

1932.

Kenya.

No. 18010.

SUBJECT

C0533/418

Native Tribunals Ordinance.

Previous

17303/A/31.

Subsequent

3057/32.

1. P. Kenya — 695 — 7/2/31. 2

Comments on the working of Native Tribunals, but for reasons stated, is not yet in a position to report fully on the working of the system. Encloses copy of the Rules which have been made under the Ordinance.

This purports to be a report, on the working of the new Native Tribunals, very informative.

It amounts to a

re-organization

report yet

with a

copy of the

rules which

are being

particular

present

it should have

not later than the

June last, & subsequent

report were to be sent in June 1931

& June 1933 the latter to have

~~been~~ contain recommendations

as to what was to happen after

1933 should be existing at the time

to an end.

There is still no
reply to no: 14 which
is 14 months old. In this
resp: the Sps suggested that
the Ord^s shd be amended at
an early date, see also

or the Govt should make
further representations
if he has any special
reasons to do so.

Last para: of no: 2 on 17303/13/31.

Perhaps we might
write as in Sps. for common

Johnson

8.1.32

I think we must be content with this for
the moment

Para: 140 enables the AG

to act as an appellate authority
in the case of criminal cases
and to be worthy

dt Allen

9/1/32

dt Allen

Allen

As regards the draft reply -
I have ~~marked~~ a few points
omission. The report despatched
(see:)

(no: 20 on 16092/30) was sufficient
for the amendment, I don't think
we need not do it again yet.

W.S.P.

12.1.32

See ~~Shaw~~ } same later.

2 To Gov 40 (Amend) copy 14 1932

Allen

Allen

20.1.32

Allen

5.2.32

3 for Kenya — 18 — 11/1/32

Submit reasons for the retention
of the Ordinance in its present form,
without the amending Ordinance as
suggested in Note on 16092/30.

The belated reply to N-14 on 16092/30 would
have been more convincing if the Governor
had explained why § 36 of the Ordinance is
not sufficient to prevent the "vast number of
frivolous appeals" which he fears.

However, the Dir's response (under the
controversy is sanctioned by Sps.) at the
end of 1933; no doubt in the autumn of
that year the question of its continuance (with

to an end.

There is still no reply to no: 14 which is 14 months old. In this respect the SFS suggests that the Ordinance be amended at an early date, so also

or the Govt should make further representations if he has any special reasons to do so.

last para: of no. 2 on 17/30/31.

Perhaps we might write on in SFS for common

Gardner

8.1.32

I think we must be content with this for the moment

Para. 140 enables the H.C. to act as an appellate authority in the case of criminal cases sent to be tried.

d. Allen

9/1/32

Not to be done.

As was
As regards the draft reply -
I have ~~revised~~ marked a few points for
omission. The draft despatch (no:

(no. 20 on 16092/30) was sufficiently
plain to be remembered, & I don't think
we need rub it in again yet

12.1.32

See Wright
& Robinson } same letter

2 To Govt 40 (1 Amended) copy 14 1932

from
B.H.G.

7.1.32

M.H.

8.2.32

3 for Kenya — 18 — 4/1/32

Submit reasons for the retention
of the Ordinance in its present form,
without the amending Ordinance as
suggested in No. 14 on 16092/30.

This belated reply to N: 14 on 16092/30 would
have been more convincing if the Governor
had explained why § 36 of the Ordinance is
not sufficient to prevent the "vast number of
fruitless appeals" which he fears.

However, the 3rdrd expires (under its
continuance is sanctioned by S.F.S.) at the
end of 1933 & no doubt in the course of
that year the question of its continuance (with

or without notification) will come under review
in the light of the further experience which
will by then have been gained of the
working of the Tribunals.

Such view, noting the views expressed,
says that it is not clear why the rate
of frivolous appeals cannot be met by
appropriate action under § 36, observe that
the question of reviewing or modifying the
Ord^s will come up for review towards the
end of 1935, and so, that no doubt you
will then report whether the further experience
gained in the working of the Tribunals calls for
any amendment of 188 30 & 34

W. H. H. H.
9/1/32

We may I think have a short
memo comparing the position in
P. O. Uganda with that in
Kenya in this specific point &
appears to the Govt & the Courts.

W. H. H. H.

16/2/32

3A

Note herewith

W. H. H. H.
16/2/32

would be compelled to take the advice of
the Provincial Commissioner concerned, i.e.
the very authority from whom the appeal is
made. I should have thought that in the
Chief Native Commissioner and the Attorney
General the Governor would have other sources

of advice. It is not clear why either
of the sources above mentioned should have
any special authority in this matter. It is not in
my opinion a matter of principle and of course
the Governor is not bound to accept the
advice of either of them. The only ground on which
the Governor might possibly be urged to
refuse to accept their advice is that they
are not sufficiently conversant with the
local conditions through which I apprehend
the Government are appreciating more and
more the fact that these native (tribes) have
been a very useful result in that they
are the District Commissioners from court
offices and are to deal more
effectively with other branches of their
work.

For the consideration of this
matter may be deferred until the whole
question of the future of the ordinance comes
up. It must in the middle of 1933, but
in so informing the Governor it should be
pointed out that it is somewhat difficult to
regard his objections as conclusive. As regards
the first part of the provision in Section 36 as
to

to frivolous appeals, and as regards both the fact
that neither of them appears to offer any
insuperable difficulty either in Tanganyika or
Uganda.

(initials) H.T. Allen
20/2/32

Postpone, or postpone, but I will surely
tell the Governor that this will be done,
I will argue with him at his stage about
the objection raised with respect

H.T.
20/2/32
at all

H. To Gov by 2 (3 lines) 29 FEB 1932

but

See note 5 to President attached. ~~W.H.H.~~

Send a short answer

deferring the issue
that makes defects

H.T. Allen

019/112

at all

N.B.
42
Bk 17803 N/S/King
with his other
notes comes out for
further comment
in 1933

By airt mail
25/12/32

5
1/2

To Gov 420

— memo 20 DEC 1932

10/2

6 Govt. Notice No 613 of 1932

Bill to amend Native Inheritance Ordinance.

There is nothing in this — so
await the receipt of the authenticated
copy.

This is one of the papers which Mr.
Baker will want to see before he leaves
for E.A. with R.B.V. 1/2/33 for this purpose
with the pp.

M.S. P. 155
12/1/33
above

Brought up vide minute above.

1.2.33
Reg 297.

7th Dec 1932

Secy - but what I wish like to know is the
position re the Agenda Bill - which has
kept up. H.B. etc.

By air mail
25/12/32

5
FD

To Gov. 920 — comm 20 DEC 1932

0/2

1/31 R.
of the fact,

6 Genl. Notice No 613 of 1932

Bill to amend Native Instruction Ordinance.

There is nothing in this — so
await the receipt of the authenticated
copy.

This is one of the papers which Mr.
Baker will want to see before he leaves
for EA. Note to B.V. 1/2/33 for this purpose
with the pp.

W.S. 155
12/1/33
atm

Brought up vide minute above.

1.2.33
Reg 297.

1.2.33

Seen — but what I would like to know is the
decision re the Uganda Bill — which was
kept up. H.B. 1/33

in connexion with marriage, or inheritance, or relating to immovable property, is ordered to pay a sum of more than \$50, excluding costs, may within thirty days from the date of such order apply to the provincial commissioner to state a case for the consideration of the Supreme Court, and the provincial commissioner shall thereupon state and sign such case, and transmit it to the Registrar of the Supreme Court.

ther

1911

in the King, of the
 (see note 4)

no 4

no 5

no 6

no 7

pc. 5

C. O.

Mr. Priestman

19/12
19/12

Mr. ~~Smith~~

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir A. Bateson.

Sir J. Stauchman.

Form U.S. of S.

Part U.S. of S.

Secretary of State

Amended by No. 2 on 20/5/33
20 December 1932
Air mail 20 Dec

C. D.
R 20 DEC
D 20

DRAFT. Copy

Sir,

I have etc. to refer to Lord Passfield's telegram of the 5th of June, 1930, (No. 75) on the subject of the Native Tribunals Ordinance, 1930.

2. I shall be glad to be informed when the report on the working of the system, whether under the Ordinance or under the rules, which should have reached this office not later than the 30th of June, may be expected.

I have etc.

(Sgd) E. DONLIFFE-LISTER

420

of (the letter)

42 16092/30

that, where the former made provision for appeals to the Governor in all cases, the Ordinance provided for appeals, to a judicial body, in all, save a few cases of a special nature. It was therefore suggested to the Governor that amending legislation should be introduced at an early opportunity ~~to~~ permit a final appeal to the Governor in those cases which do not find their way into the Courts by the ordinary appeal.

No. 2
18010/32

The Governor replied that there existed many special reasons for making it undesirable to provide for a final appeal to the Governor in cases other than those provided for in the Ordinance. *Consent of this was deferred until 1933 next*

18010/32

As regards the reports which should have been prepared on the working of the Ordinance in 1932, only one has, so far, been submitted to the 7th of December, 1932 (nt. 1), and it is to the effect that in many cases the report of the Tribunal is still incomplete and the Governor is therefore not yet in a position to report fully on the working of the system.

14 L 16092/30

that, whereas the former made provision for appeals to the Governor in all cases, the Ordinance provided for appeals up to a Provincial Commissioner only, save in cases of magnitude. It was therefore suggested to the Governor that amending legislation should be introduced at an early opportunity ~~to~~ permit a final appeal to the Governor in those cases which do not find their way into the Courts by the ordinary appeal.

No. 3 L
18010/32

The Governor replied that there existed no special reasons for making it undesirable to provide for a final appeal to the Governor in cases other than those provided for in the Ordinance. *Conson of this was deferred until 1933 and it is required the reports which should have been furnished on the working of the Ordinance and rules, only one has, so far, been submitted to the 7th of December, 1932, no. 17, and to the effect that in many cases the reports of the tribunals are still incomplete and the Governor is therefore not yet in a position to report fully on the working of the system.*

18070/32

C. O.

H 9
mm,

Mr. Priestman 26/2

Mr. *Draxton* 26/2

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley.

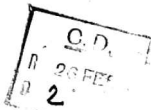
Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

18010/32 Kenya.



Downing Street,

29 February, 1932.

Sir,

(3)

I have the honour to refer to ^{ack. the} ~~your~~ ^{rest of your} Mr. Marshall's despatch No. 18 of the

11th January on the subject of the alteration of the Native Tribunals Ordinance No. 39 of 1930, and to inform you that, in the circumstances, I propose

that further consideration of the amendment suggested in Lord Bessie's despatch No. 899 of the 17th November 1930, should be deferred until the

14 on 15092/30.

question of the future of the Ordinance will arise ^{during 1933,} ~~as it must in 1933~~ in view of Section 44 of the Ordinance; and

I have, etc.

(Sgd.) P. GUNLFFE-LISTER.

DRAFT.

KENYA

NO. 142 *Get*

3A 10

NOTE.

Tanganyika

The Tanganyika Ordinance provides for appeals through a Native Court of Appeal, if any, the District Officer and the Provincial Commissioner to the High Court.

Uganda.

The Uganda Bill provides for appeals from the District Officer and the Provincial Commissioner to the High Court, but the Sheriff's Court is an ordinary channel of appeal. It is said that the District Officer might consider that he is better served if appeals were made to the High Court, and suggested that the Bill should provide under which a Provincial Commissioner or District Officer subordinate to him might refer an appeal to one of the parties concerned to the High Court in which case it would be referred to a Senior Resident Magistrate.

29/31/30 No. 5 para. 6

2105/34
No. 1 para. 6

It is suggested that the Bill would have a clause which would provide that appeals should be referred to the High Court, but that they should be referred to the High Court by the District Officer, and further that the District Officer should give an opportunity to "routine lawyers" to exploit their clients. He recommended that the Uganda Bill should include a clause corresponding to Section 34(4) of the Kenya Ordinance. The effect would be that the right of appeal

11

appeal from the Provincial Commissioner to the Governor would be retained, but that as an alternative to such an appeal an aggrieved party could, in certain specified classes of case, have a case stated by the Provincial Commissioner for the consideration of the High Court.

This proposal has been accepted by the Secretary of State.

312

KENYA.

NO. 18



GOVERNMENT HOUSE,
NAIROBI,
KENYA

January 1932.

Sir,

*Note on
16092/30*

Amended by 2 28.1.1932

I have the honour to refer to Lord Passfield's despatch No. 899 of the 17th November, 1930, on the subject of the Native Tribunals Ordinance No. 59 of 1930. The alteration to which your predecessor refers was made as the result of discussion on the bill by the Select Committee of Legislative Council and is admittedly in the nature of a concession. It was felt that if provision were made in the Ordinance, as it was made in the bill as originally drafted, for the possibility of an appeal to the Governor from any decision of a Provincial Commissioner, there was a danger to fear that the Governor would be overwhelmed by a vast number of frivolous appeals which would not only be brought owing to the litigious and litigious character of certain Kenya tribes. It was felt, on the other hand, that the way should be left open for genuine appeals to go beyond the decision of the Provincial Commissioner and to be heard by the highest judicial authority in the Colony.

2. I am satisfied that this is probably the best arrangement that can be made for meeting the situation and I hope that you will agree to the retention of the ordinance as it stands without the amending ordinance as suggested in paragraph 3 of Lord Passfield's despatch. You will readily appreciate

THE RIGHT HONOURABLE
 MAJOR SIR PHILIP GUILIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
 SECRETARY OF STATE FOR THE COLONIES,
 DOWNING STREET,
 LONDON, S. W. 1.

that ...

that no Governor could have at his disposal the necessary time to allow him personally to investigate an inordinate number of trivial or frivolous appeals. Moreover, as these appeals in the great majority of cases would be concerned with some issue dependent on native law or custom, on which Provincial Commissioners are, admittedly, the best authorities, the Governor would be compelled to take the advice of the Provincial Commissioner concerned, that is to say, the very

person from whom the appeal is made. I feel, therefore, that there exist in Kenya special reasons which make it undesirable to provide for a final appeal in cases other than those provided for in the existing law.

I have the honor to be, Sir, your obedient, humble servant,

J. M. ...
 DEPUTY COMMISSIONER GENERAL

J. GOVERNOR.

14
2 m

18010/32/Kenya.

C. O.

Mr. Eastwood 9/11

Mr. Freeston 9

Mr. Allen. 9/11

Mr. Tomlinson.

Sir C. Bottomley. 12.11

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S

Partly. U.S. of S.

Secretary of State.

Amended by Nos
C.D.
R 12 JAN
D 13

DOWNING STREET,

14 January 1932.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 69⁵ of the 7th of December on the subject of the working of the system of Native Tribunals.

2. ^{I note} ~~It is~~ that in many cases the reorganisation of the existing tribunals which was undertaken on the introduction of the new Ordinance, is not yet complete, and that you will send me a further report at a later date when more experience of the effects of this reorganisation has been gained. [In his telegram

No. 75 of the 5th of June 1930, Lord Passfield asked that reports might be sent home in June of each year, and I shall be glad if

DRAFT.

KENYA.

NO. 40

Governor.

for comm. i
v. minutes

Exhibit C 3 - see minutes

10 on
16092/30

to reach the Co.
not later than the
30th

the

the next report can be sent in ^{five} ~~six~~ months'

~~time to call but not later than the 30 June 1931.~~ note

I would observe that no reply has yet been received to Lord Passfield's despatch No. 899 of the 17th November 1930, in which he suggested that amending legislation should be introduced at an early opportunity to provide for appeal in every case beyond the Provincial Commissioner.

No. 14 on 16092/30

I should be glad to learn whether it is the

^{intention} proposed to introduce such legislation ^{or whether} ~~or whether~~ you have any further representations ^{to make} before this is done

In this connection I would also refer to my despatch No. 783 of the 19th of November

No. 2 on 17303/1/31

1931.

I have,

etc.

KENYA.

No 695



GOVERNMENT HOUSE,

NAIROBI,

KENYA.

December 1931.

Sir,

No 16092/30
No 20

I have the honour to refer to Lord Fairfield's despatch No. 563 of the 12th August 1931, on the subject of the working of the system of Native Tribunals.

2. I regret that the submission of the report has been delayed. This has been due to the fact that, with the introduction of the Native Tribunals Ordinance 1930, opportunity is being taken in most districts of reorganising existing tribunals both as to functions and as to personnel. In many cases the reorganisation will be incomplete and I am therefore not yet in a position to report fully on the working of the system.

At the same time, in order to bring the existing tribunals which were recognised by the Native Tribunal Rules 1913 under the Courts Ordinance 1929 under the new Ordinance, all such existing tribunals have been declared, under Section 42 of the Native Tribunals Ordinance 1930, to be Native Tribunals under the new Ordinance.

4. The following rules of which copies are attached have been made under the Ordinance:-

1. The Native Tribunals (Fees and Fines) Rules, 1931.
2. The Native Tribunals (Fees and Fines) (Amendment) Rules, 1931.
3. The Native Tribunals (Appeals in Trivial Cases) Rules, 1931.

5. ...

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

5. Experience shows that the fees laid down by the above rules are in some cases inadequate for the payment of sitting fees and other costs of the Tribunals and proposals to increase certain fees are under consideration.

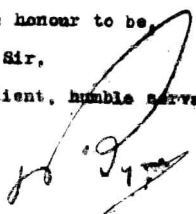
6. Under Section 39 of the Ordinance, monthly lists of all criminal proceedings decided by or brought before Native Tribunals are sent to the Attorney General, who reports that the Tribunals are working satisfactorily, although he has from time to time to exercise the powers conferred upon him by section 40 of the Ordinance.

7. I will submit a further report on the working of these Native Tribunals at a later date when more experience of the effects of the general reorganisation has been gained.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.

G O V E R N O R .

THE NATIVE TRIBUNALS ORDINANCE, 1930.

THE NATIVE TRIBUNALS (FEES AND COSTS) RULES, 1931.

IN EXERCISE of the powers conferred upon him by the Native Tribunals Ordinance, 1930, His Excellency the Governor in Council has been pleased to make the following Rules:

1. These Rules shall be known as the Native Tribunals (Fees and Costs) Rules, 1931.

2. The fees to be levied in respect of any proceedings in a Native Tribunal shall be as follows:—
(a) For the filing of a plaint or petition, the fees specified in the Schedule hereto.
(b) For the service of a summons, the fees specified in the Schedule hereto.

3. If no fees are specified in the Schedule hereto in respect of any proceedings in a Native Tribunal, the fees to be levied in respect of such proceedings shall be as if the Native Tribunal were a court of law under the Courts Ordinance as declared by the Government of the Province under the Native Tribunals Ordinance, 1930, and no warrant shall be issued for the recovery of the fees specified in the Schedule hereto until the fees are paid.

4. All fees shall be payable by the plaintiff or petitioner, but may be remitted in whole or in part for reasons of poverty where the Provincial Commissioner thinks fit.

5. For the purpose of ascertaining the value of the subject matter in a civil suit or matter the value of the subject matter shall be ascertained as follows:—
(a) Where the value of the subject matter is not fixed by the Provincial Commissioner or by the District Commissioner in writing, the value shall be ascertained by the District Commissioner or by the Provincial Commissioner.

6. All costs of the proceedings in a Native Tribunal shall be paid by the party who is unsuccessful in the proceedings, but the District Commissioner may, if he thinks fit, order that the costs shall be paid by the party who is successful in the proceedings. The District Commissioner may also order that the costs shall be paid by the party who is unsuccessful in the proceedings, if he thinks fit.

7. All costs of the proceedings in a Native Tribunal shall be paid to the District Commissioner or to the Provincial Commissioner, as the case may be, and the District Commissioner or the Provincial Commissioner shall, after payment of the costs, pay the balance into the Local Native Council Fund of the area in which the proceedings were held.

3

which the tribunal has jurisdiction, or, if there is no such Local Native Council Fund, into the Natives' Trust Fund.

7. All fines shall be paid into the general revenue of the Colony.

BY Command of His Excellency the Governor in Council.

Nairobi,

This 16th day of April 1931.

J. E. S. MERRICK.

CLERK TO THE EXECUTIVE COUNCIL.

SCHEDULE.

Fees leviable in Native Tribunals.

1. In criminal cases other than cases brought by private prosecutors. No fee.
2. In criminal cases brought by private prosecutors. Shs. 5/-.
3. Witness Summons. Sh. 1/-.
Provided that if the summons is served outside the jurisdiction of Native Tribunal issuing the summons, the ordinary court fees for service shall operate.
4. (a) In civil suits or matters where the subject matter is capable of being estimated at a money value. 5% of the amount involved with a minimum fee of five shillings.
- (b) In civil suits or matters where the subject matter is not capable of being estimated at a money value (except land disputes). Shs. 5/-.
- (c) In land disputes. Shs. 10/-.
- (d) In execution. 5% of the amount decreed with a minimum fee of two shillings.
5. Counsel in civil suits and matters. Such fee, if any, as the Provincial Commissioner shall ...

shall order not exceeding
twice the amount of the
fee leviable in the
tribunal of first instance.

INDEXED

GOVERNMENT NOTICE NO.

EXECUTIVE TRIBUNALS ORDINANCE.

1931.

THE EXECUTIVE TRIBUNALS (FEES AND FINES) AMENDMENT

WHEREAS His Excellency the Governor-in-Council has been pleased to make the following:

1. The Executive Tribunals (Fees and Fines) Amendment, 1931, shall be deemed to have been made on the 1st day of May 1931.

2. On appeal from the Executive Tribunal of first instance, the fee for the appeal shall be the amount of the fee payable to the Executive Tribunal of first instance, plus a fee of ten times the amount of the fee payable to the Executive Tribunal of first instance.

3. The fee for the appeal shall be payable to the Executive Tribunal of first instance, and the amount of such fee shall be paid into the general revenue of the Colony.

By Command of His Excellency the Governor-in-Council.

Nairobi, 1st May 1931. *Wm. B. Smith*

CLERK TO EXECUTIVE COUNCIL.

GOVERNMENT NOTICE NO.

THE NATIVE TRIBUNALS ORDINANCE 1930.

THE NATIVE TRIBUNALS (APPEALS IN TRIVIAL CASES), RULES
1931.

IN EXERCISE of the powers conferred upon him by the Native Tribunals Ordinance 1930 His Excellency the Governor-in-Council has been pleased to make the following Rules:-

- 1. These Rules may be cited as "the Native Tribunals (Appeals in Trivial Cases) Rules 1931."
- 2. No appeal from a Native Tribunal shall lie beyond a District Commissioner,
 - (a) in a criminal case when a sentence of imprisonment of not more than one month or a fine of less than Shgs. 50/00 is imposed;
 - (b) in a civil case when judgment is given for a sum of less than two hundred shillings, exclusive of costs.

BY Command of His Excellency the Governor-in-Council.

Nairobi.
This 21st day of May 1931.

James D. Baker

CLERK TO THE EXECUTIVE COUNCIL.

PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →

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