A. Swineherd.

Sd/- S. H. Fazan
w/nt

Margara Karaha, affirmed, states:

The relationship between me and Elizabeth is
follows: sworn, states

Kwamani (Muchera clan)

Gichero - Wakonyo

Gates (p) married Karaha
(Muchera)

Elizabeth

Margara

do. What clan Gichero belonged before
he was adopted into the Kimeriko clan.

Elizabeth is now living with Miss Musa of
Kimeriko clan. I live close by.

Since Elizabeth broke with Dishon, I have not
heard of her since.

Read over correct
Sd/- S. H. Fazan

Elizabeth O/O Gichero, affirmed, states:

I don't know to what clan Gichero belonged
before he was adopted into the Kimeriko clan. Kimeriko
himself was alive at that time and adopted him. I don't
know whether he paid marriage-price when he married my
mother.

Ed. Did Miss Stumpf speak to you about the marriage price
which Kwani should pay for you?

A. No.

Ed. Were you circumcised by your own wish?

A. Yes. I call myself of the Agachiku Clan, and not of
the Achera. The Kimeriko are Kwabliku.

Read over correct

Sd/- S. H. Fazan

Produced by Capt. Hicks, C.I.D.

- (a) a signed statement by Government Analyst J. J. (dated 20-1-30)
(b) a signed statement by Asst. Bacteriologist K. (dated 19-2-30)

Basil William Durdonald Cochrane, sworn, states:

At 11.10 A.M. on January 3rd, I received a telephone message and within a few minutes a telegram, the message from the Commissioner of Police and the telegram from Kijabe, to the effect that Miss Stumpf had been murdered on her bed. At 1.55 P.M. I arrived at the Africa Inland Mission and found M.P.C. MacDonald there and he informed me that he had made a few observations himself but that he had moved nothing and checked nothing in the house, which was exactly as he found it.

I immediately made the following observations at the scene of the crime. The bedroom window from the outside, as shown in the photograph X⁵. The central part of the frame-work of this single window was completely smashed in, the four central panes and the cross-pieces being absent. The two upper panes and the two lower panes were intact. I examined the panes for finger prints and could find none visible to the naked eye. There were a few jagged pieces of glass still remaining at the lower edge of the break. They would have been sufficient to deter anybody from seeking that mode of exit if another presented itself. The window is easier to get in than to get out (compare the ledge shown in the photo X² with the absence of ledge in the photo X⁵)

Just inside the window-sill, with its back to the window was a letter-box containing letters, on the top of which was a mark of earth, which appeared to be a foot mark. The earth appeared to be the same as the earth outside the window. This appeared to be the right foot of a person entering or the left foot of a person

leaving by the window. The impressioin appeared to have been made with the arch of the foot.

Below the window out-side I found small pieces of glass, which I examined for finger impressioins but could find none. Immediately below the window on the ground outside, I saw the marks of obviously four toes, a clear impressioin of the big toe, and the first, second and third toes of the left foot, as though they had been made by the left foot of some one standing with toe and facing the window from the outside. Below this I saw a large squarish lime stone - 4 inches behind, about 12 inches or eight pounds in weight. It had the impressioin of having been lately moved from earth texture. There was mud adhering to the sides of the stone. I could not find any other marks that it had been used in any way. In the stone steps leading down to a cottage the stone was a - far as I know - the same as the stone.

Below the ridge I observed a vertical branch of a tree stuck into the ground but the first and second twigs had been snapped off cleanly, that is, the outer part of the inner wood was showing at the seat of the break. I found the ends of the twigs in the mud but they were below the window. If a man effected his entry through the window by walking on right foot first it would be a natural thing for him to break off these twigs with his body.

I examined the ground under the window for other foot impressioins but could find none, the ground just here being very firm, it would not in any case show a bare foot impressioin. But right in under the window where I found the impressioin of the four toes it was not so hard, and I am of opinion that only one man could have got through the window, or he would have left tracks. If another man had got through that window I should have expected to see traces of it.

About 76 inches away from the four toes impression underneath the bath as shown in the photograph there was a clearly defined toe impression and a heel impression. The impression bridged a rut made by water from one of the tracks near a window.

The heel appeared to me to be a left foot. I marked on it at the same time (i.e., the same day) both to Magnus and to E.P.C. Macdonald. I also mentioned it to the Superintendent of the C.I.D. I made a tracing (produced and signed by me and returned to custody of C.I.D.) and the foot impression underneath it is the left foot impression of PH. 0591886 Mutua Nzomo. I took it when Mutua Nzomo had been arrested on January 25th.

I took a photograph of the window with my camera. It is the photograph which was produced in Court.

I then entered the house by the kitchen door together with E.P.C. Macdonald.

The position of the body was as in the photograph X1 (quite over head). Dr. Davis was present and very carefully removed the quilt and exposed the body in order that I could take photographs. I noticed a large pool of blood between the legs of the body, which had soaked through a sheet, a thin mattress cover, a mattress, a blanket and the mattress, and also a strip of straw matting.

There were several - what appeared to me to be foot impressions - on the sheet, that is two smudges on the sheet in the corner of the bed nearest the window (Position indicated in photo X2). There was one in the opposite corner and one near her left hip. On the floor beside the bed was a thin grass mat running the length of the bed and on it I saw about a quarter of a pound of earth spread, and numerous large and small pieces of glass. There were also pieces of glass on the window sill, which I examined for finger impressions and blood marks and could find none. By the side of the bed there was a small amount of limestone identical with that which I found on

on the stone found by me on the floor. The cross-sections of the window were clean on the mat. The upper portion of the mat was broken and at the break there was adhering a substance which appeared to be limestone identical with that which I found on the floor and on the stone.

The blind of the window was up when I entered the room for the first time. At a later date I examined this and found the markings of mud on the blind in a position corresponding to where one would expect to find them if the stone had been thrown into the room in a downward direction and the blind had been down. I found that the blind was worked by a spring and flew up easily.

From here I entered the dining room, the bedroom door, and the main door. Mr. Maddox pointed out that the main door leading outside was ajar and in the keyhole was a key. The key had been inserted from the inside. The shaft was protruding from the keyhole on the outside and we so turned that it could not be withdrawn without turning it to correspond with the key-hole; and eventually with some difficulty it was withdrawn. After inquiry I found that this key had been sent to Miss Stumpf by Miss Muriel May Perrott, school-teacher of the Mission, who sent it to Miss Stumpf on the morning of January 2nd by a native named Nderi, who worked for her, prior to her departure for Sebei. Miss Perrott said she sent it in a envelope without a hit. Nderi corroborated. The key belonged to Miss Perrott's store to which Miss Stumpf only had access.

The main door, in which I found the key, was usually held fast on the inside by a nail which protruded from the door frame. This nail was not holding the door when I saw it. The method was that the nail which protruded could be pushed back into its socket to open the door, but this could only be done from the inside.

I looked round and I found a match burnt just below the door and slightly to the right, just inside the door.

The construction of the door is that the criminal put the key through the door in order to open it, and finding it would not open, struck a match. I did find other struck matches in the bedroom. It has been suggested that at 11 o'clock a match was used to burn the body off, and I found covers on the bed.

I saw a photograph lying on a chair, but I do not attach significance to it because she was about to clean out her rooms next day.

The clock was an ordinary table clock with a luminous dial. It was on a small table. The face was scratched. I examined the finger impressions with the naked eye. The clock was broken and it was for Mr. Exposito to examine. I saw three impressions on the dial. I saw finger impressions on the glass. When Mr. Agnes arrived, I pointed out the impressions on the glass.

I found the door between the living room and bedroom bolted.

The tin bath which appears in the photograph, was put there by me to protect it.

On Wednesday January 30th I received a telephone message from Capt. Taylor saying that the finger print on the clock in this case was identical with a finger impression of PH.0591886 Mutua Nzomo.

I subsequently received Official confirmation, and then I applied for a warrant for his arrest. He was arrested at on January 24th at 8.15 P.M. at Brackenhurst Hotel where he was staying with his brother. He was arrested by Inspector Stevenson of the C.I.D. and Inspector Sharp of the Police Branch Nairobi.

The following day the accused was taken to Court and remanded till 8th February. A further remand for 14 days till 22nd February was then obtained.

When Mutua have been arrested I obtained the foot impression which I have produced.

When I first saw him he appeared to be very very nervous. It is not unusual. I had him taken into Dr. Kauntze for examination. I was instructed on 27th to hand my file over to the C.I.D. which I did at 11:30 on 28th January to Capt. Grenfell Hicks.

I first saw Mutua on the evening of his arrest and noticed the sore on his foot the following day on examination. It was on the second joint of the left big toe. It was not exactly a sore - It was a sort of blister place, as though it had been inflicted by some dirt. I took him to Dr. Ross on January 26th. Dr. Ross found two small pebbles now with Government Analyst.

Ad. by Court. regarding the probabilities.

Seeing that (i) I could not imagine one man having entered by a window and (ii) it does not seem probable that he admitted any one else by the door before the crime (which would postulate Miss Stumpf remaining quiescent) I am inclined to regard it as probable that the crime was done by only one man. I do not find any insuperable obstacle to that view in the fact that there were no blood stains on the clock or elsewhere in the room. In my view he did not lose much time in attacking the deceased. I should imagine she was overpowered almost immediately, or else she would have cried out.

The clock was going when I first saw it and I have heard this story about it having stopped and gone on again. It must be that the culprit simply moved from one place to another, or that it fell and was stopped by the fall and was picked up by Miss Stumpf's assailant after the crime. Miss Stumpf's other stocking was lying by one of her shoes near the head of her bed and within reach. The other shoe of that pair was some little way away, as shown in the photograph. I am inclined to think that the best explanation of the stocking on her arm is that she picked it up when she first heard the noise and was about to put it on.

I made inquiries from every body that knew Miss Stumpf and nobody seemed to think that anything had been stolen. In the cash box I found no money, nor anywhere else in the house. Her cheque book was found and she had a certain amount of money in the bank.

The distance between the house and the hut of crew and the other two natives was about 200 yards.

Re: over correct.

S. J. Pazan
D.C.

G. Surax

Rever

Matthew Wagner, sworn states:

Inspector J. L. Rice and an Assistant to the Officer in Charge of the Finger Print Bureau.

I was at Kilauea on January 3rd and 4th. On arrival made an inspection of the premises with two Police Officers. We found this clock (produced) as a sketch map of the premises appropriate.

"F" is the position where I found two Police Officers were Capt. Hays and Mr. [unclear] many finger prints on the clock. Two of them were at present being used - one on the side.

The lead was on the same table as the clock, and this (produced) is the cylinder of it. Three finger prints have been found on it (position indicated and two of them visible to my naked eye and a third mark also visible said to be a finger print). There are also hand prints at the points marked A, C, D, and E on the hand rail at the top of the ball is also a hand print, either the base joint of the middle joint of the finger. The one at A does not belong to Mitta, nor to any person known to have right of access.

54
105
non to any of the two hundred or so hand-prints which have been examined.

I am not prepared to swear definitely that B, C, D, E do not belong to Mutua, but in my opinion they do not belong to him. It is very significant that no marks were found on the other bed rails, that at the head of the bed: I saw the two foot-prints, those in the position indicated (the same as found already, indicated by Sgt. Cochrane). The left window shows clearly four toes and the other shows all five toes. Linear measurements were obtained, and comparison indicates that they belong to the same man, but I am prepared to swear that they do not belong to the boy Mutua Nzomo. I have skinned the superimposed print (i.e. the tracing put over the print of Mutua Nzomo) and I am positive that it would be a physical impossibility for toes of that ~~size~~ to make such an impression. There is no indication, so far as I know, to whom they do belong.

There was also a very faint footprint outside the window in front of which the table (with the clock on) stood - it was sideways to the wall. It is useless for any form of identification.

I should say that the two marks on the clock to which I have particularly called attention were quite recent. One can express a strong opinion that for the reason of the definiteness of the impression after treatment. I am strongly of opinion that they were put on within 24 hours of their treatment by me, on the afternoon of the 3rd January. I base my opinion on my general experience which extends over twenty years.

I am prepared to swear that the three finger prints on the lamp belong to Mutua Nzomo. I saw the marks that afternoon and sprinkled them with powder but I did not examine particularly then but left them some time to develop. This piece of the lamp has been in the custody of my department ever since I first saw it. The finger prints were put on simultaneously. As far as the finger print evidence alone goes there is nothing to indicate whether the prints on the clock and the prints on

the lamp were done on the same day.

This (produced) is the paper with which I compared the impression. It was sent on to me by the Officer I/C Finger Print Bureau as being Mutua Nzomo's impression's (paper returned to custody of Officer I/C Finger Print Bureau). The foot print also I took from a paper sent by the C. J. Finger Print Bureau.

It is definite that none of the finger prints mentioned belong to the deceased herself.

The mark of red on the ledge inside the window (that which Capt. ... suggested was a foot print) did not appear to me to be a foot print. It lacked the stress and definiteness which I should have expected to find. I could find no indication that ... had entered the window. I think it highly improbable but not impossible that he could have come through the window without leaving a mark which I should have seen.

It appeared to me that the man who made the mark A on the rail is not the same as the man who made the other marks on the rail. The ridges in that mark appeared to me to show more definite ridge formation. I cannot say that they are different, but I believe so.

I am of opinion that some of the marks were put on from outside the rail and some from the inside.

I examined the bedclothes for finger and foot prints, but could find nothing definite, though there were dust marks there, but I could not say definitely what they were.

Sd/- M. Wagner.

Sd/- S. H. Fagan.
D.C.

Stanley Fletcher Taylor, sworn, states:

I am O.C. Central Finger Print Bureau Kenya Colony. Certain exhibits were handed to me by Inspector Wagner on January 20th. They were the cylinder of a lamp and

the clock and an iron bed-rail. On examination it was found that there were very clean finger impressions on the clock. The cylinder of the lamp was covered with a film of oil but there were certain faint impressions. The film of oil would prevent clean impression from showing but that oil films were bent in other impressions on the rail which were taken to be those of the hand. The first worker on the clock for identification purposes, a number 1250, was received by the police, including all persons who had right of access to the room. Also the deceased and suspects were compared with the impression on the clock, and none were identical. A systematic search was then commenced amongst the records (approximately 10,000,000 sets of finger impressions) and on 21st January the impression on the clock was found identical to that of a native registered under the name of Ofachakes, Mumbwa, Nyasa, Kapungwe, Malandini, No. 26-9-28, Ch. Kabila. The police were informed accordingly. On 31st January the lamp cylinder was taken to the laboratory and the impressions were sufficiently clear for identification purposes. The impression was compared with those of Mutua Nzomo as per registration. The police were also informed of this.

There are other hand and finger impressions which have not to date been identified.

The paper which I passed to Mr. Wagner contained the impressions taken by Capt. Cochrane from the hands of Mutua Nzomo after his arrest.

As to the foot marks I put into Court this written statement of my opinion (attached). In the present case the marks are definitely not identical with those of Mutua Nzomo and would not have been caused by him. I am prepared to swear that.

The lamp was handled and held by Mutua's left hand. The marks were more than that of touching.

The fact that no oil was found on the finger impressions

on the clock indicates that the clock was touched first. They are also left hand impressions.

Although no other impressions were found on the lamp, it is possible for the lamp to have been lit.

Although the mark of mud on the ledge inside the window was not identified as a footprint, it might nevertheless be a foot print. I agree with what Mr. Wagner said.

Sd/- S. P. Taylor.

Read over correct.

Sd/- S. H. Fazan.

Capt. Cochran, recalled:

The weather report at S.A.I. on 2nd January weather fine. Night dark. Visibility poor. The night of the 3rd, the report is moonlight till 8 p.m. - night dark. Visibility poor.

On 25th January 1951 I went to Fijabe and found that Mutua Nzomo had been to school under a Miss Loodie A.I.M. Kigobe. I asked her for her school register. I looked through her register of attendance and found this sheet (produced) which she gave me. The name of Mutua Nzomo is on it, and he is shown as attending it October and again in December, the last date being 23rd December.

Mrs. Probst informed that the alarm clock which belonged to Miss Stumpf, which is the clock in this case, had been in her house for some considerable time, I believe over a year, and that one day, about 3 months previously, Miss Stumpf had occasion to go to Mairipi, called and asked if she might borrow an alarm clock and Mrs. Myers, Mrs. Probst's mother, had handed over the clock to Miss Stumpf, reminding her that it was hers and she could take it, which she did. This was got from Mrs. Probst. Mrs. Myers in accordance that she gave it to Miss Stumpf herself, but she thinks she gave it to Mr. Downing to give to Miss Stumpf. Mr. Downing does not remember this.

The lamp, I have only seen in Miss Stumpf's

house.

The distance from this Stampf house to the
Downing house is 128 paces.
nav. 250.

Sd/- S. H. ^{and} Bryan.

Under the English Law the Coroner would address the Jury summarizing the facts in the case and the state of the law, and the Jury would then enter a verdict. I have to combine both functions. While I am not obliged to write down the Summary, I consider it expedient that I should do so, in order to show the reasons on which I base my finding. I shall therefore first write a summary, which must not be taken to be part of the verdict, and I shall then write the verdict.

Identity of the Deceased. It has been shown beyond doubt that the deceased was Hulda Jane Stumpf, believed to have been aged 63 years and to be a spinster. She had worked for many years for the Africa Inland Mission at Kijabe, and at the time of her death was acting as "field correspondent" to the Mission. It has been stated and I have no reason to doubt that she was formerly resident at Indiana Pennsylvania.

Place and time of death. The deceased met her death on the night of the 2nd/3rd January 1950 at Kijabe on the premises of the Africa Inland Mission. She was found dead on her bed in the bedroom of a cottage in which she lived by herself at a distance of about 150 yards from the nearest European house, which was that of Mr. Downing, the Principal of this Mission. It was a small cottage consisting of verandah, kitchen, sitting room, and bedroom. It was very insecurely fastened, and I permit myself the observation that it was not at all the sort of house in which a European lady ought to have been allowed to live by herself. It has been stated that she did so at her own request.

The exact time of night at which the deceased met her death is uncertain. Dr. Vint has recorded his opinion that death took place in the early morning, because Rigor Mortis had not yet passed off when he examined the corpse in the afternoon of January 3rd. He explained that in this country Rigor mortis passes off quickly, and that in cases of death

by violence, it usually comes on more quickly, and passes off more quickly than in cases of natural death. Mrs. Downing has attested that the corpse was already cold when she touched it at about 7:20 A.M., and Dr. Vint regards from three to four hours as about the minimum for a corpse to get cold in such a temperature, but considers two hours not impossible. On the two statements taken together one would be justified in thinking it probable that death took place between midnight and 4:20 A.M. but that up to 5:20 A.M. would not be impossible. Conjectures as to the significance attaching to the alleged stopping of the clock at 5:20 A.M. are speculative and do not affect my finding, and no more precise opinion is justifiable than that death probably took place between midnight and 5:30 A.M. on January 3rd.

Manner of death. I am convinced by the medical evidence that the death of the deceased was caused by suffocation, and that she was suffocated by a person or persons exercising pressure upon her face in such a way as to smother her. I consider that no other construction can be put upon the facts adduced, and that they are conclusive. The only point which has been brought to my notice which might possibly be considered to cast doubt on this conclusion is that the left hand of the deceased was found open and not clenched, and it has been suggested that it would be more usual in a case of suffocation for the hand to be clenched. If indeed such is the case, a point on which no evidence has been advanced, it could probably be explained by supposing that the pressure was relaxed before death, when the deceased was too far gone for recovery.

The medical evidence is not conclusive as to the construction to be set upon the injuries in the vaginal region. Dr. Vint's Post Mortem Report (para 8) states: "The mucous membrane showed a tear about half an inch long, There were two small tears, one on each side of the main tear" and in his evidence Dr. Vint has referred to "the tearing of the mucous membrane of the vagina without bruising." It is to be noted that he refers to it as a tear rather than a cut, and Dr. Kauntz has commented that "wound" would be a more non-committal

non-committal expression. There is clearly some doubt whether 112
it is more in the nature of a tear or a cut, and as I read the
evidence, Dr. Vint appears to be divided in his mind whether cut-
ting with a very blunt knife or tearing with the hands is the
most probable explanation, which Dr. Kauntz regards cutting with
a blunt knife as the more probable. Both regard cutting with a
sharp knife as unlikely. Both consider the position of the wound
to be unusual on the hypothesis of attempted rape, but neither
are prepared to say definitely that it is not a case of attempted
rape. Dr. Decker who was present at the Post Mortem but not a
microscopic examination, appears to have regarded the case as one
of attempted rape and states that in his opinion the tissues
were stretched and caused the mucous membrane of the vagina to
break. He considers that it might have been done in the course
of an attempt at rape. Dr. Vint admits the possibility that the
wound might have been caused in the process of attempted rape by
the hard knot of skin which forms beneath the penis of a native
circumcised by native methods.

The absence of semen and spermatozoa indicates that ac-
tual rape did not take place.

The alternative supposition to that of attempted rape is
attempted mutilation. The balance of medical evidence is defi-
nitely though not very strongly on the side of attempted mutila-
tion. None of the three doctors are prepared to swear that it
was not attempted rape.

The evidence of the finger print experts seems to point
to at least two and probably to three persons being concerned in
the crime. While alternative suppositions are no doubt possible
and I do not wish to record a positive opinion that more than one
person took part in the crime, I am bound to allow that the fin-
ger print evidence points to a probability in that direction, and
to that extent, to an improbability of attempted rape, since if
rape were the motive, it would be unusual for the assailant to be
accompanied by witnesses.

On the other hand, if it should turn out that the only
person whom there is at present reason to suspect is a Kamba and

not a Kluyvr, the theory of a conspiracy to commit the crime is somewhat weakened. 113

I cannot find in the rest of the evidence, significant as it must be from the point of view of investigation, anything which helps me to a more definite conclusion as to the manner of death, and the only conclusion which I feel justified in reaching is that the criminal or criminals first suffocated the unfortunate lady, and either just before or just after her death inflicted the wounds in the region of the vagina either in an attempt to rape or to mutilate.

In the absence of other evidence it may be conjectured that the attempt was abandoned when it was realised that Miss Stumpf was dead.

The Offence Committed. I do not think it can be held on the evidence as probable that death by suffocation was intended. Whether it was intended to kill her after completion of the offence it is impossible to say. It might depend on the degree of risk of recognition.

Since the lady died of the injuries, and since no extraneous circumstance has been alleged, and since there is no reason to suppose that she was ^{less} resistant than a person of her age might be expected to be, I consider that it must be held that such bodily hurt was caused as was likely to cause death, and ^{such} a man must be held to have intended that which is the natural consequence of his own acts. I find that within the meaning of sec:299 I.P.C., there was the intention of causing such bodily hurt as would be likely to cause death. The injuries actually did cause death, and, since no accident or extraneous cause intervened, I consider that they were sufficient in the ordinary course of nature to cause death. There is moreover no evidence that more injury was inflicted than was intended to be inflicted, although it may not have been intended that death should result. I consider therefore that the offence committed falls within the third definition of Sec:300 I.P.C. and is murder. I am not

actually bound under section 143 I.P.C. of the Criminal Procedure Ordinance to find exactly what offence has been committed, but merely to record my finding whether an offence has been committed. It seems right to me however in this place to indicate my opinion that the evidence sufficiently indicates that the offence is murder.

Person or persons suspected.

The evidence given by Mr. Davis regarding scratch on the arm and shoulder of Amani Kihuha is inconclusive. The evidence does not warrant a finding that suspicion lies against him.

The suggestion of motive on the question of the marriage price of the girl Elizabeth does not connect with any particular suspect, and must therefore be disregarded by me. The only evidence which shows any definite ground for suspecting any particular person is the evidence that finger prints of the left hand of Mutua Nzomo were found both on the clock and on the lamp, and that they are recent. Mutua Nzomo is known to have attended the Mission School up to December 23rd. In the absence of any explanation by him as to how his finger prints came to be on the lamp and on the clock, I consider that there are strong grounds for suspecting him.

Having summarised the points I now proceed to my verdict.

Verdict.

I find that the deceased was Hulda Jane Stumpf, aged 63 years, spinster. I find that she met her death on the premises of the Africa Inland Mission at Kijabe in her bed and that the time of death was between midnight and 5:50 A.M. on the morning of January 6th 1950. I find that the cause of death was suffocation and that the verdict must be that an offence has been committed and I record my opinion that it amounts to the offence of wilful murder by a person or persons unknown. I add as a rider that strong suspicion, amounting in my opinion to a prima facie case, exists against

F.H. 0591886 Mitua Nzomo, an Mkamba native.

Sd/- S.M. H. Pagan.

District Commissioner,
15th February, 1930.

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NOTES OF A MEETING AT GOVERNMENT HOUSE
ON THE 22ND FEBRUARY, 1930.

PRESENT:

His Excellency the Governor,
The Colonial Secretary,
The Chief Justice, Mr. Justice Gurnea,
The Rt. Rev. the Bishop of Kenya,
The Rev. Canon the Hon. G. Burns, B.C.,
The Rev. Canon the Hon. H. Leakey,
The Rev. Bro. Arthur, O.B.S.,
The Rev. R. T. Worthington, and
Mr. Ruffell Barlow.

His Excellency thanked the Bishop and other members of the Missionary Council for having sent him the Minutes of the Annual General Meeting of the Kenya Missionary Council, held in February, 1929, on the subject of female circumcision amongst the tribes in Kenya, more particularly the Maasai. He appreciated their readiness to take the Government into their confidence and to inquire of the Government of what action they proposed to take. On his side, he was most anxious that they should not act without full knowledge of the Government's position.

His Excellency then went on to point out that neither the Government nor the Missionary Council could look upon this question as one for decision in Kenya alone. Female circumcision was practised by a very large number of African Tribes ranging from Kenya through the Sudan to Nigeria and the Gold Coast where he believed that a great majority of the tribes practised the rite. In all, thirty or forty millions of

for which the mission had no lease, licence or other title, and that it was therefore open to the Githika holders to exclude the mission from those buildings and to devote them to such purpose as they might themselves desire. His Excellency said that he was a very strong advocate of education through missions wherever possible, since any form of Western education must necessarily undermine the primitive sanctions of the tribe. It would always be a difficulty that purely secular schools conducted by Government were weak in providing new sanctions, a new sense of morality, and a moral anchorage. In this matter he was entirely at one with the views expressed by the Education Committee in the Colonial Office and he was most anxious that everything should be done to prevent any rift on this matter, as on others, between the Government and the Missions.

He then passed to the second paragraph in the Missionary Council's Minutes and dealt with the action to be taken by Government. The first point dealt with in Paragraph 2 (a) was the legal position. With regard to that, it was explained that the present law does in fact provide liberty of personal choice if the people will avail themselves of it. The difficulty at present lay in the question of consent. Any operation of female circumcision came under the present law within the category of grievous hurt, but grievous hurt was not an offence if the person upon whom it was inflicted was a consenting party. In a case which was tried at Kisumu it was found by the magistrate, as a matter of fact, that the girl had consented and it was for that reason that the

Magistrate was unable to convict the accused of grievous hurt.

Under the new Criminal Code, consent would be no defence to maintain. The brutal facts of circumstances could therefore be established under that law, even if the victim gave his consent. Under the new law, the minor form of circumcision would be an offence if it were proved that the victim did not consent, but in the case of the minor form consent would be a defence.

Some discussion then took place as to the possibility of arriving at some legal definition of consent, since consent was to be given under a state of necessity or relations. It was pointed out that consent might equally be withheld under the same conditions and that a definition could very well be given which would help a magistrate in dealing with such a difficult case.

It was suggested by Mr. Arthur that a girl might appear before a District Magistrate and make a declaration of abduction. This she might do in the presence of the Magistrate. The Magistrate might then require that she make such an affidavit under the sanction of a doctor. The findings and charges for which she was brought before him were changed. This would always be a difficulty, but he thought that the existence of such an affidavit would at some times might be of value in enabling a magistrate to arrive at a decision even if it were proved that the girl had afterwards, for some reason or another, changed her mind.

The Governor informed the Legislative Council that it was proposed in the new Criminal Code to introduce a new

supplementary provision in regard to the definition of 'harm,' as not to include any operation of a trivial kind. The general idea was that the minor operations, so-called, should be defined by a special clause of the Statute, and that everything else should be defined as a major operation and thus become an offence. 'Harm' was included under the term 'grievous harm,' and under the new Penal Code any person who unlawfully did grievous harm to another was guilty of a felony and was liable to imprisonment for seven years. The members of the Missionary Council generally agreed that if this were the legal position it would be entirely satisfactory.

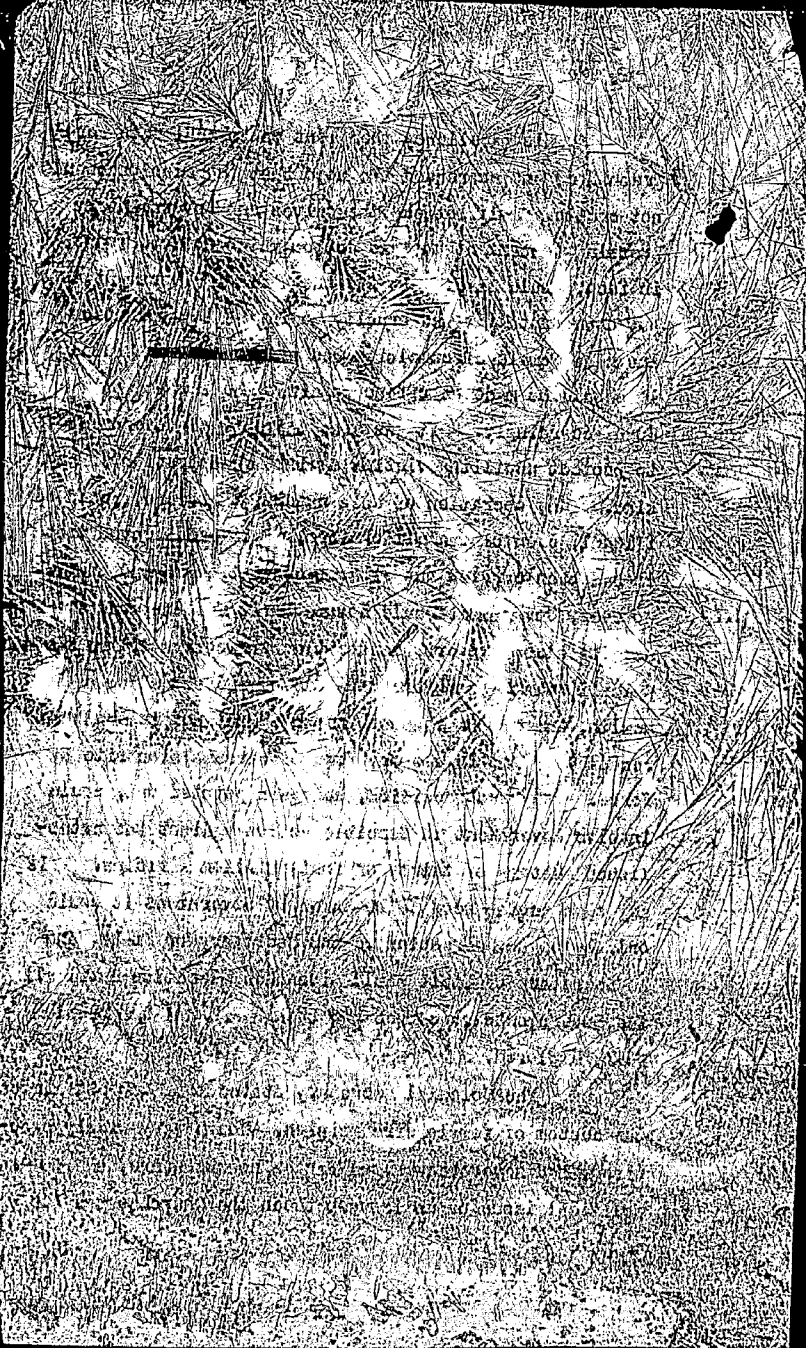
Mr. Gifford, however, pointed out in regard to Paragraph 2(b) of the Missionary Council's Minutes that considerable doubt existed as to whether 'harm' meant simple Clitoridectomy or ~~Clitoridectomy~~ ^{more than} simple Clitoridectomy and therefore severe. The missionary doctors believed that no form of operation existed which was not in fact ^{more than} simple Clitoridectomy and therefore severe. The Governor agreed that if this were established it would be necessary to give very close consideration to it in making definitions under the new Penal Code. He undertook to find out, if possible, what was the exact nature of the operation usually performed in the Kikuyu Reserve and said that African doctors would be afforded every opportunity of giving evidence. A sub-committee of the Central Board of Health consisting of Mr. Gilks, Dr. Jax-Niaki and Dr. Anderson had already been formed for the purpose of investigating the nature and effect of the operation generally performed.

His Excellency then went on to deal with Paragraph 2(c) and expressed the hope that the mission would not create a gulf between themselves and Government by pressing Government to take ^{the} ^{steps} ^{which} ^{his} ^{Government}, in fact, could take. It was the duty of Government to put down brutality and cruelty so far as the operation known as female circumcision was ~~so~~ brutal it should be made an offence against the law and put down accordingly. It was also the duty of Government to protect unwilling victims against an operation of any kind. Any operation of this nature, therefore, would be illegal, even of the milder form, if it were proved that it had been carried out without consent. Beyond that, however, Government could not go. It was prepared to use its ^{own} ^{powers} in educating ^{the} ^{native} ^{tribes} ^{sons} which it was responsible to a better understanding of its health, and of the respect due to women; but it could not renounce or put down every form of circumcision rite by force. Any such decision, he again pointed out, would involve Government in forcible action against the established customs of thirty or forty million Africans. If any such action were to be taken by Government it could only be on the direction of the Secretary of State, and no Secretary of State would give such direction until all the Governments concerned had been heard and the problem fully explored.

The Colonial Secretary stated that in East Africa the custom of female circumcision, though widely practised, had never become, so far as he was aware, a political issue or an issue between the Churches and the

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The Colonial Secretary stated that in West Africa the custom of female circumcision, though widely practised, had never become, so far as he was aware, a political issue or an issue between the Churches and the



Government.

The Bishop of Mozambique expressed his grateful thanks to the Governor for the interest bearing which he had given to the population and for his generous offer of goodwill towards missionary enterprises, particularly in the matter of education.

The Governor thanked the Bishop and the delegation for attending, and made every assurance that he was most anxious that neither over this or any other issue should any rift be created between the Government and the Missions, and he earnestly trusted that the Missions would never force such a rift pressing upon Government a demand to which no Government could possibly accede.

Dr. ... never made reference to that part ...
... condition of assistance to the ...
... his Excellency agreed, but pointed out ...
... nevertheless willing to ...

to ...