

1933

38004

CO 533/487

38004

KENYA

Penal code legislation

Previous		309	11/10
		Mudambi	11/10
1937		m: Dale	12.10
		m: Pami	13/10
		303	13/10
Subsequent		299	14/10
		297	14/10
		309	14/10
1940.		Mudambi	18/10
	10/5	Mudambi	19/10
297	18/5	R. 297	24/10
309.		309.	7.11
Mudambi	21.5	Mudambi	24/11
M. Calder	24.5	m: Dale	1.12
Sir G. Bushe	15/5	m: Pami	3
Dawson	26.5	297	-
SIR C. BOTTOMLEY	26/5	R. 83	31/39
Sir P. ...	27/5/38	R. 98 PUT BY	
Lord Dufferin	28		
M. Costley White	298		
297	216		
309.	26/8		
M. Sumner	26/8		
297	24/9		

legal decision whether or not a particular document is seditious can be avoided in Kenya. This power of declaring documents to be seditious has been thought to be undesirably wide, and Kenya, in agreeing to bring its law into line with the law in the rest of East Africa, has agreed to the repeal of this section. In the present letter Kenya is, in fact, asking for an extension of powers which in another connection, it is agreed should be restricted.

? It is perhaps unnecessary to give a reasoned reply. It will be sufficient to write to Mr. Freeston saying that the Secretary of State is unable to alter his opinion expressed in Nov 6 or -/37

Clarke White

18.5.38

SECRET

I find it difficult to see that there can be any real case for authorising in Kenya any departure from the general policy laid down in the Circular. But I should like to know what impression the Kenya arguments make on you.

A. J. M. Awe

21.5.1938

The Kenya arguments may cast doubt on our policy of giving Governors powers to prohibit importation of any literature they regard as seditious. The arguments do not touch the grave objections to giving Governors complete censorship over the local press. J.H. Alder

24.5.38

Quilise

Use no violence in Kenya...
What is not a flat contradiction to
the general principle...
J.H. Alder

J.H. Alder

Sir C. Bottomley.

I agree. So far as I can see there is no evidence at all at present that there exists in Kenya the possibility of seditious or other disruptive activity which might constitute such a threat to the maintenance of public order as would justify the conferring of arbitrary powers of censorship of the Press on the Executive Government.

? Ack. receipt and say that Mr. MacDonald fully adheres to the general policy on this matter which was stated in his predecessor's Confidential Circular despatch of the 17th February: that he has, however, carefully reviewed the

arguments

arguments adduced by the Kenya Government that a departure from the general policy should be permitted for that colony: but that he fears that it is not possible for him to take the view that it has been shown that the circumstances of Kenya would justify him in overriding the obvious and grave objections which exist to conferring on an Executive Government, without the intervention of the Courts, the suggested wide powers of control over the local Press and other literature originating in the colony.

A. J. Dave

26.5.38.

Sir Clerkson

Kindly think me official for
you would - in addition to this file -
see letter no: 6 on the 1937 file.

I agree that Kenya has distinctive
special reasons for special treatment
in this matter of local publication
& that we should adhere to the
policy laid down in the circular.

As to these proposals?

C.S. 26.5.38.

I quite agree.

ced

26.5.38

A preparatory suggestion.

As proposed.

D.F.A.

27.5.38

alone.

To Rep. Govt. Conf. (Draft) 16/5/38

(See minutes on 15/11/38: N. Rhod)

3. To Kenya Conf. - cont - 18/8/38
(Draft on 4.5.11/38 N. Rhod)

4. Extract from Kenya Gazette No. 39 of 3rd August 1938

? Await the Ordinance

Cloke, White

16/5/38

1

Copy regd
on 7/33/24/38
G.C.

Governors Deputy 550
This has been authenticated and twelve printed copies
of Penal Code (Amendment) Ordinance 1938
with Legal Report. (Spares to Library)

Section 2 of this ordinance embodies
the draft clauses in the circular of
17th Feb in their entirety. The variation
included in the new Section 53 (1) (b)
of the Code seems all right.

It is perhaps worth noting that
in giving effect to the circular Kenya
has entirely abandoned the attitude
taken up as recently as April (encl
601) that the Gov should have power

To prohibit the publication of
undesirable literature. The old
Section 52, giving the Gov power
to declare documents to be seditious,
has also been repealed.

Clause 3 4 + 5 of this Ordinance do
not appear to require comment from
Chair agreement.

? Subject to legal advice, G3.

Clarke White
14/10

J. J. Pasumi
11/10

There is another circular supplementary to
that of 17 Feb that makes a slight allusion
to the issue of sedition which. But we
need not say anything about it here, and
this can be searched without comment.

W. J. J.
12. 10.

J. J. Pasumi
13/10
at am.

E. D. G. 19/10

6 to Kenya 601. 5th Nov. G/S. 14. 10. 38.

Governor 189 Conf.

11/10/38

Ref: section 60 of Penal Code will be replaced by
the equivalent of section 62 of the Palestine Criminal
Code, when amendment is again undertaken.

I take it that it was not
intended that Kenya should make
an amendment immediately

Legal Advisor to see - part 6?

Must see
8. 11

J. J. Pasumi
24/11

W. J. J.

1. 11.

J. J. Pasumi
3/11
at am

Noted
E. D. G.
19/10

KENYA

No. 189

CONFIDENTIAL



GOVERNMENT HOUSE
NAIROBI
KENYA

17 October, 1938.

Sir,

With reference to your Confidential despatch of the 18th August on the subject of an amendment to Section 60 of the Kenya Penal Code, I have the honour to state that this Government is prepared to repeal Section 60 and to replace it by a Section the same as Section 62 of the Palestine Criminal Code on the next occasion on which an amendment of the Kenya Penal Code is undertaken.

I have the honour to be,

Sir,

Your most obedient, humble servant,

ABrooke-Bpshan

AIR CHIEF MARSHAL

GOVERNOR

THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.



23 September, 1958.

Sir,

I have the honour to forward herewith two authenticated copies and 12 printed copies of Ordinance No. XXVI of 1958 entitled "An Ordinance to Amend the Penal Code", which duly passed its third reading in the Legislative Council on the 18th August, 1958, and to which Sir Robert Brooke-Popham assented in His Majesty's name on the 15th September.

2. A copy of the Legal Report and a comparative table by the Attorney General is also enclosed.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Adm. G. A. D. S.

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.

LEGAL REPORT

THE PENAL CODE (AMENDMENT) BILL, 1938

The object of Clause 2 of the Bill is to bring the laws relating to sedition and importation of undesirable publications into general accord with that of the other British dependencies and gives effect to the suggestions of the Secretary of State contained in a circular despatch of the 17th February, 1938.

Clause 3 is designed to remedy an obvious defect in section 166 of the Penal Code.

Clauses 4 and 5 correct typographical errors in the Principal Ordinance and in the Penal Code (Amendment) Ordinance, 1936.

A Comparative Table, together with a copy of the Bill showing in red ink how it differs from the model enclosed to the Secretary of State's circular despatch, is enclosed for transmission to the Secretary of State.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
18th August, 1938

W. H. Murray
ATTORNEY GENERAL

COMPARATIVE TABLE

THE PENAL CODE (AMENDMENT) BILL, 1938

Clause of the Bill.

Remarks.

1. Short title.
2. Section 47. Cf. Clause 1 of draft "A" and Clause 1 of draft "B" enclosed to Circular Despatch of the Secretary of State of the 17th February, 1938
 The definition of "inland waters" is new.
 In view of the amendment to the proposed new section 53(1)(b) the definition of the term "seditious words" in draft "B" has not been adopted.
 Section 48. Cf. Clause 2 of draft "A".
 Section 49. Cf. Clause 3 -do-
 Section 50. Cf. Clause 4 -do-
 Section 51. Cf. Clause 5 -do-
 Section 52. Cf. Clause 2 of draft "B".
 Section 53. Cf. Clause 3 -do-
 Section 54. Cf. Clause 4 -do-
 Section 55. Cf. Clause 5 -do-
3. New.
4. New.
5. New.

C O P Y
O F
THE PENAL CODE (AMENDMENT) BILL, 1938
SHOWING IN RED INK HOW IT DIFFERS
FROM THE MODEL ENCLOSED TO THE
SECRETARY OF STATE'S CIRCULAR
DESPATCH OF THE 17TH FEBRUARY,

1938

Seditious
libel and
conspiracy,
publications.

Sections 47-55 of the Principal Ordinance which it is proposed to replace:—

47. Any person who—

- (a) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them; or
- (b) prints or publishes any words or writing with a seditious intention; or
- (c) sells, offers for sale, distributes or has in his possession any newspaper, book or document containing any seditious words or writing, or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony; or
- (d) imports into the Colony any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony,

is guilty of an offence and is liable to imprisonment for two years. If he has been previously convicted of any such offence he is liable to imprisonment for seven years.

A Bill to Amend the Penal Code

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1938, and shall be read as one with the Penal Code, hereinafter referred to as the Principal Ordinance. Short title.
No. 40 of 1938.

2. Sections 47, 48, 49, 50, 51, 52, 53, 54 and 55 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:— Repeal and replacement of sections 47-55 of the Principal Ordinance.

"47. For the purposes of the eight next following sections of this Code— Definitions.

'import' includes—

- (a) to bring into the Colony, and
- (b) to bring within the inland waters of the Colony whether or not the publication is brought ashore; and whether or not there is an intention to bring the same ashore;

'inland waters' includes all lakes, rivers, creeks, and lagoons inside the river bars, of the Colony; (4)

'publication' includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

'periodical publication' includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

'seditious publication' means a publication having a seditious intention.

Possessing seditious publications.

48. (1) Any person to whom any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony has been sent without his knowledge or privity shall forthwith deliver to the officer in charge of the nearest police station or to the nearest administrative officer such newspaper, book or document, and in default thereof is guilty of an offence and is liable to imprisonment for one year.

(2) A person who has complied with the provisions of sub-section (1) of this section or has been convicted of an offence under such sub-section shall not be liable to be convicted of an offence under paragraph (c) of section 47 of this Code.

Evidence necessary for conviction.

49. A person cannot be convicted of any offence against section 47 or section 48 on the uncorroborated testimony of one witness.

Forfeiture of seditious publications.

50. A court on convicting any person of an offence under section 47 or section 48 shall order any seditious or prohibited newspaper, book or document to be forfeited to His Majesty.

Powers of detention and examination of suspected packages, etc.

51. Any of the following officers, viz.—
any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;
any officer of the Customs Department not below the rank of Examining Officer;
any police officer not below the rank of European Police Constable;
any other officer authorized in that behalf by the Governor,

may detain, open and examine any package or article which he suspects to contain any newspaper, book or document which it is an offence under section 47 or section 48 to print, publish, import, sell, offer for sale, distribute or possess, and during such examination may detain any person importing, distributing or posting such package or article, or in whose possession such package or article is found. If any such newspaper, book or document is found in such package or article, the whole package or article may be impounded and retained by the officer, and the person importing, distributing or posting it, or in whose possession it is found, may be arrested without warrant and proceeded against for the commission of an offence under section 47 or section 48.

Powers of arrest.

Power to prohibit importation of publication.

48. If the Governor in Council is of opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order prohibit the importation of any past or future issue thereof.

the words "in Council" mean

Offences in relation to publications, the importation of which is prohibited.

49. (1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract therefrom shall be forfeited to His Majesty.

Delivery of prohibited publication to administrative officer or police station.

50. (1) Any person to whom any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made forthwith upon the coming into effect of an order prohibiting the importation of such publication deliver such publication or extract therefrom to the nearest administrative officer or to the officer in charge of the nearest police station, and in default thereof shall be

the words "in Council" mean

Power of Governor in Council to declare documents, etc., to be seditious publications.

52. The Governor in Council may by proclamation declare any newspaper, book or document to be a seditious publication.

Power to prohibit importation of documents.

53. The Governor in Council may by proclamation prohibit the importation into the Colony of any newspaper, book or document.

Interpretation.

54. For the purposes of the seven last preceding sections—
“newspaper” means any periodical work containing public news or comments on public news, and includes any part of such work or extract therefrom;

“book” includes every volume, part or division of a volume, pamphlet or leaflet in any language, and every sheet of music, map, chart or plan separately printed or lithographed, and any part of or extract from any such volume, pamphlet, leaflet, sheet of music, map, chart or plan;

“document” includes any painting, drawing or photograph or other visible representation.

Seditious intentions defined.

55. For the purposes of the eight last preceding sections a seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors or the Government of the Colony, as by law established, or against the administration of justice; or to excite the inhabitants of the Colony to attempt to procure the alteration otherwise than by lawful means of any matter in the Colony as by law established; or to raise discontent or disaffection amongst the inhabitants of the Colony; or to promote feelings of ill-will and hostility between different classes of the population of the Colony:

Innocent intention.

Provided that it shall be lawful for any person—

- (a) to endeavour in good faith to show that the Sovereign has been misled or mistaken in any of his measures; or
- (b) to point out in good faith errors or defects in the government or constitution of the Colony as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or

guilty of an offence and liable to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) A person who complies with the provisions of sub-section (1) of this section or is convicted of an offence under that sub-section shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

51. (1) Any of the following officers, that is to say—
- (a) any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;
 - (b) any officer of the Customs Department not below the rank of Examining Officer;
 - (c) any police officer not below the rank of Assistant Inspector;
 - (d) any other officer authorized in that behalf by the Governor,

Power to examine packages

may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 49 of this Code to import, publish, sell, offer for sale, distribute, reproduce or possess, and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section 49 or section 50 of this Code, as the case may be.

52. (1) A ‘seditious intention’ is an intention—
- (i) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors, or the Government of the Colony as by law established; or

Seditious intention.

- (c) to excite in good faith the inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or
- (d) to point out in good faith, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony.

- (ii) to excite His Majesty's subjects or inhabitants of the Colony to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Colony as by law established; or
- (iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Colony; or
- (iv) to raise discontent or disaffection amongst His Majesty's subjects or inhabitants of the Colony; or
- (v) to promote feelings of ill-will and hostility between different classes of the population of the Colony:

But it is not a seditious intention—

- (a) to show that His Majesty has been misled or mistaken in any of his measures; or
- (b) to point out errors or defects in the government or constitution of the Colony as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) to persuade His Majesty's subjects or inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony:

Provided that none of the acts or things mentioned in provisos (a), (b), (c) and (d) shall be deemed to be lawful if they are done in such a manner as to effect or be likely to effect any of the purposes (i) to (v) which are declared in this section to be a seditious intention.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

53. (1) Any person who—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;
- (b) utters any words with a seditious intention;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious,

Seditious offences.

shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to His Majesty.

Possession of seditious publication.

54. (1) No prosecution for an offence under section 53 of this Code shall be begun except within six months after the offence is committed.

Legal proceeding.

(2) A person shall not be prosecuted for an offence under section 53 of this Code without the written consent of the Attorney General.

55. No person shall be convicted of an offence under section 53 of this Code on the uncorroborated testimony of one witness.¹⁷

Evidence.

8. Paragraph (4) of section 166 of the Principal Ordinance is hereby amended by substituting the word "publicly" for the words "in any public place" which occur in the first line thereof.

Amendment of section 166 of the Principal Ordinance.

Section 166 of the Principal Ordinance which it is proposed to amend:—

166. The following persons—

- (1) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (2) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

Idle and disorderly persons.

- (3) every person playing at any game of chance for money or money's worth in any public place;
- (4) every person who in any public place conducts himself in a manner likely to cause a breach of the peace;
- (5) every person who without lawful excuse publicly does any indecent act;
- (6) every person who in any public place solicits for immoral purposes; and
- (7) Every person wandering about and endeavouring by the exposure of wounds or deformations to obtain or gather alms,

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.

Section 368 of the Principal Ordinance which it is proposed to amend:—

Other conspiracies.

368. Any person who conspires with another to effect any of the purposes following, that is to say—

- (1) to prevent or defeat the execution or enforcement of any Ordinance, Statute or Order in Council; or
- (2) to cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or
- (3) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
- (4) to injure any person in his trade or profession; or
- (5) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or
- (6) to effect any unlawful purpose; or
- (7) to effect any unlawful purpose by any unlawful means.

is guilty of a misdemeanour.

4. Section 368 of the Principal Ordinance is hereby amended by substituting the word "lawful" for the word "unlawful" where it first occurs in the first line of sub-section (7) thereof. Amendment of section 368 of the Principal Ordinance.

Amendment of
section 311 of
the Principal
Ordinance.

Section 5 of Ordinance No. 31 of 1936 which it is proposed to amend:—

5. Section 331 of the Principal Ordinance is hereby amended by inserting between the word "him" and the word "purchasers" which occur in the second line thereof, the words "imports into the Colony, or".

7

5. Section 5 of the Penal Code (Amendment) Ordinance, 1936, is hereby amended by substituting the word "purchasers" for the word "purchasers" which occurs in the third line thereof.

Amendment of
section 5 of
Ordinance
No. 31 of 1936.

OBJECTS AND REASONS

~~The object of Clause 2 of the Bill is to bring the laws relating to sedition and importation of undesirable publications into general accord with that of the other British dependencies.~~

Clause 3 is designed to remedy an obvious defect in section 166 of the Penal Code.

Clauses 4 and 5 correct typographical errors in the Principal Ordinance and in the Penal Code (Amendment) Ordinance, 1936.

No expenditures of public moneys will be involved if the provisions of this Bill become law.



Colony and Protectorate of Kenya

IN THE SECOND YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM

G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.

Governor

Assented to in His Majesty's
name this _____ day of
1938.

13 SEP. 1938

H. BROOKE-POPHAM

Governor

AN ORDINANCE TO AMEND THE PENAL CODE

ORDINANCE No. XXVI of 1938

An Ordinance to Amend the Penal Code

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1938, and shall be read as one with the Penal Code, hereinafter referred to as the Principal Ordinance.

Short title.

No. 10 of 1938.

2. Sections 47, 48, 49, 50, 51, 52, 53, 54 and 55 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 47-55 of the Principal Ordinance.

47. For the purposes of the eight next following sections of this Code—

Definitions.

'import' includes—

(a) to bring into the Colony, and

(b) to bring within the inland waters of the Colony whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

'inland waters' includes all lakes, rivers, creeks, and lagoons inside the river bars, of the Colony;

'publication' includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

'periodical publication' includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

'seditious publication' means a publication having a seditious intention.

Power to prohibit importation of publication.

48. If the Governor in Council is of opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any past or future issue thereof.

Offences in relation to publications, the importation of which is prohibited.

49. (1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract therefrom shall be forfeited to His Majesty.

Delivery of prohibited publication to administrative officer or police station.

50. (1) Any person to whom any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made forthwith upon the coming into effect of an order prohibiting the importation of such publication deliver such publication or extract therefrom to the nearest administrative officer or to the officer in charge of the nearest police station, and in default thereof shall be

guilty of an offence and liable to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) A person who complies with the provisions of sub-section (1) of this section or is convicted of an offence under that sub-section shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

51. (1) Any of the following officers, that is to say—

- (a) any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;
- (b) any officer of the Customs Department not below the rank of Examining Officer;
- (c) any police officer not below the rank of Assistant Inspector;
- (d) any other officer authorized in that behalf by the Governor,

Power to examine packages.

may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 49 of this Code to import, publish, sell, offer for sale, distribute, reproduce or possess, and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section 49 or section 50 of this Code, as the case may be.

52. (1) A 'seditious intention' is an intention—

- (i) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors, or the Government of the Colony as by law established; or

Seditious intention.

Power to prohibit importation of publication.

48. If the Governor in Council is of opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any past or future issue thereof.

Offences in relation to publications, the importation of which is prohibited.

49. (1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract therefrom shall be forfeited to His Majesty.

Delivery of prohibited publication to administrative officer or police station.

50. (1) Any person to whom any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made forthwith upon the coming into effect of an order prohibiting the importation of such publication deliver such publication or extract therefrom to the nearest administrative officer or to the officer in charge of the nearest police station, and in default thereof shall be

guilty of an offence and liable to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) A person who complies with the provisions of sub-section (1) of this section or is convicted of an offence under that sub-section shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

51. (1) Any of the following officers, that is to say—
- (a) any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;
 - (b) any officer of the Customs Department not below the rank of Examining Officer;
 - (c) any police officer not below the rank of Assistant Inspector;
 - (d) any other officer authorized in that behalf by the Governor,

Power to examine packages.

may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 49 of this Code to import, publish, sell, offer for sale, distribute, reproduce or possess, and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section 49 or section 50 of this Code, as the case may be.

52. (1) A 'seditious intention' is an intention—
- (i) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors, or the Government of the Colony as by law established; or

Seditious intention.

- (ii) to excite His Majesty's subjects or inhabitants of the Colony to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Colony as by law established; or
- (iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Colony; or
- (iv) to raise discontent or disaffection amongst His Majesty's subjects or inhabitants of the Colony; or
- (v) to promote feelings of ill-will and hostility between different classes of the population of the Colony:

But it is not a seditious intention—

- (a) to show that His Majesty has been misled or mistaken in any of his measures; or
- (b) to point out errors or defects in the government or constitution of the Colony as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) to persuade His Majesty's subjects or inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony:

Provided that none of the acts or things mentioned in provisos (a), (b), (c) and (d) shall be deemed to be lawful if they are done in such a manner as to effect or be likely to effect any of the purposes (i) to (v) which are declared in this section to be a seditious intention.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

53. (1) Any person who—
- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;
- (b) utters any words with a seditious intention;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious,
- shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited to His Majesty.

Seditious offences.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to His Majesty.

Possession of seditious publication.

54. (1) No prosecution for an offence under section 53 of this Code shall be begun except within six months after the offence is committed.

Legal proceedings.

(2) A person shall not be prosecuted for an offence under section 53 of this Code without the written consent of the Attorney General.

55. No person shall be convicted of an offence under section 53 of this Code on the uncorroborated testimony of one witness."

Evidence.

8. Paragraph (4) of section 166 of the Principal Ordinance is hereby amended by substituting the word "publicly" for the words "in any public place" which occur in the first line thereof.

Amendment of section 166 of the Principal Ordinance.

4. Section 368 of the Principal Ordinance is hereby amended by substituting the word "lawful" for the word "unlawful" where it first occurs in the first line of sub-section (7) thereof.

Amendment of section 368 of the Principal Ordinance.

No. XXVI

Penal Code

1938

Amendment of section 5 of Ordinance No. 31 of 1936.

5. Section 5 of the Penal Code (Amendment) Ordinance, 1936, is hereby amended by substituting the word "purchasers" for the word "purchasers" which occurs in the third line thereof.

Passed in the Legislative Council the eighteenth day of August, in the year of Our Lord one thousand nine hundred and thirty-eight.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

R. W. BAKER-BEA

Acting Clerk to the Legislative Council.

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SUPPLEMENT

KENYA PROCLAMATIONS, RULES AND REGULATIONS, No. 29

Colony and Protectorate of Kenya

GOVERNMENT NOTICE No. 595

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER BEALL.

Acting Clerk to the Legislative Council.

A Bill to Amend the Penal Code

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1938, and shall be read as one with the Penal Code, hereinafter referred to as the Principal Ordinance. Short-title.
No. 10 of 1930.

2. Sections 47, 48, 49, 50, 51, 52, 53, 54 and 55 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:— Repeat and replacement of sections 47-55 of the Principal Ordinance.

"47. For the purposes of the eight next following sections of this Code— Definitions.

'import' includes—

(a) to bring into the Colony, and

(b) to bring within the inland waters of the Colony whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

'inland waters' includes all lakes, rivers, creeks, and lagoons inside the river bars, of the Colony;

'publication' includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

'periodical publication' includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

'seditious publication' means a publication having a seditious intention.

Sections 47-55 of the Principal Ordinance which it is proposed to replace:—

47. Any person who—

(a) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them; or

(b) prints or publishes any words or writing with a seditious intention; or

(c) sells, offers for sale, distributes or has in his possession any newspaper, book or document containing any seditious words or writing, or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony; or

(d) imports into the Colony any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony,

is guilty of an offence and is liable to imprisonment for two years. If he has been previously convicted of any such offence he is liable to imprisonment for seven years.

Seditious
libel and
conspiracy,
publications.

Possessing
seditious
publications.

48. (1) Any person to whom any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony has been sent without his knowledge or privity shall forthwith deliver to the officer in charge of the nearest police station or to the nearest administrative officer such newspaper, book or document, and in default thereof is guilty of an offence and is liable to imprisonment for one year.

(2) A person who has complied with the provisions of sub-section (1) of this section or has been convicted of an offence under such sub-section shall not be liable to be convicted of an offence under paragraph (c) of section 47 of this Code.

Evidence
necessary for
conviction.

49. A person cannot be convicted of any offence against section 47 or section 48 on the uncorroborated testimony of one witness.

Forfeiture of
seditious
publications.

50. A court on convicting any person of an offence under section 47 or section 48 shall order any seditious or prohibited newspaper, book or document to be forfeited to His Majesty.

Powers of
detention and
examination
of suspected
packages, etc.

51. Any of the following officers, viz.—

any officer of the Posts and Telegraphs Department

not below the rank of Junior Postmaster;

any officer of the Customs Department not below the rank of Examining Officer;

any police officer not below the rank of European Police Constable;

any other officer authorized in that behalf by the Governor.

may detain, open and examine any package or article which he suspects to contain any newspaper, book or document which it is an offence under section 47 or section 48 to print, publish, import, sell, offer for sale, distribute or possess, and during such examination may detain any person importing, distributing or posting such package or article, or in whose possession such package or article is found. If any such newspaper, book or document is found in such package or article, the whole package or article may be impounded and retained by the officer, and the person importing, distributing or posting it, or in whose possession it is found, may be arrested without warrant and proceeded against for the commission of an offence under section 47 or section 48.

Powers of
arrest.

Power to
prohibit
importation of
publication.

48. If the Governor in Council is of opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any past or future issue thereof.

Offences in
relation to
publications, the
importation of
which is
prohibited.

49. (1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract therefrom shall be forfeited to His Majesty.

Delivery of
prohibited
publication to
administrative
officer or
police station.

50. (1) Any person to whom any publication the importation of which has been prohibited under section 48 of this Code, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made forthwith upon the coming into effect of an order prohibiting the importation of such publication deliver such publication or extract therefrom to the nearest administrative officer or to the officer in charge of the nearest police station, and in default thereof shall be

Power of Governor in Council to declare documents, etc., to be seditious publications.

52. The Governor in Council may by proclamation declare any newspaper, book or document to be a seditious publication.

Power to prohibit importation of documents.

53. The Governor in Council may by proclamation prohibit the importation into the Colony of any newspaper, book or document.

Interpretation.

54. For the purposes of the seven last preceding sections—

“newspaper” means any periodical work containing public news or comments on public news, and includes any part of such work or extract therefrom;

“book” includes every volume, part or division of a volume, pamphlet or leaflet in any language, and every sheet of music, map, chart or plan separately printed or lithographed, and any part of or extract from any such volume, pamphlet, leaflet, sheet of music, map, chart or plan;

“document” includes any painting, drawing or photograph or other visible representation.

Seditious intentions defined.

55. For the purposes of the eight last preceding sections a seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors or the Government of the Colony, as by law established, or against the administration of justice; or to excite the inhabitants of the Colony to attempt to procure the alteration otherwise than by lawful means of any matter in the Colony as by law established; or to raise discontent or disaffection amongst the inhabitants of the Colony; or to promote feelings of ill-will and hostility between different classes of the population of the Colony:

Innocent intention.

Provided that it shall be lawful for any person—

- (a) to endeavour in good faith to show that the Sovereign has been misled or mistaken in any of his measures; or
- (b) to point out in good faith errors or defects in the government or constitution of the Colony as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or

guilty of an offence and liable to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to His Majesty.

(2) A person who complies with the provisions of sub-section (1) of this section or is convicted of an offence under that sub-section shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

51. (1) Any of the following officers, that is to say—

- (a) any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;
- (b) any officer of the Customs Department not below the rank of Examining Officer;
- (c) any police officer not below the rank of Assistant Inspector;
- (d) any other officer authorized in that behalf by the Governor,

may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 49 of this Code to import, publish, sell, offer for sale, distribute, reproduce or possess; and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section 49 or section 50 of this Code, as the case may be.

52. (1) A ‘seditious intention’ is an intention—

- (i) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors, or the Government of the Colony as by law established; or

Power to examine packages

Seditious intention.

- (c) to excite in good faith the inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or
- (d) to point out in good faith, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony.

- (ii) to excite His Majesty's subjects or inhabitants of the Colony to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Colony as by law established; or
- (iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Colony; or
- (iv) to raise discontent or disaffection amongst His Majesty's subjects or inhabitants of the Colony; or
- (v) to promote feelings of ill-will and hostility between different classes of the population of the Colony:

But it is not a seditious intention—

- (a) to show that His Majesty has been misled or mistaken in any of his measures; or
- (b) to point out errors or defects in the government or constitution of the Colony as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) to persuade His Majesty's subjects or inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony:

Provided that none of the acts or things mentioned in provisos (a), (b), (c) and (d) shall be deemed to be lawful if they are done in such a manner as to effect or be likely to effect any of the purposes (i) to (v) which are declared in this section to be a seditious intention.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

53. (1) Any person who—

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any words with a seditious intention;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

(d) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited to His Majesty.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to His Majesty.

54. (1) No prosecution for an offence under section 53 of this Code shall be begun except within six months after the offence is committed.

(2) A person shall not be prosecuted for an offence under section 53 of this Code without the written consent of the Attorney General.

55. No person shall be convicted of an offence under section 53 of this Code on the uncorroborated testimony of one witness.

3. Paragraph (4) of section 166 of the Principal Ordinance is hereby amended by substituting the word "publicly" for the words "in any public place" which occur in the first line thereof.

Section 166 of the Principal Ordinance which it is proposed to amend:—

166. The following persons—

(1) every common prostitute behaving in a disorderly or indecent manner in any public place;

(2) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

Idle and disorderly persons.

Seditious offences.

Possession of seditious publication.

Legal proceedings.

Evidence.

Amendment of section 166 of the Principal Ordinance.

- (3) every person playing at any game of chance for money or money's worth in any public place;
- (4) every person who in any public place conducts himself in a manner likely to cause a breach of the peace;
- (5) every person who without lawful excuse publicly does any indecent act;
- (6) every person who in any public place solicits for immoral purposes; and
- (7) Every person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms.

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.

Section 368 of the Principal Ordinance which it is proposed to amend:—

368. Any person who conspires with another to effect any of the purposes following, that is to say—

- (1) to prevent or defeat the execution or enforcement of any Ordinance, Statute or Order in Council; or
- (2) to cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or
- (3) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
- (4) to injure any person in his trade or profession; or
- (5) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or
- (6) to effect any unlawful purpose; or
- (7) to effect any unlawful purpose by any unlawful means,

is guilty of a misdemeanour.

4. Section 368 of the Principal Ordinance is hereby amended by substituting the word "lawful" for the word "unlawful" where it first occurs in the first line of sub-section (7) thereof.

Amendment of section 368 of the Principal Ordinance.

Other conspiracies.

Section 5 of Ordinance No. 31 of 1936 which it is proposed to amend:—

Amendment of section 331 of the Principal Ordinance.

5. Section 331 of the Principal Ordinance is hereby amended by inserting between the word "him" and the word "purchasers" which occur in the second line thereof, the words "imports into the Colony, or".

5. Section 5 of the Penal Code (Amendment) Ordinance, 1936, is hereby amended by substituting the word "purchasers" for the word "purchasers" which occurs in the third line thereof.

Amendment of section 5 of Ordinance No. 31 of 1936.

OBJECTS AND REASONS

The object of Clause 2 of the Bill is to bring the laws relating to sedition and importation of undesirable publications into general accord with that of the other British dependencies.

Clause 3 is designed to remedy an obvious defect in section 166 of the Penal Code.

Clauses 4 and 5 correct typographical errors in the Principal Ordinance and in the Penal Code (Amendment) Ordinance, 1936.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

Section 7 of the Principal Ordinance which it is proposed to amend:—

Control of
internment
camps.

7. (1) The Commander shall be in charge of any internment camp established in accordance with the provisions of the last preceding section and shall be responsible for the discipline of internees.

(2) The Commander may, with the approval of the Governor, appoint a Commandant to be in charge of an internment camp, and may detail such other persons as may be necessary to ensure proper control of internment camps to serve under such Commandant.

Section 19 of the Principal Ordinance which it is proposed to amend:—

Offences
against
discipline.

19. Any internee who—

- (a) attempts to escape;
- (b) disobeys the order of any person in whose charge he is placed;
- (c) fails to declare his true name, rank, or number on interrogation,

shall be deemed to have committed an offence against discipline.

Draft on 25.10.38

KENYA.

Downing Street,

CONFIDENTIAL.

18 August, 1938.

Sir,

I have the honour to transmit to you, for your information, a copy of a despatch which I have sent to the Acting Governor of Northern Rhodesia regarding the new Section 58A of the Northern Rhodesia Penal Code. Copies of the Penal Code (Amendment) Ordinance, 1937, and of Section 62 of the Palestine Criminal Code referred to in the despatch are also forwarded herewith.

2. Section 58A of the Northern Rhodesia Code is in similar terms to Section 60 of the Kenya Penal Code and, as you will observe, I do not regard its terms as entirely satisfactory. I should be obliged if you would consider the possibility of amending the corresponding provision of the Kenya law in the light of the observations in my despatch to Northern Rhodesia and of Lord Harlech's Confidential Circular despatch of the 17th February, 1938. I should be glad if you would submit to me in draft any legislation which you decide to introduce on the matter.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

GOVERNOR,

AIR CHIEF MARSHAL,

SIR ROBERT BROOKE-POPHAM, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.

etc.,

etc.,

etc.

C. O.

C. D.
R 30 MAY
1938

38004/38

31

Mr. Costley-White 30/5/38

J.S.

Mr. ~~Case~~

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

John
May 1938.

Sir,

(1)

I am etc. to acknowledge
the receipt of your letter ^{leg} (C/128/A.1.)
of the 29th of April, forwarding a
copy of a letter from the Government
of Kenya on the subject of the
importation and publication of
seditious documents.

DRAFT.

THE SECRETARY,

EAST AFRICAN GOVERNORS'
CONFERENCE.

Confidential

2. I am to state that

Mr. MacDonald fully adheres to the
general policy on this matter which
was ~~stated~~ ^{set out} in Lord Harlech's

confidential circular despatch of the

(2)

17th of ~~October~~ ^{February}. Mr. MacDonald has,
however, carefully reviewed the
arguments adduced by the Government
of Kenya that a departure from the
general policy should be permitted

FURTHER ACTION.

for

for the Colony, but he fears that it is not possible for him to take the view that it has been shown that the circumstances of Kenya would justify him in overriding the obvious and grave objections which exist to conferring on ^{the} ~~an~~ Executive Government, without the intervention of the Courts, the suggested wide powers of control over the local press and other literature originating in the Colony.

I am, etc.

(Rgn) A. J. Rowe

AIR MAIL

TELEGRAMS:

"CONFGOV, NAIROBI."

REF. No. C/Leg/A.1.

OFFICE OF THE
CONFERENCE OF EAST AFRICAN GOVERNORS
P. O. Box 601
NAIROBI, KENYA

32

RECEIVED

29th April, 1938.

Sir,

6 on 1937 file I have the honour to state that a copy of your letter of the 25th of March (No. 38004/38), on the subject of seditious publications, was duly communicated to the Government of Kenya, from whom the enclosed reply has now been submitted for Mr. Ormsby Gore's consideration.

2. The Governments of Uganda, Tanganyika, Northern Rhodesia, Nyasaland and Zanzibar are being furnished with copies of this correspondence.

I have the honour to be,

Sir,

Your obedient servant,

Hand 2
B. Justice
SECRETARY TO GOVERNORS' CONFERENCE

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE,
DOWNING STREET, S.W.1.

COPY.

NO. S/D/M.L.12/58/3/6/55.

THE SECRETARIAT,
NAIROBI, KENYA.
27th April, 1938.

33

Sir,

I have the honour to acknowledge the receipt of your letter No.C/Leg/A.1. of the 1st April, 1938, enclosing a copy of a letter from the Colonial Office of the 25th March, in which it is stated that, until it can be demonstrated to be essential that power should be given to the Governor in Council to prohibit the local publication of any document or newspaper, the Secretary of State would be very reluctant to approve the adoption of any provision conferring this power.

2. It is admitted in paragraph 3 of Mr. Dawe's letter that it is possible that circumstances might arise which would justify the granting of such power. In His Excellency's view it is better to recognise the existence of such a possibility by taking the power beforehand instead of waiting until a crisis occurs. In a situation requiring action to prevent the publication and sale of seditious literature time is an important factor. The situation to be met is not one of a gradual growth of unrest throughout the Colony, but of a possible sudden outbreak of trouble in one section of it. When such an outbreak occurs it will be too late, in His Excellency's view, to "consider whether more stringent powers of control are required."

3. His Excellency appreciates that the proposed power would be a wide one (although apparently no wider than the power to prohibit the importation of literature of such a nature that its importation would, in the Governor's opinion, be contrary to the public interest), and it would not be exercised except in a case of absolute necessity. Such a case might possibly arise at any moment, and at present the time which may elapse in a protracted action in the Courts not only allows opportunity for circulation of the seditious document but ^{may} also give it, added

publicity/

THE SECRETARY TO THE
GOVERNORS' CONFERENCE,
NAIROBI.

publicity. The aim appears to His Excellency to be to stop seditious literature being circulated, whether it is printed in this or some other country.

4. It is noted from paragraph 4 of the Secretary of State's Confidential Circular despatch of the 17th February that it appears to the Secretary of State to be essential that the question whether a locally published document is or is not seditious should be left to the Courts to decide. The objection, however, that in deciding such a question the Governor would be, in a sense, a judge in his own cause appears to apply equally to the case of imported literature in which it is left to the Governor to decide whether the importation is contrary to the public interest on the ground of the seditious character of the document.

5. For these reasons His Excellency trusts that the Secretary of State will agree to give this matter further consideration with a view to approving the introduction of a provision as desired by himself and Executive Council, and I am to ask that a copy of this letter may be forwarded to the Colonial Office for the consideration of the Secretary of State.

I have the honour to be,

Sir,

Your obedient servant,

(Sd). A. de V. WADE.

COLONIAL SECRETARY.