

1930.

Kenya.

No. 16191.

SUBJECT

plutone
C0533/400

CLOSED
UNTIL

Penal and Criminal Procedure Codes.

Ordinances Nos 10 + 11 of 1930.

Previous

See 25102/30, F.A.

15314/28.

See 27025/32, F.A.

Subsequent

22116/34 (Criminal Procedure)

17403/31 (Penal Code)

See 27045/32 (Amendment of Penal Code)

1.

Secretariat. 3.p.m. 28th. April 30.

Spare to
Library.

Two copies of the Report of Select Committee
of Legislative Council appointed to consider and
Report on the provisions of a Bill to establish
a Code of Criminal Law.

Put
C. Carson
17/6/30
[Signature]

2.

Secretariat. 3.p.m. 28th. April 30.

Spare to
Library.

Two copies of a Report of Select Committee
of Legislative Council appointed to consider and
Report on the provisions of a Bill to make Provision
for the Procedure to be followed in Criminal Cases.

? Party. We know from
other course that the Bill ~~is~~ became
law at the April session. The
Gov's report on it may be
expected shortly. He is considering
the desirability of sending it to
a to meet Indian representation

On 16/30/30
Extension of July
Sept to Indians

C. Carson
17.6.30

deed
17.6.30
[Signature]

3. Copy of a telegram sent to Kenya on 25402/30.
 4. Mr. Moore for Gov. 377. 10th. June 30.

Trs 2 authenticated copies of an Ordinance cited as "The Penal Code" with copies of the legal report, Report of Select Cttee, and printed copies - intention is to bring this Ordce into operation on the 1st. August next

5. Gov. Grigg. 96. Conf'd. 23rd. June 30.

Trs 2 authenticated copies of an Ordinance cited as "The Criminal Procedure Code" with copies of the legal report and report of the select Cttee - states as regard to the position of Indians -

I fear that there has been a good deal of delay in sending forward this paper; but, apart from other considerations, the position was complicated by the fact that it appeared desirable to await the receipt of Sir C. Griffin's criticisms of the Codes.

I have now summarized the position in the note attached opposite to the file, which sets out the points on which decisions are required, and which also indicates the general action which I think should be taken.

? The file should go in the first instance to the Legal advisers for their views on the points summarized in the memorandum.

(Note: I have flagged the files containing the various Ordinances. The minutes on 29744/30 T.T. should be seen. Nos. 11 and 12 on 25402/30 E.A. may be taken as the "Model" Codes, except that Part VII of the Model Criminal Procedure Code (special provisions for the trial of Europeans) has been omitted).

M. Lee

17/6/30.

W. Keble
 Yes, please. You will
 advise on all this?
 A. Lee
 17.11.30

Mr. Lee has set out very nicely all the points in his memorandum, and I have made one or two marginal comments thereon.

As regards Sir Charles Griffin's outburst, I have, so far as the Penal Code is concerned, been through his letter. He makes a few good points, some bad ones, and a great many which are very forced and trivial. The Procedure Code I have not attempted to deal with, since it is so very much a matter of local knowledge. I do not see any point which renders an immediate amendment necessary, and I agree with Mr. Lee that the best thing would be to arrange for a conference in about two years from now, when the Codes could be considered in the light of experience. By that time, I have no doubt a good many points will have arisen which will make amendment desirable.

W. Green

In the light of A. Lee's memorandum this appalling file becomes delightful & simplified. Provided that you do not wish to press your suggestion in regard to Pt 47-52 of the Penal Code, I think we might

18.30.

how have it to be carried
in lines proposed by
H. Lee & Co. B. S. S. S.

A. C. P. S. S. S.
27. 12. 30

I cannot agree to leaving
§§ 47-54 unamended for two years. If they
are to be left part of the penal code, my
view is that they require thorough
discussion, amendment and adaptation to the
special circumstances of each dependency. It
is most objectionable that special legislation
of this kind, which has obvious industrial
bearing, should escape consideration by being
slipped into a code of which they are no
proper part.

If they are just framed separately,
they can be adequately considered without delay
to the rest of the code. Tanganyika Ordinance
is subject to criticism from the representatives
of the International Labour Office in the P. C. C.,
and of any nature, who tells them that
Indians don't pay high enough wages or that
the Belgians look after their mines better
than we do, is to be liable to all sorts
of disabilities and penalties, we shall have
trouble.

A. C. P. S. S.
29. 12. 30

Mr. Bush.

I am sufficiently in agreement with
Mr. Green to wish to have a definite opinion
on

4
whether
on what are the activities which he suggests
would fall within "seditious intention" under
the last three lines of Clause 55 of the Penal
Code, although they are made lawful under (d)
of the proviso.

Also, what about getting up a strike or
a boycott of an employer believed to be a bad
employer?

If you think that there is a chance that
this part of the Code can be used repressively,
I should be glad if you would consider what is the
minimum alteration which, while giving the means of
dealing with actual sedition, will not make it
criminal to express ~~right~~ views.

W. C. S. S. S.
29. 12. 30

Sir Cecil Bottomley.

If you will look at the minutes on
29744 under the head Sections 47-54, you will see
that the provisions of these Sections are covered
by precedent. The nearest parallel is the Trinidad
Ordinance, Chapter 16, of the 1925 Edition. Upon
reading that Ordinance through again, I remember that
when it came home originally, we discussed the matter
at some length. I have accordingly obtained the
paper (23008/20), and it is now attached. The
definition of "sedition" also appears in similar
terms in the Cyprus Penal Code, for which we have a
special responsibility, since we passed it here by
Order in Council.

I have never heard of a complaint from
anywhere that these provisions have operated unfairly,
and I feel confident that no one could be properly
convicted under them in the circumstances instanced
by Mr. Green and you.

If one had a completely free hand, there are two matters of detail in the Sections in question which I should like to see altered. I should like firstly to see included Subsection 3 of Section 4 of the Trinidad Ordinance, and ~~secondly~~ ^{secondly}, I should like to see excluded the right of the Governor (Section 52) to make any document by proclamation a seditious publication. He ought to have power to prohibit the importation of any document, but it ought to be a matter for the Courts to decide whether, apart from any question of prohibited import, a document is or is not seditious.

As you know, however, this Code had to be agreed not only by us but by four governments, and a certain amount of compromise and 'give-and-take' ~~were~~ necessary. I do not think that either of the above points are so serious as to necessitate our suggesting amendments at this early stage, and I am bound to say that I should like to give these Codes a run for a couple of years, collecting during that time experience indicating what amendments should be made at the end of that time.

Meanwhile, if you feel some anxiety about these particular Sections, it would be quite easy for you to ask to be supplied with particulars of any prosecution which occurs under them.

H/B 6.1.31.

Sir S. Wilson.

In view of Mr. Bushe's minute I think that we may pass this question of seditious publications, but I agree that we should ask for particulars of any ^{prosecution} proclamation of the kind ~~that~~ he suggests at the end of his minute, and also that we should tell all the Governors concerned that the S. of S. would not wish the Governor to exercise his right under Section 52 of making any document by proclamation a seditious publication, without the strongest justification, pointing out, as in Mr. Bushe's minute that this should be a matter for ^{the} Court.

Mr. Lee's excellent memo. mentions two other points to which I ought to refer:-

(1) Trial by Jury for Europeans and not others. This was adopted from the previous Kenya Law and, as the memo. shows, it has been accepted by Nyasaland but not by Uganda or Tanganyika. I think that we can leave this point to work out its own solution, but if there is no protest by the Indians in Kenya, I think that it can wait for the two years which Mr. Bushe suggests.

(2) As regards Section ²³ of the Penal Code — this also was taken from the previous Kenya Law which was passed at a time of very high tension of feeling on the subject. I think we are all agreed that the extreme penalty is regrettable, but I do not think we can possibly antagonise local

European

*9/10
H.B.
P
Death sentence
for rape.*

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European

It is a question that
will not be more difficult
to get it allowed later
than to pass it now
be a question.

European opinion by insisting on any
alteration ~~at the present time~~.

Therefore subject to the first paragraph
of my minute I think that the Ordinances may
be allowed.

W.C.S.
7.1.30

Sec of State
(through B. Dicks)

Agree with the procedure
proposed by Sir C. Bottomley
and suggest that subject to the
action he proposes the Ordinance
should be allowed & that a
Conference should be convened
in two years time to discuss the
whole matter.

P.M.B.

10.1.30

I think the Conference in two years should be clearly
stated. I dislike many of these provisions and I think
especially the death sentence for rape very low. I agree
to what is proposed subject to the revision in two years. We
would like any action could be
taken on my marginal note above. P.M.B. 10.1.31

The despatch should state
very explicitly that the
present allowance of the
Ordinances must be
understood as provisional,
and ~~confined to the~~

plaw
officers

subject to a conference ^{not}
^{later than the end of 1932}
~~1930~~ when amendments
in the law will doubtless
be required in the light of
experience. ^{in some while every} ~~case~~

Also the power
to bind over
and imprison
in default,
without a
conviction
(Sec 48/59)
of which
— under which
thousands of
Indians are
already in
jail in India
— ought to
be made the
subject of a
special
quarterly
report of the
cases.

Councils will

of a section to be reported in
Governor not to use the power
of declaring a public seditious
to be seditious (as distinguished
from merely prohibiting ^{importation} it)
explaining the reason. I think
we might say that the range of
application of the death penalty
will be another of the subjects
to be thus reconsidered; also
the application of the jury
system; also ^{the other} points in which
the three codes depart from
uniformity (which may of course
be justified by local differences)
— and the points raised by Sir C. Bottomley

E.O. Dept
for necessary
action P.M.B.
above
16.1.31.

P.151 P.10

(1) No. 10 is said in these
Mts about but Barthe
attending the proposed
Conference of Law Officers -
see 971024/15/30 Instab.
I have confirmed that
but Barthe will work to
attend that Conference -
I am sure that he would
do so. The Supt. has
fixed the end of 1932 as
the latest date for the
Conf^{ce}: of however but Barthe
is to put off his C.A.
visit to suit S.O.,
until end of Nov 1931,
it might be difficult
for him to get away
again quite so soon to
Africa, & it is for
certain whether we will
be allowed a little
latitude as to date.
I say to the 4 ports
that Supt. hopes to
arrange for one of his
Legal advisers to
attend the Conference,
& select a convenor

date, so far as can now be
foreseen, would be about 7
the end of 1932. Noo,
the Mts can be amended
accordingly.

(2) In such a Conf^{ce} the
Conf^{ce} Secretariat, viz. the
Supt. in 1930, will
add to each Dept. a para.
saying that copy is being
sent to Sec, Conf^{ce} of 29. Jan 31,
who will make the
necessary arrangements for the
Conf^{ce} - & send copies
accordingly in official letters
to the Sec. asking him,
when the time comes, to
make the neccy. arrangements
in consultation with the 4 ports?

if a letter has been
sent up by then,
I will make no
further diff. as
Conf^{ce} Secretariat
will be part of
his cut also

(3) Mr Lee asked me as to
interpretation of the Supt's
ref^{ce} to the range of
application of the statute
generally. I agreed with him
that I took this to be a
ref^{ce} to the statute generally
for rape in Kenya, & the
Supt. to Kenya has been
winded accordingly

of course the only
in 1931/32 when
the Supt. was in
Kenya in 1932

(1) Nothing is said in these
M's about Mr. Bausche
attending the proposed
Conference of Law Officers -
see 971524/1/30 Lab.
I have confirmed that
Mr. Bausche will wish to
attend that Conference -
I am sure that he should
do so. The Spt. has
fixed the end of 1932 as
the latest date for the
Conf. of course Mr. Bausche
is to put off his visit
visit to visit S.O.,
until end of Nov. 1931,
it might be difficult
for him to get away
again quite so soon to
Lafica, as it is for
certain whether we should
be allowed a little
latitude as to date
to say to the 4 ports
that Spt. hopes to
arrange for one of his
Legal Advisers to
attend the Conference,
& select a convenient

Sunday
1931

As Mr. B. has been
kept up by them,
I will make no
practical offer -
Conf. Secretary
with his part of
his cut also
each

From the way
of arrangements about
the proposed
before the end of 1932
Lab

date, so far as can now be
foreseen, would be about 7
the end of 1932. No,
the M's can be amended
accordingly.

(2) In such a Conf. the
Conf. Secretary will be
responsible for the
and to each Dept. a para.
saying that copies is being
sent to Sec, Conf. of 20. Jan.
who will make the
necessary arrangements for the
Conf. - a small copies
according in official letter
to the Sec. asking him
when the time comes, to
make the necessary arrangements in
consultation with the 4 ports?

(3) Mr. B. asked me as to
interpretation of the Spt's
M's as to the range of
application of the death
penalty. I agreed with him
that I took this to be a
ref. to the death penalty
for rape in Kenya, & the
Spt. to Kenya has been
wonder accordingly according

P.T.O

The Mysore 2.1.31

Sir C. Bottomley.

I have prepared a draft to the Secretary of the East African Governors' Conference, after discussion with you, and I have inserted a reference to this letter in each of the draft despatches.

Mr. Bushe should see after action.

Yes. We need not ask for letters in other parts of the Conference. It is known that it is necessary.
3.2.31
3.2.31

- to Gov 99 - (C. 10.) - Dec 4. 1930
- to Gov 99 (C. 10.) - Dec 11. 1930
- Uganda 52 (C. 10.) - Dec 11. 1930
- Uganda 59 (C. 6 & 10.) - Dec 11. 1930
- Confce. E.A. Govs (C. 6, 7, 8 & 9) Dec 11. 1930

Draft on 27/11/30 TT
Draft on 20/5/30 TT
Draft on 25/10/30 TT
Draft on 24/11/30 TT

22nd December
The authenticated and printed copies of Penal Code (Uganda) Ordinance No. 1 of 1930 together with legal affidavits by Attorney General

22nd December
The authenticated and printed copies of Criminal Procedure Code (Uganda) Ordinance No. 2 of 1930, together with legal affidavits by Attorney General

30/12/31
7 FEB 1931

13 minutes re Archdeacon Owen's report for information as to imprisonment in default of payment of fine

14 To Archdeacon Owen (C. 10) con. 14 January '31

Mr. Lee

These are nos. 11 & 12.

shown
17/1/31

Nos. 11 & 12 have not yet been examined - the file has been in con. with other papers.

The A.G.'s explanation of the two ordinances seem to cover the ground adequately. The only clause which it seems necessary to call attention is cl. 3 of the Penal Code (Uganda) Ord. which remains the minimum penalty of 3 years for wife leaving the husband as death or imprisonment for life. ? should be abolished of course if possible

(I have also marked with a query down 6 & 9 of the Criminal Proc^os

1 year or more
to at a less sentence
is possible

3.2.31

(Am?) Note - based on Duncan case
no doubt as to whether he committed the
act (right)

to Duncan

This file was taken
from your table for circ in another
committee & has only now become
available again.

Johnston
4.2.31

ORDINANCE NO. XLV OF 1930:

Section 3. A less sentence could
be imposed, and I see
no objection to this.

Section 5. It seems to me essential
that there should be
provision as the lines of the proviso to section
1 of the Infant Life Protection Act, 1929, which
runs as follows: - "Provided that no person shall
be found guilty of an offence under this section
unless it is proved that the act which caused the
death of the child was not done in good faith
for the purpose only of preserving the life of
the mother." Under sections 186 and 189, to
cause death by an unlawful act with the intention
to kill is murder, and there seems to be nothing
to ensure that the destruction of the child in
cases coming within the above-mentioned proviso
is not an unlawful act. There may be something
to this effect which I have not seen, but I think
this point should certainly be raised.

ORDINANCE NO. XLVI OF 1930:

Section 2. I cannot find any
provision specifying the
number

*copy of 2.10.31
the measure*

*Subject to
medical opinion
H.B.*

*Of course the wording
of this section is
quite different
from the 1929 Act
H.B.*

*See 2.9 of the
Provisional Ordinance
H.B.*

*See section
2.9*

number of jurymen in a case of trial by jury.
I gather that the full jury is twelve in a case of
murder or treason, and nine in a case of any other
offence. If so, I have no objections to raise.

J.O. Roberts Esq. 11.8.31.

*see note on
16.12.30*

15 See to Gov's Office
This provisional measure of P.D. Government is
to meet likely and convenient date for holding
conference of law officers

~~Section~~
No. 11. re Roberts-Loring's point
a § 5 certainly seems an important
one since it affects amendment
& include it? (the measure of?)
non-derogation:

*Definitely sanction
but there is a point
H.B.*

See 2.9

No. 12. This certainly seems
to be wholly about the number
of jurymen in the Code - 9 or
I suppose that under § 245
it will be the same as in
England - namely 12 in all
cases - but it certainly looks
from the new Section as if
in cases other than murder or
treason it the number was only

Respect 209

wise.

? seems non-dualist

I unless Mr. Bush can show
any light on it enquire
so. of Mr. Martin on this
point.

no. 15. see minutes a
year ditto. ? loc. in
March.

A note shd be made
a box papers of the attention
to the case being suggested
on the paper entitled "Native
Rights" - i.e. a few minor
attention which involve
discrimination against natives.

Goodman
13/8/31

Attendant

J. Stanton
as to no. 11

A/B
11/8

no. 11. sec 5. Tit. Kolentor. Wray's
point is covered by sec. 219
of the Principal Ordinance (No. 4)
I think.

J. Stanton
E.C.O.

Mr. Bush

As regards the Ordinances

No 45 & 430

Will do you agree that no point need
be raised in sect 3?

(ii) does s. 29 sufficiently define

3. instruction to Roberts King's point on
section 5?

no. 46 & 430

Will do & 209 says down the
number & pursue no further views
in sec 9?

If the answers to the above are
all in the affirmative do you agree
that both Ordinances may be sanctioned
without comment?

J. H. Allen

19/8/31

With regard to s. 3 of no. 45 of 1930, there
is no doubt whether or not the point
raised by Mr. Eastwood. See s. 26(2) Ord. of
1930. I have no other views.

J. H. Allen
J.F.F.

Sanction of Ordinances as Nos 11 &
12: secure act hold.
J. H. Allen J.P. at once

Receipt for
No. 10 8 as at
1/12/51

No. Cav 597 - 11. Honwd. } C/S - 25 AUG 1951
598 - 12

Noted
16/9/51

Noted 30/9/51
Bony of 1 Oct 1951

will speak to the Bank & perhaps
send a No to Col. ...

Reg. action as at
No. 10 8 as at
1/12/51

See No. 13 & 14
B.G. carefully

with OK
N.B.
C.S.P.T.
Rend

W. Allen
1/10
at once

See on 17/10/51 Kenya - future policy - for
suggested minor alterations in codes in
matters which involve discrimination against
natives

18 To Hon. T. ... 391 (7/10) on 3603 of 51 L. Mod.
30 July 1951

W. Allen
Please see your minutes of
1/10/51 above

Thomson
27/10/51

I suppose this portion to Col
Walker - this has come up
the middle March ...
to Bank returns
W. Allen

See ...
Sub E 11 H 10

TELEGRAMS —

"CONVOY, NAIROBI"

Ref. No. C/EC/A.1.

OFFICE OF THE
CONFERENCE OF EAST AFRICAN GOVERNMENTS
P. O. BOX 601,
NAIROBI.

20th June 1951.

RECEIVED
17 JUL 1951
COL. OFFICE

Sir,

No. 10
I have the honour to refer to your letter No. 16191/50 of the 7th of February, 1951, regarding a Conference of Law Officers of the Territories of Kenya, Uganda, Tanganyika Territory and Nyasaland not later than the end of 1952 in order to review the Penal and Criminal Procedure Codes which have recently been enacted in these East African Territories.

1. I have consulted the Governments concerned as to a date for the holding of such a Conference and have been informed by the Governments of Kenya and Uganda that some date towards the latter part of 1952 would probably be most convenient but it is too early yet for a definite time to be fixed, though as far as Uganda is concerned August or September would be most likely to be suitable. The Government of Tanganyika Territory and Nyasaland state that definite dates for such a Conference cannot be fixed so far ahead, but probably any date would be most convenient which did not clash with meetings of Legislative Councils.

2. Although no definite date which is suitable for the various Territories can yet be fixed, it may be

THE UNDER SECRETARY OF STATE FOR THE COLONIES,

THE COLONIAL OFFICE,

LONDON, S.W.1.

2.

12

of some assistance to the Legal Adviser to the Secretary of State to know the provisional views of the Governments of the East African Dependencies as to what dates would be likely to be suitable for the holding of this Legal Conference. When any indication can be given to me as to a convenient date for the visit of the Legal Adviser to the Secretary of State, I will again approach the Governments of these Territories on this question.

I have the honour to be

Sir,

Your obedient servant

C. H. Gutter

SECRETARY TO GOVERNORS' CONFERENCE

13
114

C. O.

Register after despatch.

Mr. Allen, 12/1

Mr.

Mr.

Mr. Tomlinson

Mr. C. Bottomley, 13/1

Mr. J. Shackburgh

Sir G. Grenville

Parson, U.S. of S.

Parly, U.S. of S.

Secretary of State

For Mr. Allen's signature.



Downing Street.

14 January 1931

[Handwritten signature]

[Handwritten signature]

You will recollect that

DRAFT, Cas.
R. minutes

Mr. Parson promised to write to you

on the question whether under the

Penal and Criminal Procedure Codes recently

introduced in Kenya imprisonment in

default of payment of a fine extinguishes

the liability to pay the fine.

The position is as follows:-

Section 28 of the new Penal Code

of Kenya provides that, where a man is

sentenced to a fine with imprisonment,

the Court in its discretion may direct that,

if the fine is not paid, the offender shall

be imprisoned for an additional period,

and may also issue a warrant for distress

on the property of the offender. Directly

the fine is either paid or levied by such

process

The Venerable

Archdeacon W. P. Owen.

*Wicks from
Heldborough
rent
obtained by phone
from C.M.S.*

Penal Code.

Criminal Procedure Code.

File.

process of law, this additional period of imprisonment terminates. In this connection it is also to be observed that, under section 23(1) of the new Criminal Procedure Code of Kenya, if the offender pays part of the fine, the additional period of his imprisonment is proportionately reduced. Section 28 of the Penal Code also provides that, if the offender has served the whole term of the additional period of imprisonment, no distress shall be levied on his property unless there are special reasons for doing so. These reasons have to be recorded in writing by the Court.

The said considerations apply to the case of a person who is sentenced to a fine only and who fails to pay it, i.e. they apply to the additional imprisonment awarded for non-payment of the fine.

I enclose copies of the Penal and
Code
Criminal Procedure in case you should wish to refer to them. Perhaps you will be kind enough to return them at your convenience.



Also return the file which
you left with Mr. Parinson.

W. D. Owen

15

13

This file belongs to Archdeacon Owen who brought it to me today at Dr. Shields' request. It will be seen that he sought the advice of Messrs. Daly and Figgis, who are probably the best legal firm in Nairobi, but he could not make any real headway. The particular case is now some years old; he tells me that they have kept it alive in Kenya and that his idea is to petition the Secretary of State.

First there is the question of principle whether or not the Supreme Court of Kenya was right in taking the line that under the Indian Code, which was then in force, imprisonment in default of payment of a fine does not extinguish liability to pay the fine. According to Archdeacon Owen Mr. Daly with whom he spoke could find nothing in the Indian Penal Code to support this view, rather the contrary. It will, however, be noted from the letter sent by the Registrar of the Supreme Court on the 20th October 1927, to Messrs. Daly and Figgis that there is no attempt to point to any specific authority; all that is said is that the state of law on the subject has for many years been taken, both in India and in Kenya, to be that imprisonment in default of payment does not extinguish the liability.

Assuming that the Supreme Court was correct would you please advise whether it is equally true under the new Codes introduced last summer that imprisonment in default of payment of a fine does not extinguish the liability to pay the fine?

Returning to this particular case of Esau Khamati the account given to me by Archdeacon Owen which is supported by copies of translations of a

letter

letter and a statement at the bottom of the file leaves me very unhappy. It would appear that the Magistrate gave Khamati to understand in Court quite clearly that if he did not pay the fine the period of imprisonment would be extended and that that would be the end of the matter. And yet some nine or ten months after the sentence was served the property of Khamati's uncle was seized in order to pay the fine. In this connection see the circular issued under the signature of Sir Jacob Barth on the 27th July 1926. On the statement of the ^{case} ~~Government~~ as we have it here, I entirely agree with the Archdeacon that whatever the legalities of the situation the action taken was, to put it mildly, inequitable. The Archdeacon, if he petitions, will urge that at any rate in this case repayment should be made even at this late date. I put it to him that there might be difficulty in trying to revise any such recoveries of fines during the past three or four years, and he agreed that this would be difficult, and he thought unnecessary. I suggested that if the repayments were made in one case this must lead to demands for repayment in every other case, but he assured me that natives were very generous, and that if the Government admitted by its action in this one case that it had made a mistake they would not press for repayment of all past fines similarly collected. The Archdeacon knows vastly more about natives than I do; he may be right, but I confess his views surprise me.

The Archdeacon
was himself
present & can
swear to this
see

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The Archdeacon
was himself
present & can
swear to this
acc.

I promised to let him know in particular what is the position in this matter under the new Codes and he will then, I take it, prepare the petition which, as he realises, we shall first refer for consideration to the Governor of Kenya.

W. Parry
2.12.26

1. Mr. Bushe.

2. Mr. Terkington.

[Mr. Bushe.] It appears that you had this case in the first instance, and I am therefore sending the papers through you.]

A [Section 28 of the new Penal Code of Kenya provides that, where a man is sentenced to a fine with imprisonment, the Court in its discretion may direct that, if the fine is not paid, the offender shall be imprisoned for an additional period, and may also issue a warrant for distress on the property of the offender. Directly the fine is either paid or levied by such process of law, this additional period of imprisonment terminates. In this connection it is also to be observed that, under section 343 (1) of the new Criminal Procedure Code of Kenya, if the offender pays part of the fine, the additional period of his imprisonment is proportionately reduced. Section 28 of the Penal Code also provides that, if the offender has served the whole term of the additional period of imprisonment, no distress shall be levied on his property unless there are special reasons for doing so. These reasons have to be recorded in writing

by the Court.

In these circumstances it seems clear that if the case under consideration were governed by the new Penal Code, the failure of the law would have been illegal (unless, of course, there were special reasons for such distress, because the offender had already served the full term of his additional period of imprisonment.

In any case I can see no justification for raising the law of the offender's uncle.

H. Duncan.

P.S. The same considerations apply to the case of a man who is sentenced to a fine only and who fails to pay it i.e. they apply to the period of imprisonment awarded for non-payment of the fine.

3/1/31

H.D.

(Samson I have delayed this)

? with s/o to beheaden
Given as in draft herewith.
There is a case with the last
2 paras of Mr Duncan's typed
memo.

H. Allen

12/1/30

KENYA.

No. 799



7/2
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
19 JAN 1931
COL. OFFICE

27
December, 1930.

My Lord,

I have the honour to forward herewith two authenticated and twelve printed copies of an Ordinance intituled "the Criminal Procedure Code (Amendment) Ordinance, 1930," which duly passed its third reading in the Legislative Council on the 22nd November, 1930, and to which I assented in His Majesty's name on the 15th December, 1930.

A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble
servant,

Wm. A. ...
ACTING GOVERNOR.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Forward - 598 - 25 AUG 1931 9/3

LEGAL REPORT

THE CRIMINAL PROCEDURE CODE (AMENDMENT)
BILL, 1930.

This Bill makes the following amendments to the Criminal Procedure Code.

Clause 2 gives an officer executing a search warrant the power to break out of a building if he cannot peaceably obtain egress therefrom.

Clause 3 and the second part of Clause 7 remove doubts expressed by certain magistrates by substituting the word "release" for the word "discharge".

Clause 4 does away with the necessity for reading over the evidence of a witness unless he expresses a wish to have his evidence read over to him.

Clause 5 corrects an obvious mistake in the Code.

Clause 6 and the first part of Clause 7 remove the necessity for a sworn charge before an accused person can be remanded in custody. In this country of considerable distances it is frequently very inconvenient to get a sworn charge other than a perfunctory and routine one by a police officer who happens to be in court. This Clause also allows of a thirty day adjournment if the accused is not in custody.

Clause 8/

19

Clause 8 is included to relieve doubts expressed by magistrates as to their powers when the prosecution has made out no case.

Clause 9 follows the Criminal Justice Act, 1925, and provides for a trial continuing in the absence of one juror.

Clause 10 carries out a recommendation of the Select Committee on the Code, which was adopted but inadvertently omitted when the Code was prepared for authentication and assent.

Clause 11 amends the Schedule partly by correcting manifest errors in it, and secondly by providing for the new offences constituted by the Penal Code (Amendment) Bill which was passed on the same day as this Bill.

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

Signed,

22nd November, 1930.

ATTORNEY GENERAL.



Colony and Protectorate of Kenya.

IN THE TWENTY-FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
HENRY MONCK-MASON MOORE, O.M.G.,
Acting Governor.

Assented to in His Majesty's
name this 10th day of December
1930.

H. M. M. MOORE.

Acting Governor.

An Ordinance to Amend the Criminal Procedure 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 Criminal Procedure Code (Amendment) Ordinance, 1930," and shall be read as one with the Criminal Procedure Code, hereinafter referred to as "the Principal Ordinance."

Short title.
No. 11 of 1930.

2. Sub-sections (1) and (2) of section 118 of the Principal Ordinance are hereby repealed and the following substituted therefor:—

Repeal and replacement of sub-sections (1) and (2) of section 118 of the Principal Ordinance.

(1) Whenever any building or other place search is closed, any person residing in or being of such building or place shall, on demand of officer or other person executing the search and on production of the warrant, allow him free egress therefrom and afford all reasonable facilities for a search therein.

If ingress into or egress from such building or place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21 or section 22.

Section 121 of the Principal Ordinance is hereby amended by substituting the word "release" for the word "discharge" in the second line of the proviso to sub-section (1).

Section 184 of the Principal Ordinance is hereby amended by substituting for sub-section (3) thereof the following:-

If a witness asks that his evidence be read over to him, the magistrate shall cause such evidence to be read over to him in a language which he understands. The magistrate shall inform each witness that he is not to have his evidence read over to him."

Section 185 of the Principal Ordinance is hereby amended by substituting the words "a language which he understands" for the words "the language of the court" in sub-section (1) of the section, and the word "English" for the words "the language of the court" in sub-section (2) of the section.

Section 190 of the Principal Ordinance is hereby amended by deleting the words "but shall not commit him to prison unless the charge has been made on oath" at the end of the section.

Section 193 of the Principal Ordinance is hereby amended by deleting the words "if the charge has been made on oath" in the sixth and seventh lines of the section and by substituting the word "release" for the word "discharge" in the eighth line of the section, and by adding the following words for the proviso at the end of the section:-

Provided that no such adjournment shall be for more than thirty clear days, or if the accused person has been committed to prison, for more than fifteen clear days following that on which the adjournment was being counted as the first day."

The following section is hereby inserted in the Principal Ordinance as section 193A:-

193A. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to plead a defence, the court shall dismiss the case and issue a writ of habeas corpus or order him to be discharged as to that charge."

9. Section 277 of the Principal Ordinance is hereby repealed and the following substituted therefor:-

277. If in the course of a trial by jury at any time before the delivery of the verdict, any juror dies or is discharged by the court as being through illness incapable of continuing to act or for any other reason, the jury shall nevertheless, so long as the number of its members is not reduced by more than one, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. Where one juror has died or has been discharged as aforesaid the verdict of eleven jurors in a trial for murder or treason, or of eight jurors in a trial for any other offence shall be deemed to be the unanimous verdict of the jury."

10. Section 344 of the Principal Ordinance is hereby amended by substituting the words "reheard before three judges" for the word "dismissed" at the end of the section.

11. The First Schedule to the Principal Ordinance is hereby amended:-

(a) by deleting all reference to section 110 of the Penal Code and substituting therefor the following:-

410	Escape.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
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(b) by deleting from the entry in the fourth column thereof relating to section 123 of the Penal Code the words "No. 10 of 1930" or "for any term not less than three years";

(c) by substituting in the fourth column thereof, in the entries relating to sections 252 and 255 of the Penal Code the word "three" for the word "five" and the word "ten" for the word "seven" respectively;

(d) by substituting in the fourth column thereof, in the entry relating to section 256 of the Penal Code the words "Imprisonment for seven years" for the word "ditto";

(e) by adding, in their respective numerical positions, the following:-

115A	False information to public servant.	May arrest without warrant.	Imprisonment for six months or fine of £50.	Any magistrate.
146A	Indecent assault on boys under 14.	May arrest without warrant.	Imprisonment for seven years with or without corporal punishment.	Subordinate court of the first class.
146B	Indecent practices between males.	May arrest without warrant.	Imprisonment for five years with or without corporal punishment.	Subordinate court of the first class.
206A	Killing unborn child.	May arrest without warrant.	Imprisonment for life.	
267A	Foundling depositors of mangrove goods.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
294A	False declaration for passport.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.

4
Passed in the Legislative Council the twenty-second day
of November, in the year of Our Lord one thousand nine
hundred and thirty.

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.

G. R. SANDFORD,

Clerk of the Legislative Council.

1619/30

22/11



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 795

22nd December, 1930.

RECEIVED
19 JAN 1931
COL. OFFICE

My Lord,

I have the honour to forward herewith two authenticated and twelve printed copies of an Ordinance intituled "the Penal Code (Amendment) Ordinance, 1930," which duly passed its third reading in the Legislative Council on the 22nd November, 1930, and to which I assented in His Majesty's name on the 15th December, 1930.

A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble servant,

ACTING GOVERNOR.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Amund 599-23-10-11-12-13

LEGAL REPORT

THE PENAL CODE (AMENDMENT) BILL, 1930.

This Bill introduces the following amendments of the Penal Code.

Clause 2 makes it an offence to give false information to a public servant with intent.

This provision is taken from section 182 of the Indian Penal Code. It has been found useful in the past and is reintroduced at the request of the Commissioner of Police.

Clause 3 removes the minimum punishment for rape, an amendment which the Judges have frequently pressed for.

Clause 4 deals with indecent assault on young boys and indecent practices between males.

Actual instances have unfortunately occurred since the Penal Code came into force.

Clause 5 deals with the offence of killing an unborn child before such child has a separate existence.

The clause is taken from the Nigerian Criminal Code. Similar provision exists in the Indian Penal Code and the Infant Life Preservation Act, 1929, made it an offence in England.

Clause 6 which is taken from the Nigerian Criminal Code is introduced in view of the great increase in/


74
in the mortgaging of chattels in consequence of the
Agricultural Advances Ordinance, 1930, and the Chattels
Transfer Ordinance, 1930.

Clause 7 which is taken from the Criminal
Justice Act, 1925, is necessitated by actual attempts
that have been made to obtain passports by false
declaration.

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

Nairobi,

22nd November, 1930.


ATTORNEY GENERAL.



Colony and Protectorate of Kenya.

IN THE TWENTY-FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
HENRY MONCK-MASON MOORE, O.M.G.,
Acting Governor.

Assented to in His Majesty's
 name this 17th day of December
 1930.

H. M. M. MOORE.

Acting Governor.

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 (Short title, Amendment) Ordinance, 1930," and shall be read as one with the Penal Code, hereinafter referred to as "the Principal No. 16 of 1920 Ordinance."

2. The following section is hereby inserted in the Principal Ordinance as section 115A:—

"115A. Whoever gives to any public servant any false information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

to use the lawful power of such public servant to the injury or annoyance of any person,

guilty of a misdemeanour and shall be liable to be sent for six months or to a fine of fifty pounds or both and such imprisonment."

Section 133 of the Principal Ordinance is hereby amended by deleting the words "or for any term not less than six months."

The following sections are hereby inserted in the Ordinance as sections 146A and 146B :-

146A. Any person who unlawfully and indecently touches a boy under the age of fourteen years is guilty of a felony and is liable to imprisonment for seven years without corporal punishment.

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any such act, or attempts to do so, or attempts to induce the commission of any such act by any male person, whether himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years with or without corporal punishment."

The following section is hereby inserted in the Ordinance as section 206A :-

206A. Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive, or commits any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life."

The following section is hereby inserted in the Ordinance as section 267A :-

267A. (1) Any person who, being the mortgagor of any goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour.

In this section the term "mortgaged goods" means any goods and chattels of any kind, and any and every progeny of any animals, and any crops or produce of the soil, whether growing or severed, which are subject for the time being by virtue of the provisions of any Ordinance or of any written instrument, to a valid lien by way of security for any debt or obligation."

The following section is hereby inserted in the Ordinance as section 294A :-

294A. Any person who makes a statement which is known to be false for the purpose of procuring a loan, whether for himself or for any other person, is guilty of a misdemeanour."

Passed in the Legislative Council the twenty-second day of November, in the year of Our Lord one thousand nine hundred and thirty.

The 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.

G. R. SANDFORD,

Clerk to the Legislative Council.

C. O.

16191/30/Kenya.

27
10

Mr. Lee. 3/2/31

Mr. F

Mr.

Mr. Tomlinson.

X Sir C. Bottomley. 3.2.31

Sir J. Shackelagh.

Sir G. Grindal.

Parnt. U.S. of S.

Parnt. U.S. of S.

Secretary of State.

DOWNING STREET,

7 February 1931.

Handwritten: 15
~~SECRET~~

Sir,

I am directed by Lord

Passfield to transmit to you, for

your information, copies of despatches

which have been sent to the Officers

Administering the Governments of

Kenya, Uganda, Tanganyika and

Nyasaland in regard to the Penal

and Criminal Procedure Codes which

have recently been enacted in those

Dependencies.

2. It will be seen that the

Secretary of State has asked that

arrangements should be made for a

Conference of Law Officers from the

four Dependencies to be convened

in 1932 in order to review the Codes

DRAFT.

THE SECRETARY,

CONFERENCE OF EAST
AFRICAN GOVERNORS,

NAIROBI.

7 FEB 1931

Handwritten: 79
2/11/31
4/12/31
1/12/31

7 FEB 1931

7 FEB 1931

7 FEB 1931

7 FEB 1931

Handwritten: To O.A.S. Kenya

Handwritten: To B.A.L. AT.

Handwritten: To SW. Uganda.

Handwritten: To SW. Nyasaland.

Handwritten: In reply
to Mr. Lee to
see after work
acc'd
6.2.31

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in the light of the experience gained
of their working in the interim, and to
submit proposals for any necessary
amendments.

3. ~~It is assumed that~~ ^{the} arrange-
ments for this Conference ^{will of course,} ~~would~~ be
made by your staff. I ~~am to state,~~ ^{may}

~~in this connection that~~ ^{It} The Secretary
of State ^{desires that you should know that he} hopes to arrange for one of his
Legal Advisers to visit the East African

Dependencies towards the end of 1932,
and that he considers it desirable that
this officer should, if possible, attend
the proposed conference. It is not

possible at the present time to give any
indication of the ^{date} /date on which the Legal
Adviser will arrive in East Africa, or
of the period which he will spend there,
but it would be convenient if you could
arrange for this Department to be given

long notice of the date contemplated for
the proposed conference, ^{as it may be necessary} since this may
^{be in the same or adjacent cities in}
affect the arrangements made for

for the Legal Adviser's visit, ^{or for the}
^{date of that conference.} I am, etc.

Copy

9. 28

Draft on 25/10/30 F.D.

HYASLAND

B. 39

DOWNING STREET,

7 February, 1931.

SIR,

I have the honour to refer to your despatch No. 597 of the 27th December, 1929, with which you forwarded copies of the Penal Code and the Criminal Procedure Code as enacted in Nyasaland (Ordinances Nos. XIII and XIII of 1929).

2. I have now received copies of the Code as enacted in Kenya, Uganda and the Tanganyika Territory, and I enclose, for your information and guidance, a copy of a despatch which I have addressed to the Acting Governor of Kenya in regard to the Codes enacted in that Colony.

To Kenya No. 40
Tsh

3. Some of the points of detail which are dealt with in paragraph 4 of the enclosed despatch relate to additions to the Codes which have been introduced in Kenya and Tanganyika alone, and which do not, therefore, concern Nyasaland. I would, however, invite your attention to what is said in regard to Section 193 of the Penal Code as enacted in Kenya (Section 176 of the Nyasaland Code) and I would ask you to consider the possible amendment of this Section of the Nyasaland Code so as to make its wording identical with the corresponding section of the Kenya and Tanganyika Ordinances. I would also invite your attention to the request made for a quarterly

return

GOVERNOR,

T. S. H. THOMAS, ESQ., F.C.S., O.B.E.

etc., etc., etc.

29

return of cases where persons have been committed to prison in accordance with the provisions of Section 26 of the Kenya Criminal Procedure Code. I shall be glad if similar reports can be made to me in cases where persons are committed to prison in accordance with Section 42 of the Nyasaland Ordinance.

4. You will also see from the enclosed despatch that I have asked that arrangements should be made for a conference of Law Officers of the four Dependencies to be held not later than the end of 1955 to review the Codes in the light of the experience gained since the date on which they were brought into operation, and to put forward recommendations for any amendments which may be necessary. I shall be glad if one of the Law Officers from Nyasaland can participate in this Conference. I enclose a copy of a letter which has, by my direction, been sent to the Secretary of the Conference of West African Governors in the matter.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

(Signed) PASSFIELD

to R.A. Govrs

Confes. 7 Feb.

50 8

Copy
16/9/30 Kenya

UGANDA PROTECTORATE

52

Draft on 26/11/30 by

JOHNSTON, C. A. J.

7 February, 1931.

Sir,

Under cover of your despatch No. 129 of the 18th April, 1930, you forwarded copies of the Penal and Criminal Procedure Codes as enacted in Uganda, (Ordinances No. VII of 1929 and No. VIII of 1929). Mr. Perryman subsequently forwarded in his despatch No. 506 of the 26th July, 1930, copies of correspondence with the Chief Justice in regard to certain criticisms which Sir Charles Griffin has made on the Codes as enacted in the Protectorate. He also forwarded copies of draft Bills prepared by Sir Charles Griffin embodying amendments which Sir Charles Griffin considered to be necessary in the Criminal Procedure Code, and in the Uganda Evidence Ordinance, together with notes on both the draft Bills.

2. I have now considered in consultation with my Legal Advisers, the Ordinances as enacted in Uganda. Opportunity has been taken to examine these in conjunction with the similar Ordinances enacted in Kenya, Tanganyika and Nyasaland, while I have also given careful consideration to the correspondence with Sir Charles Griffin, and to the draft Bills which Mr. Perryman forwarded to me.
3. In paragraph 4 of his despatch Mr. Perryman mentioned

GOVERNOR,

SIR W. W. GOV. SB, K.C. M.C.
etc., etc., etc.

mentioned that you had considered the criticisms made by Sir Charles Griffin, but had decided that the Ordinances should be enacted as amended by the Legislative Council, and that consideration of the proposals for further amendments should be deferred until the Codes had been in force for some time, when other points requiring amendment would no doubt come to light, and when it would be possible to enact comprehensive amending Ordinances. I agree generally with this view, and I do not think (subject to what is said in paragraph 4 below as to certain minor points) that any immediately amendment of the Codes is necessary. His Majesty will not, accordingly, be advised to exercise his power of disallowance in respect of either of the Ordinances mentioned in the first paragraph of this despatch. I consider, however, that the Ordinances should be regarded as provisional in the sense that it will certainly be necessary to review them exhaustively in (say) two years' time in the light of the experience gained of their working in the interior. The most effective means of making such a review will be to hold a conference of the Law Officers of Kenya, Uganda, Nyasaland and Tanganyika, at which conference the Codes could be examined and proposals for their amendment submitted. I have to ask, therefore, that such a conference should be arranged at a convenient date not later than the end of 1958. I enclose a copy of a letter which has, by my direction, been sent in the matter to the Secretary of the Conference of East African Governors. As I have said, this conference

could

7-2-31

could review the Code in detail in the light of their working from the date on which they were brought into operation. In particular, I should wish the Committee to consider the amendments which have been suggested by Sir Charles Griffin, and, with this end in view, I should be glad if you would arrange for copies of the correspondence which has taken place with him in the matter, and of his draft amending Bills, to be forwarded to the Governments of Kenya, Tanganyika and Nyasaland, so that the amendments which he has suggested can be fully considered before the conference is held. It would also, I think, be of advantage if the conference could give special consideration to the differences which exist between the Codes, as enacted in the four Dependencies concerned, though I recognize that varying local circumstances make some divergence necessary.

4. There are one or two points of detail in connection with the Codes as enacted in Uganda to which I desire to invite your attention.

(a) Penal Code - Section 15. The model Ordinance which was forwarded to your Government contained a provision to the effect that a male person under the age of twelve years is presumed to be incapable of having carnal knowledge. Such a provision has been included in the Ordinances as enacted in Kenya, Nyasaland and Tanganyika, but it does not appear in the Uganda Ordinance.

(b) Penal Code - Section 176. I am advised that this Section is so important that it is most desirable that it should be worded in an identical manner in all four Dependencies. At present, the wording of the section is

in the Uganda Ordinance and in the Nyasaland Ordinance differs from that in the Ordinances enacted in Tanganyika and Kenya. I should be glad, therefore, if you will consider the desirability of adopting in the Uganda Ordinance the same wording as that which appears in the Tanganyika and Kenya Ordinances.

(c) Original Procedure Code - Sections 40-49. These

Sections relate to the giving of security to keep the peace and to be of good behaviour. Under section 40 a person who fails to give the security required within a prescribed period can be committed to prison until he gives security, or until the period in respect of which security was demanded has expired. I consider it desirable that I should be furnished with a quarterly report of all cases in which persons are committed to prison in accordance with this section, and I shall be glad if you will arrange for this to be done.

3. I am communicating on similar lines (mutatis mutandis) with the Officers Administering the Governments of Kenya, Nyasaland and the Tanganyika Territory.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

(Signed) PASSFIELD

Copies
11/29/36

Downing Street,

19

Mr.

Under cover of Mr. Ronald Cameron's despatch No. 273 of the 24th March 1936, the forwarded copies of the original measure were enclosed in Hungarian (Ordinance No. 211 of 1936). Under cover of Mr. Ronald Cameron's despatch No. 273 of the same date, the forwarded copies of the said Ordinance were enclosed of 1936.

2. I have now considered these Ordinances carefully in consultation with my legal advisers. Opportunity has been taken to examine them in consultation with the similar Ordinances enacted in other States and Kingdoms while regard has also been had to certain criticisms on the said Ordinance in 1936, which have been made by Mr. Charles Griffin, the Chief Justice of South Africa, and which were forwarded to me by the Acting Secretary of the League of Nations. Further reference to Mr. Charles Griffin's criticisms is made in paragraph 3 below.

3. The Ordinances for the most part are based on the draft model Ordinances which were forwarded to your Government, and, in so far as this is the case, are in accordance with them. It is regretted that it will not be possible to exercise the power of abrogation in respect of either

THE OFFICE OF THE SECRETARY OF STATE FOR FOREIGN AFFAIRS
LONDON

either of the Ordinances; but there are a number of detailed points (some of which call for immediate action), to which I desire to invite your attention, while what may, for convenience, call the general nature of the Code is a matter which requires consideration.

4. I will deal first with the points of detail in regard to some of which immediate action appears necessary.

(a) I note that in the Model Code certain provisions have been inserted (Sections 47-50) dealing with the control of seditious publications. Similar provisions have been inserted in the Model Code as enacted in Kenya. They do not appear in the Model Code, nor have they been inserted in the Ordinances enacted in Nyasaland and Uganda. I am not entirely happy about the inclusion of these sections in the Code, and while I recognize that they are based on precedents in Colonial legislation elsewhere I should have been glad had reference been made to me before it was decided that they should be inserted in the Code. Now, however, that the sections have been enacted, I do not wish to suggest any amendment of them, but I should be glad if you would furnish me with particulars of any prosecution which may be instituted in respect of an offence under these sections. In particular, Section 50 (under which the Governor-in-Council may by proclamation declare any newspaper, book or document to be a seditious publication) does not command itself to me. There is no objection

object... to the grant of power to a Governor to prohibit the importation of any document. It should, however, I think, be a matter for the courts, and for the courts alone, to decide whether, apart from any question of prohibited imports, a document is or is not seditious. This being so, I have to say that the power given by the section in question should not be used without the strongest justification, and that in cases where it is used, full details should at once be reported to me.

(b) Section 105 of the Penal Code. I am advised that this section is of such importance that it is desirable that it should be worded in an identical manner in all the four Dependencies concerned. The wording in the Uganda and Nyasaland Ordinances differs slightly from that in the Kenya and Tanganyika Ordinances. I am accordingly suggesting to the Governors of Uganda and Nyasaland that they should consider the amendment of the Ordinances as passed in Uganda and Nyasaland, with a view to the adoption of the same wording as that adopted in Kenya and Tanganyika.

(c) Section 105 of the Penal Code. No such section was included in the model Ordinance, nor is there any analogous section in the Ugandan and Nyasaland Ordinances. I am advised that, in so far as this section purports to make it an offence for a person to procure the doing of an act outside the Territory which, if done, would not be a crime in the Territory, it is probably *ultra vires* and is, in any event, undesirable. In so far as the section makes it an offence for a person to procure the doing of an act

act

in the territory which, if done, is not an offence in the territory, but is an offence in the country where it is proposed to be done, it is probably infra vires, but is nevertheless prima facie undesirable. I shall be glad if this section can be reconsidered in the light of the above remarks, and if it is agreed that it is undesirable, that opportunity should be taken for its early amendment.

(4) Original Procedure Code, Sections 1459. These sections relate to the giving of security to keep the peace and to be of good behaviour. Under section 1459 a person who fails to give the security required within the prescribed period can be committed to prison until he gives the security, or until the period in respect of which security was demanded has expired. I consider it desirable that I should be furnished with a quarterly report on all cases in which persons are committed to prison in accordance with this section, and I shall be glad if you will arrange for this to be done.

5. I now turn to what I have termed above the question of the general future of the codes. It has, I think, always been clear that experience of their working would undoubtedly reveal various points in respect to which amendment would be desirable. Indeed, as I have mentioned, the Chief Justice of Uganda has already recommended that a number of amendments should be made in the codes as enacted in Uganda. I do not, however, think to suggest any immediate amendment (other than any which

connection with the points mentioned in
 be necessitated in the preceding paragraph), but I
 think that the Codes should be regarded as provisional
 in the sense that it will certainly be necessary to review
 them exhaustively in (say, two years' time in the light
 of the experience gained of their working in the interim.
 Clearly, the most effective means of making such a review
 will be to arrange a conference of Law Officers of the
 four Dependencies, at which the Codes could be examined,
 and proposals for their amendment submitted. I have
 to ask, therefore, that such a conference should be arranged
 at a convenient date, not later than the end of 1922.

To Secretary
 of African Govts.
 Conf. 7. 2. 22.

I enclose a copy of a letter which has, by my direction,
 been sent in the matter to the Secretary of the Conference
 of West African Governors. As I have said, this
 conference could review the Codes in detail in the light
 of their working during the period subsequent to their
 being brought into operation. In particular, I should
 wish the conference to consider the amendments which have
 been suggested by Sir Charles Griffin, and to give
 special consideration to the differences which exist
 between the Codes as enacted in the four Dependencies.
 (I recognise, of course, that varying local conditions
 makes some divergence necessary).

3. I am communicating similarly mutatis mutandis
 with the Officers administering the Governments of Uganda,
 Kenya and Nyasaland. I am asking the Governor of Uganda
 to communicate to your Government the amendments of the
 Code

Cases which have been suggested by Sir Charles Griffiths so that there will be full opportunity for their consideration before the conference is held in 1950.

I have the honour to be,

sir,

Your most obedient,

humble servant,

(Signed) PASSFIELD

40
6/

C. O.

X.16191/30 Kenya.

Mr. Lee 26.1.31

Mr. ~~Lawrence~~ 21

Mr. Green 2.2

for wills
C.O.P.

Bowling Street

X Sir C. Bottomley 3.2.31

Sir J. Stauchburgh

Sir G. Grenville

Presid. U.S. of S.

Party U.S. of S.

Secretary of State

Sir,

Under cover of his despatch No. 1930,

(4) of the 10th June, Sir Edward Griffiths forwarded copies of the Penal Code as enacted in Kenya (Ordinance No. IX of 1930). In another despatch of the same date he forwarded copies of the Criminal Procedure Code (Ordinance No. XI of 1930).

DRAFT.

KENYA

NO. 99

C. O. G.

cc. 405

(initial to Commissioner)

FEB 1931
7 Feb 1931
copy sent to E.A. Horn
copy sent to C. O. G. 1931

To Sir B.A. ...
initial

2. I have now ~~considered~~ these Ordinances, ~~and~~ in consultation with my legal advisers. Opportunity has been taken to examine them in conjunction with the similar Ordinances enacted in Uganda, Nyasaland and the Tanganyika Territory, while regard has also been had to certain criticisms on the Codes as enacted in Uganda, which have been made by Sir Charles Griffiths, the Chief Justice of Uganda.

Handwritten signature

Copy of the ...
7.1.31

Recd. ...
20.1.31

Uganda, and which were forwarded to me
by the Acting Governor of the Protectorate.
Further reference to Sir Charles Griffin's
criticisms is made in paragraph 5 below.

3. The Ordinances for the most part
are based on the draft model Ordinances
which were forwarded to your Government,
and, in so far as this is the case, I have
no comments on them. His Majesty will not
be advised to exercise his power of dis-
allowance in respect of ~~these~~ Ordinances; but
there are a number of detailed points

(some of which call for immediate action)
to which I desire to invite your attention.
While what I may for convenience call the
general future of the Codes is a matter
which requires consideration.

4. I will deal first with the points
of detail in respect of some of which
immediate action appears necessary.

(a) I note that in the Penal Code certain
provisions have been inserted (Sections

47-54) dealing with the control of seditious publications. Similar provisions have been inserted in the Penal Code as enacted in the Tanganyika Territory. They do not appear ^{now} in the model Code, nor have they been inserted in the Ordinances enacted in Nyasaland and Uganda. I am not entirely happy about the inclusion of these sections in the Codes, and (while I recognise that they are based on precedents in Colonial legislation elsewhere) I should have been glad had reference been made to me before it was decided that they should be inserted ~~in the Codes~~. Now, however, that the sections have been enacted, I do not wish to suggest any amendment of them, but I should be glad if you would furnish me with particulars of any prosecution which may be instituted in respect of an offence under

these

slightly from that in the Kenya and Tanganyika Ordinance. I am accordingly suggesting to the Governors of Uganda and Nyasaland that they should consider amendment of the Ordinances ^{in order} ~~as proposed~~ in Uganda and Nyasaland, with a view to the adoption of ^{the same} wording similar to that ^{existing} ~~existing~~ in Kenya and Tanganyika.

(c) Section 364 of the Penal Code. No such Section was included in the model Ordinance, nor is there any analogous Section in the Uganda and Nyasaland Ordinances. I am advised that, in so far as this Section purports to make it an offence for a person to procure the doing of an act outside the Territory ^{Colony} which, if done, would not be a crime in the ^{Colony} Territory, it is probably ultra vires, and is, in any event, undesirable. In so far as the Section makes it an offence for a person to procure the doing of an act ^{in the Colony} ~~in the Territory~~ which, if

in accordance with this section, and I shall be glad if you will arrange for this to be done.

5. I now turn to what I have ~~written~~ ^{written} above the question of the general future of the Codes. It has, I think, always been clear that experience of their working would undoubtedly reveal various points in regard to which amendment would be desirable. Indeed, as I have mentioned, the Chief Justice of Uganda has already recommended that a number of amendments should be made in the Codes as enacted in Uganda. I do not, however, wish to suggest any immediate amendment (other than any which may be necessitated in connection with ~~the~~ points mentioned in the preceding paragraph), but I think that the Codes should be regarded as provisional in the sense that it will certainly be necessary to

44

that varying local conditions often
make ~~such~~ ^{special} divergencies necessary).
Two other matters of special relevance
to Kenya which could, I think, be
discussed with advantage at the
conference are the application of the
Jury system (~~this~~ ^{which} exists only in Kenya
and Nyasaland), and the infliction of
the death penalty for rape, which
penalty has, I note, been incorporated
in the Kenya Penal Code from the exist-
ing Kenya law, but ~~is~~ ^{is} not ~~contained~~ ^{in effect}
in the other Dependencies.

6. I am communicating similar
~~*mitatis mitandis*~~ with the Officers
Administering the Governments of Uganda,
Tanganyika and Nyasaland. I am
asking the Governor of Uganda to
communicate to your Government the
amendments of the Code which have been
suggested by Sir Charles Griffin, so
that there will be full opportunity
for their consideration before the

conference

5a 45

East African Penal and Criminal
Procedure Codes.

1. It will be convenient to begin by stating briefly what the position is as regards the examination of the Ordinances in the Colonial Office.

2. The Nyasaland Ordinances were the first received. They followed the model Ordinances (subject to certain very minor modifications necessitated by local conditions) very closely indeed; and, as on their examination here nothing was found requiring amendment or comment, non-disallowance of the Ordinances was signified.

5, 6, 9 and 10
on 25402/30 P.A.

Minutes on
29744/30 T.F.

16191/30 Kenya.

Subsequently the Tanganyika and Uganda Ordinances were examined in detail both by the Department and Mr. Bushe; and it was decided that certain points (which are set out in paragraph 5 below) should be reserved for further examination after the Kenya Ordinances were received. The Kenya Ordinances have now been received; and I have examined them in conjunction with the Uganda and Tanganyika Ordinances.

3. Meanwhile the Chief Justice of Uganda had represented strongly to the Acting Governor that the introduction of the new Codes in Uganda should be deferred, since he considered the Codes to be gravely defective. He had prepared Bills amending the Codes and was anxious that these should be examined by the Legal Advisers to the Colonial Office before the Codes were introduced in Uganda. The Acting Governor did not consider it necessary or desirable to postpone the introduction

(3, 4, and 5 on
20579/30
Uganda)

5a 45

East African Penal and Criminal
Procedure Codes.

1. It will be convenient to begin by stating briefly what the position is as regards the examination of the Ordinances in the Colonial Office.

2. The Nyasaland Ordinances were the first received. They followed the model Ordinances (subject to certain very minor modifications necessitated by local conditions) very closely indeed; and, as on their examination here nothing was found requiring amendment or comment, non-disallowance of the Ordinances was signified.

5,6,9 and 10
on 25402/30 E.A.

Subsequently the Tanganyika and Uganda Ordinances were examined in detail both by the Department and Mr. Burns, and it was decided that certain points (which are set out in paragraph 5 below) should be reserved for further examination after the Kenya Ordinances were received. The Kenya Ordinances have now been received; and I have examined them in conjunction with the Uganda and Tanganyika Ordinances.

Minutes on
29744/30 T.F.

16191/30 Kenya.

3. Meanwhile the Chief Justice of Uganda had represented strongly to the Acting Governor that the introduction of the new Codes in Uganda should be deferred, since he considered the Codes to be gravely defective. He had prepared bills amending the Codes and was anxious that these should be examined by the Legal Advisers to the Colonial Office before the Codes were introduced in Uganda. The Acting Governor did not consider it necessary or desirable to postpone the

(3,4, and 5 on
20579 /30
Uganda)

introduction

act in the Territory which, if done, is not an offence in the Territory, but is an offence in the country where it is proposed to be done, it is probably intra vires, but is nevertheless prima facie undesirable. I shall be glad if this section can be reconsidered in the light of the above remarks, and if it is agreed that it is undesirable, that opportunity should be taken for its early amendment.

(4) Criminal Procedure Code, Sections 1-57. These sections relate to the giving of security to keep the peace and to be of good behaviour. Under section 30 a person who fails to give the security required within the prescribed period can be committed to prison until he gives the security, or until the period in respect of which security was demanded has expired. I consider it desirable that I should be furnished with a quarterly report on all cases in which persons are committed to prison in accordance with this section, and I shall be glad if you will arrange for this to be done.

5. I now turn to what I have termed above the question of the general future of the Codes. It has, I think, always been clear that experience of their working would undoubtedly reveal various points in regard to which amendment would be desirable. Indeed, as I have mentioned, the Chief Justice of Uganda has already recommended that a number of amendments should be made in the codes as enacted in Uganda. I do not, however, wish to suggest any immediate amendment (other than any which

connection with the points mentioned in
 may be necessitated in the preceding paragraph, but I
 think that the Codes should be reviewed as provided for
 in the order that it will certainly be necessary to review
 them exhaustively in (say) two years' time in the light
 of the experience gained of their working in the interim.
 Clearly, the most effective means of making such a review
 will be to arrange a conference of Law Officers of the
 four Dependencies, at which the Codes could be examined,
 and proposals for their amendment submitted. I have
 to ask, therefore, that such a conference should be arranged
 at a convenient date, not later than the end of 1922.
 I enclose a copy of a letter which has, by my direction,
 been sent in the matter to the Secretary of the Conference
 of West African Governors. As I have said, this
 conference would review the Codes in detail in the light
 of their working during the period subsequent to their
 being brought into operation. In particular, I should
 wish the conference to consider the amendments which have
 been suggested by Sir Charles Griffin, and to give
 special consideration to the differences which exist
 between the Codes as enacted in the four Dependencies.
 (I recognise of course, that varying local conditions
 makes some divergence necessary).

6. I am communicating similarly (in Latin)
 with the Officers administering the Governments of Uganda,
 Kenya and Nyasaland. I am asking the Governor of Uganda
 to communicate to your Government the amendments of the
 Code

To Secretary
 of African Gov'ts
 Conf. 7. 2. 22

code which have been suggested by Sir Charles Griffin so that there will be full opportunity for their consideration before the conference is held in 1930.

I have the honour to be,

sir,

Your most obedient,

humble servant,

(Signed) PASSFIELD

C. O.

Mr. Lee 26.1.31

X.16191/30 Kenya.

Mr. ~~Arthur~~ ^{to bushel 21}

Mr. Green 22

See minute
deal

Bowring Street

X Sir C. Bottomley 3.2.31

Sir J. Shuckburgh

Sir G. Grenville

Parent, U.S. of S.

Parly. U.S. of S.

Secretary of State

January 1931.

Sir,

DRAFT.

(4)

Under cover of his despatch No. 27
1930,
of the 10th June, Sir Edward Brigg

KENYA

NO. 99

C. O.

FEB 1931
24 Feb 1931

forwarded copies of the Penal Code as
enacted in Kenya (Ordinance No. X of 1930)

In another despatch of the same date he
forwarded copies of the Criminal

Procedure Code (Ordinance No. XI of 1930)

I have now considered these
Ordinances, ~~carefully~~ in consultation with

my legal advisers. Opportunity has been
taken to examine them in conjunction with

the similar Ordinances enacted in Uganda,
Nyasaland and the Tanganyika Territory,

while regard has also been had to recent
criticisms on the Codes as enacted in

Uganda, which have been made by Sir
Charles Griffin, the Chief Justice of

Uganda.

U.C. 405

(insert in Appendix)

To see E.A. for ~~Lawrence~~ ^{Lawrence}
date 1/31

Copy sent to E.A. ~~Lawrence~~ ^{Lawrence}
copy also sent to ~~James D. 29.~~ ^{James D. 29.}

Lawrence
Copy of the report to
P.I. 8.50/2 24744/30 P.I.
Recd. v. *Lawrence* 1.50/2
20.7.30
Mganda
1.50/2
2.50/2

Uganda, and which were forwarded to me
by the Acting Governor of the Protectorate.
Further reference to Sir Charles Griffin's
criticisms is made in paragraph 5 below.

3. The Ordinances for the most part
are based on the draft model Ordinances
which were forwarded to your Government,
and, in so far as this is the case, I have
no comments on them. His Majesty will not
be advised to exercise his power of dis-
allowance in respect of ^{either} ~~both~~ Ordinances; but
there are a number of detailed points
(some of which call for immediate action)
to which I desire to invite your attention,
and which I may, for convenience, call the
"special features" of the Codes is a matter
which requires consideration.

I will deal first with the points
of detail, and then, where of such
importance that immediate action appears necessary.

(a) I note that in the Penal Code certain
provisions have been inserted (Sections

47-54) dealing with the control of seditious publications. Similar provisions have been inserted in the Penal Code as enacted in the Tanganyika Territory. They do not appear ⁱⁿ in the model Code, nor have they been inserted in the Ordinances enacted in Nyasaland and Uganda. I am not entirely happy about the inclusion of these sections in the Codes, and (while I recognise that they are based on precedents in Colonial legislation elsewhere) I should have been glad had reference been made to me before it was decided that they should be inserted in the Code. Now, however, that the sections have been enacted, I do not wish to suggest any amendment of them, but I should be glad if you would furnish me with particulars of any prosecution which may be instituted in respect of an offence under these

these Sections. In particular, Section 52

under which the Governor-in-Council may ^{by proclamation} declare any newspaper, book or document to be a seditious publication) does not commend itself to me. There is no objection to

the grant of power to a Governor to prohibit

the importation of any document. It should, ^{however},

I think, be a matter for the courts, and

for the courts alone, to decide whether,

apart from any question of prohibited

^{words} ~~words~~, a document is or is not seditious.

This being so, I have to ask that the power

given by ~~that~~ ^{Section 52} Section should not be used

without the strongest justification, and

that in cases where it is used, full details

should at once be reported to me.

(b) Section 143 of the Penal Code. I am

advised that this Section is of such import-

ance that it is desirable that it should be

worded in an identical manner in all the

four Dependencies concerned. The wording

in the Uganda and Nyasaland Ordinances differs

slightly

42
slightly from that in the Kenya and Tanganyika Ordinance. I am accordingly suggesting to the Governors of Uganda and Nyasaland that they should consider amendment of the Ordinances ^{existing} ~~existing~~ in Uganda and Nyasaland, with a view to the adoption of ^{the same} wording ^{as} similar to that ^{exists} ~~exists~~ existing in Kenya and Tanganyika.

(c) Section 364 of the Penal Code. No

such Section was included in the model

Ordinance, nor is there any analogous

Section in the Uganda and Nyasaland

Ordinances. I am advised that, in so

far as this Section purports to make

it an offence for a person to procure

the doing of an act ^{in the} ~~outside the~~ ^{Colony} ~~territory~~

which, if done, would not be a crime

in the ^{Colony} ~~territory~~, it is probably

ultra vires, and is, in any event,

undesirable. In so far as the Section

makes it an offence for a person to

procure the doing of an act ^{in the} ~~in the~~ ^{Colony} ~~territory~~ which, if

done.

done is not an offence in the ^{Colony} ~~territory~~
but is an offence in the country where
it is proposed to be done, it is probably
ultra vires, but is nevertheless prima
facie undesirable. I shall be glad if
this section can be reconsidered in the
light of the above remarks, and if it is
agreed that it is undesirable, ~~then~~ oppor-
tunity ~~should~~ be taken for its early
amendment.

(d) Prison Procedure Code, Sections 41-49.

These sections relate to the giving of
security to keep the peace and to be of
good behaviour. Under Section 45 a person
who fails to give the security required
within the prescribed period can be committed
to prison until he gives the security, or
until the period in respect of which
security was ^{or} required has expired. I
consider it desirable that I should be fur-
nished with a quarterly report on all cases
in which persons are committed to prison

in

43
in accordance with this section, and I
shall be glad if you will arrange for
this to be done.

5. I now turn to what I have
~~mentioned~~ ^{mentioned} above the question of the general
future of the Codes. It has, I think,
always been clear that experience of
their working would undoubtedly reveal
various points in regard to which
amendment would be desirable. Indeed,
as I have mentioned, the Chief
Justice of Uganda has already recom-
mended that a number of amendments
should be made in the Codes as enacted
in Uganda. I do not, however, wish
to suggest any immediate amendment
(other than any which may be necessi-
tated in connection with the points
mentioned in the preceding paragraph),
but I think that the Codes should be
regarded as provisional in the sense
that it will certainly be necessary to

review

review them exhaustively in (say) two years' time in the light of the experience gained of their working in the interim. ~~early~~ The most effective means of making such a review will be to arrange a conference of Law Officers of the four Dependencies, at which the Codes could be examined, and proposals for their amendment submitted. I have to ask therefore that such a conference should be arranged at a convenient date, not later than the end of 1962. As I have said, this conference could review the Codes in detail in the light of their working during the period subsequent to their being brought into operation. In particular I should wish the conference to consider the amendments which have been suggested by Sir Charles Griffin, and to give special consideration to the divergencies which exist between the Codes as enacted in the four Dependencies. (I recognise, of course, that

I enclose a copy of a letter which has been sent to the Secretary of State in the light of the fact that the Conference of Law Officers

that varying local conditions often make such divergencies necessary). Two other matters of special relevance to Kenya which could, I think, be discussed with advantage at the conference are the application of the jury system (~~which~~ ^{which} exists only in Kenya and Nyasaland), and the infliction of the death penalty for rape, which penalty has, I note, been incorporated in the Kenya Penal Code from the existing Kenya law, but ~~it~~ ^{it} is not ~~incorporated~~ ^{incorporated} in the other Dependencies.

6. I am communicating similar ~~amendable matters~~ with the Officers Administering the Governments of Uganda, Tanganyika and Nyasaland. I am asking the Governor of Uganda to communicate to your Government the amendments of the Code which have been suggested by Sir Charles Griffin, so that there will be full opportunity for their consideration before the

5a 45

East African Penal and Criminal

Procedure Codes.

1. It will be convenient to begin by stating briefly what the position is as regards the examination of the Ordinances in the Colonial Office.

2. The Nyasaland Ordinances were the first received. They followed the model Ordinances (subject to certain very minor modifications necessitated by local conditions) very closely indeed; and, as on their examination here nothing was found requiring amendment or comment, non-disallowance of the Ordinances was signified.

Subsequently the Tanganyika and Uganda Ordinances were examined in detail both by the Department and Mr. Bush; and it was decided that certain points (which are set out in paragraph 5 below) should be reserved for further examination after the Kenya Ordinances were received. The Kenya Ordinances have now been received; and I have examined them in conjunction with the Uganda and Tanganyika Ordinances.

3. Meanwhile the Chief Justice of Uganda had represented strongly to the Acting Governor that the introduction of the new Codes in Uganda should be deferred, since he considered the Codes to be gravely defective. He had prepared bills amending the Codes and was anxious that these should be examined by the Legal Advisers to the Colonial Office before the Codes were introduced in Uganda. The Acting Governor did not consider it necessary or desirable to postpone the introduction

5, 6, 9 and 10
on 25402/30 E.A.

Minutes on
29744/30 T.F.

16191/30 Kenya.

(3, 4, and 5 on
20579/30
Uganda)

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5a

East African Penal and Criminal

Procedure Codes.

1. It will be convenient to begin by stating briefly what the position is as regards the examination of the Ordinances in the Colonial Office.

2. The Nyasaland Ordinances were the first received. They followed the model Ordinances (subject to certain very minor modifications necessitated by local conditions) very closely indeed; and, as on their examination here nothing was found requiring amendment or comment, non-disallowance of the Ordinances was signified.

Subsequently the Tanganyika and Uganda Ordinances were examined in detail both by the Department and Mr. Busha; and it was decided that certain points (which are set out in paragraph ⁵ below) should be reserved for further examination after the Kenya Ordinances were received. The Kenya Ordinances have now been received; and I have examined them in conjunction with the Uganda and Tanganyika Ordinances.

3. Meanwhile the Chief Justice of Uganda had represented strongly to the Acting Governor that the introduction of the new Codes in Uganda should be deferred, since he considered the Codes to be gravely defective. He had prepared Bills amending the Codes and was anxious that these should be examined by the Legal Advisers to the Colonial Office before the Codes were introduced in Uganda. The Acting Governor did not consider it necessary or desirable to postpone the introduction

5, 6, 9 and 10
on 25402/30 E.A.

Minutes on
29744/30 T.F.

16191/30 Kenya.

(3, 4, and 5 on
20579/30
Uganda)

introduction of the Codes in Uganda, since it did not appear that the amendments suggested by the Chief Justice (which were not received until a very late date) were urgent. He has now, however, forwarded the draft bill prepared by the Chief Justice to amend the Criminal Procedure Code, together with another draft bill to amend the Uganda Evidence Ordinance, and voluminous critical notes on both the Penal Code and the Criminal Procedure Code. Sir C. Griffin is still preparing a draft bill to amend the Penal Code, and this has not yet been forwarded to this Office.

- 4. It is thus necessary to consider (a) the Uganda, Tanganyika and Kenya Ordinances, as enacted.
- (b) what action should be taken as regards the proposals of Sir C. Griffin.

5. To take first (a) above, the following points arise:-

(i) The Kenya Ordinance follows very closely that enacted in the Tanganyika Territory. This is largely due to the fact that there was a Conference between the Attorney Generals before the Ordinances were enacted. Both Ordinances differ in certain respects from those enacted in Uganda and Nyasaland.

(ii) Special attention must be drawn to the following:-

(a) Trial by Jury.

Both Uganda and Tanganyika have omitted

- (i) the special provisions relating to the trial of Europeans (Part VII of the Model)
- (ii) the provisions relating to trial by jury.

The omission was specifically approved by the Secretary of State

14. 16 A
15. 04/30
EA

State in the case of Uganda, and it is assumed that no objection will be seen to the omission in the Tanganyika Territory.

In Kenya and Nyasaland the provisions have been enacted. The question was raised in Kenya whether the special provisions relating to the trial of Europeans (i.e. as to trial by jury) should be extended to Indians. The subject was not pursued at the time when the Ordinances were before the Legislative Council, since the question was held to be an important one of principle, which (following instructions sent from here) the Legislative Council were precluded from discussing. The Governor stated, however, that the representations received from the Indian National Congress in the matter were receiving his consideration and that he would address the Secretary of State on the matter "at an early date". No further communication has, however, been received from Kenya on the subject.

See: -
Paras. 5-7 of Gov's
despatch on 16191/30
Kenya
Correspondence on
16130/30 Kenya.

The question of
revising the
OAG's being
taken up on
16130/30 K.

Grant
24. 10. 30.

* The letter is no. 25402 I/30. (10)
It was quite general, and when it was
Kenya has decided that this trial by jury
point (already in their laws) was one
of principle. (10) 7. 11.



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State in the case of Uganda, and it is assumed that no objection will be seen to the omission in the Tanganyika Territory.

In Kenya and Nyasaland the provisions have been enacted. The question was raised in Kenya whether the special provisions relating to the trial of Europeans (i.e. as to trial by jury) should be extended to Indians. The subject was not pursued at the time when the Ordinances were before the Legislative Council, since the question was held to be an important one of principle, which (following instructions sent from here) the Legislative Council were precluded from discussing. The Governor stated, however, that the representations received from the Indian National Congress in the matter were receiving his consideration and that he would address the Secretary of State on the matter "at an early date". No further communication has, however, been received from Kenya on the subject.

See: -
Paras. 5-7 of Gov's
despatch on 16191/30
Kenya

Correspondence on
16130/30 Kenya.

The question of
reminding the
OAG & being
taken up on
16130/30 K.

Pratibha
1. 2. 30

* One tel. to no. 2 in 25402 I/30. (b)
It was this journal, and was it was
Kenya who decided that this Trust by law
power (already in their laws) was one
of principle. Wed 7.1.31.

(b) Minor divergencies in the Codes.

The flagged notes on 29744/30 T.T. show various minor divergencies from the model which appear in the Tanganyika Territory and Uganda Ordinances. Generally, the Kenya Ordinance is similar to that in the Tanganyika Territory. It will be seen that Mr. Bushe does not consider that these divergencies are of any significance.

The following further minor divergencies in the Penal Code might be noted, but I assume that no action on our part is necessary in regard to them (the references here, and throughout this note to Sections in the Kenya Ordinance):-

(a) Section 15 - Presumption that a male person below the age of 12 is incapable of ~~criminal~~ ^{criminal} knowledge). This has been omitted in Uganda, but appears in all the other three Ordinances.

(b) Clause 123 - A minimum sentence of 3 years for rape is in force in Kenya and Nyasaland, but not in Uganda or the Tanganyika Territory. Kenya alone of the Dependencies makes the offence punishable by death.

(c) Clause 128 - The age of consent is fixed as 16 in Kenya, the Tanganyika Territory and Nyasaland - at 14 in Uganda.

(d) Clause 147 - (Relations between white women and natives). This appears only in the Kenya Ordinance. Its omission in Uganda was specifically approved by the Secretary of State.

(b) Special Provisions appearing in Kenya and Tanganyika Ordinances.

The most important of these are

- (1) Sections 47-54 (Control of Seditious Publications etc) and

*Is this part of the
out to Uganda
H/S
Introduce back to Kenya
Provisions - but the
T.M.C. has been
accepted H/S.*

14 & 15 on
25402/30 E.A.

and Section 60 (spreading false information to cause disaffection etc.)

The minutes on 29744/30 T.T. showed that precedents exist for these Sections in the legislation of other Colonies: but the question was raised by Mr. Green on that paper whether it was not desirable for legislation of this kind to be considered and enacted apart from the Penal Code. His minute is as follows:

" My own view is that legislation of this kind is best considered and enacted apart from a Penal Code. It is exceptional in character and raises considerations of a different order to those dealt with in ordinary criminal law. For instance, it is clearly an offence (punishable with two years' imprisonment) to write that the wages in the coffee industry are low, or the taxes in the Iringa district high, unless it can be proved that it is done in good faith with a view to the removal of a matter which is producing ill-will and enmity. This may be all right, but it does not seem suitable for inclusion in a Penal Code.

I suggest therefore that Governments be asked to embody their proposals for such legislation in separate Ordinances".

It was decided to wait to see whether any explanation was forwarded by the Government of Kenya as to the reason for adding these sections: and also whether Sir C.Griffin referred to them in his criticisms of the Uganda Ordinance. No explanation has, however, been received from the Kenya Government: while no reference is made to them by Sir C.Griffin.

It is therefore necessary to decide what, if anything, is to be said to the Governments of the Tanganyika Territory and Kenya in regard to these sections.

*Callaghan was
in the books -
disinclined
to take it along
1951*

(11) Sections 64-70 Provisions regarding unlawful societies

Precedents exist for these sections (which do not appear in Uganda and Nyasaland) and, presumably, no objection need be taken to them. The same applies to Sections 161-163 containing provisions as to the control of lotteries etc. Mr. Bushe saw no objections to these.

(iii) Section 193 (Penal Code) (Causing death defined)

This is regarded by Mr. Bushe as being so important that we should impress on the four Governments the desirability of their agreeing on identical wording. The wording in the Uganda and Nyasaland Ordinances (Section 176) differs slightly from that in Tanganyika and Kenya.

(iv) Section 364 (Penal Code)

A similar section appears as Section 363 in the Tanganyika Ordinance, but there are no such sections in the Uganda and Nyasaland Ordinances. Mr. Bushe wrote as follows as regards this section:

"In so far as this section purports to make it an offence for a person to procure the doing of an act outside the Territory which if done would not be a crime in the Territory it is probably ultra vires and certainly undesirable.

In so far as the section makes it an offence for a person to procure the doing of an act in the territory which if done is not an offence in the Territory but is an offence in the country where it is proposed to be done - it is I think intra vires - but still prima facie undesirable."

We should presumably ask the Governments of Kenya and the Tanganyika Territory to reconsider the section in the light of the considerations mentioned by Mr. Bushe.

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6. Sir Charles Griffin's representations

AS was mentioned above, Sir Charles Griffin has produced very detailed criticisms of the Codes and has even gone to the trouble of preparing amending Ordinances which he wishes to be enacted forthwith. I have looked through the criticisms and have read the draft amending bills. Some of the criticisms relate to minor matters only: others (e.g. ^{that} ~~was~~ relating to the age of consent) were met at once by the amendments of the draft Uganda Ordinance before its enactment: none of them, so far as a layman/ can tell, is of such importance as to necessitate the immediate amendment of the Code. This is the view taken by the Governor, the Acting Governor and the Attorney General of Uganda - who recommend that no immediate amendment of the Codes should be made, but that the suggestions put forward by the Chief Justice should be considered later on, after the Codes have been in operation for some time, and when, in the light of the experience gained of their working, further amendments will no doubt be seen to be desirable.

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Jaeger
Dec 8

This is, I think clearly the line which should be taken in the matter. Obviously it would be desirable, in any event, to review the operation of the Codes after, say, eighteen months experience of their working: and it seems undesirable to consider any immediate amendments, unless ~~they~~ ^{they} are so defective that immediate amendments are necessary to make them workable or defensible.

7. To sum up, the action which I think should be taken is, briefly as follows:

We should signify non-disallowance of the Ordinances as enacted. At the same time, we must decide what is to

6. Sir Charles Griffin's representations

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Lace P*

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7. To sum up, the action which I think should be taken is, briefly as follows:

We should signify non-disallowance of the Ordinances we enacted. At the same time, we must decide what is to

be said to Kenya and the Tanganyika Territory as regards (1) Sections 47-54 of the Penal Code (11) Section 364 of the Penal Code - and to all four Dependencies as to section 193 of the Penal Code (see paragraph 5 above).

As regards the amendments etc. suggested by Sir C. Griffin, we should take the line that it will be best to arrange for a conference of Law Officers of the Dependencies concerned to be held at some convenient time after the Codes have been in operation for an agreed period (say eighteen months or two years), when the amendments proposed by Sir C. Griffin (together with any others which appear desirable in the light of the experience gained of the working of the Codes) can be fully considered and draft amending Ordinances (assuming that these are necessary) submitted to the Secretary of State. We should ask the Uganda Government to circulate to the other Governments concerned Sir C. Griffin's notes on the Codes and his draft amending bills: and should tell the other Governments that we have asked the Uganda Government ^{to} do this.

(I do not know what the position is as regards the proposal that Mr. Bushe should visit East Africa; but obviously if he, as the protagonist, if not the parent of the Codes, could be present at the proposed Conference, it would be a great advantage. Perhaps we could ask for early notice of the date fixed for the Conference in case it would be possible to arrange for Mr. Bushe's visit to coincide with it)

I understand
that in any
case he will
not go before
1932. *Red*

KENYA.

No. 96

CONFIDENTIAL.



53
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

23 June, 1930.

My Lord,

With reference to correspondence terminating with Your Lordship's telegram of the 24th January, I have the honour to transmit, for Your Lordship's information and signification of His Majesty's pleasure, the accompanying two authenticated copies of an Ordinance cited as "the Criminal Procedure Code", which duly passed its third reading in the Legislative Council on the 11th April, 1930, and to which I assented in His Majesty's name on the 28th May, 1930.

(Copy as No. 3)

1 FEB 1931
Lanc 99

2. A Legal Report by the Attorney General is also enclosed to which is attached a copy of the Report of the Select Committee the recommendations of which are embodied in the Ordinance.

Under separate cover.

3. Twelve printed copies of the Ordinance are also being sent under separate cover.

4. It is my intention to bring this Ordinance into operation on the 1st August next by Proclamation.

5. With reference to paragraph 3 of Your Lordship's Confidential despatch of the 8th May /relative

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

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relative to the acquittal of Mr. Cottar and the position with regard to Indians and the jury system, it will be observed that the Report of the Select Committee was signed by Mr. A.H. Malik and that the question of the trial by jury of Indians was not discussed in the Report. I am advised that the point was mentioned by Mr. Malik, the Indian Member, during the Select Committee's meetings, but that the Attorney General was of opinion that the question was one of main principle and, in view of the contents of Your Lordship's telegram of the 24th January, was not an amendment to the existing law which should properly be discussed by the Committee.

6 . On the 3rd April Mr. Malik raised the question during debate upon the adoption of the Report of the Select Committee stating that he had only signed the Report subject to certain reservations. The Attorney General assured Mr. Malik that his reservations had not been received, but that if he made representations on the subject of the extension of the trial by jury system they would be carefully considered at a subsequent date.

(No. 10. on 1/130/30)

7. As already explained in my telegram No. 208 of the 14th June, the representations of the Indian National Congress in the matter were not considered, for the foregoing reasons, during the passage through Legislative Council of the Criminal Procedure Ordinance. They have, however, since been

/receiving

-3-

receiving my consideration and my recommendations in the matter will, in due course, form the subject of a separate despatch to Your Lordship.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble
servant,

Edward Gigg

GOVERNOR.

LEGAL REPORT

THE CRIMINAL PROCEDURE CODE.

In a despatch No. 74 dated the 2nd February, 1929, the Secretary of State stated that it was his express wish that a Code of Criminal Procedure based on English practice should be given the force of law in this Colony at the earliest opportunity.

2. The Bill when published for information evoked considerable criticism from various representative bodies and these criticisms were referred to the Secretary of State, who replied thereto in a telegram dated the 24th January, 1930, and reiterated his wish that the Bill should be proceeded with.

3. The Bill was introduced into Legislative Council in the October Session, 1929, and a Select Committee of Council was appointed to consider and report on its provisions.

4. The Report of the Select Committee, a copy of which is attached, was submitted to Legislative Council and the Bill embodying the recommendations of the Select Committee passed its third reading on the 7th April, 1930.

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

Nairobi,
7th April, 1930.

James P. ...
ATTORNEY GENERAL.

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

Nairobi,
7th April, 1930.

Samuel P. ...
ATTORNEY GENERAL.

KENYA

No. 377



GOVERNMENT HOUSE
NAIROBI,
KENYA.

RECEIVED
-3 JUL 1930
COL OFFICE

51
June, 1930.

My Lord,

With reference to correspondence terminating with Your Lordship's telegram of the 24th January, I have the honour to transmit, for Your Lordship's information and signification of His Majesty's pleasure, the accompanying two authenticated copies of an Ordinance cited as "the Penal Code", which duly passed its third reading in the Legislative Council on the 7th April, 1930, and to which I assented in His Majesty's name on the 26th May, 1930.

(No 2 in 2502/30)
Cp. all in No. 3
Two authenticated copies of Ordinance.

Legal Report

2. A Legal Report by the Attorney General is also enclosed to which is attached a copy of the Report of the Select Committee the recommendations of which are embodied in the Ordinance.

Report of Select Committee.

3. Twelve printed copies of the Ordinance are also being sent under separate cover.

Twelve printed copies under separate cover.

4. It is my intention to bring this Ordinance into operation on the 1st August next by Proclamation.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

John A. Uthman

for GOVERNOR.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.

Received 99 FEB 1931

LEGAL REPORT
THE PENAL CODE.

In a despatch No. 74 dated the 2nd February, 1929, the Secretary of State stated that it was his express wish that a Penal Code based on English Criminal Law, in substitution for the Indian Penal Code, should be given the force of law in this Colony at the earliest opportunity.

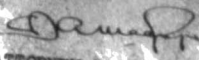
2. The Bill when published for information evoked considerable criticism from various representative bodies and these criticisms were referred to the Secretary of State, who replied thereto in a telegram dated the 24th January, 1930, and reiterated his wish that the Bill should be proceeded with.

3. The Bill which closely follows the Nigerian Ordinance was introduced into Legislative Council in the October Session, 1929, and a Select Committee of Council was appointed to consider and report on its provisions.

4. The Report of the Select Committee, a copy of which is attached, was submitted to Legislative Council and the Bill embodying the recommendations of the Select Committee passed its third reading on the 3rd April, 1930.

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

Nairobi,
3rd April, 1930.


ATTORNEY GENERAL.



COLONY AND PROTECTORATE OF KENYA

REPORT OF SELECT COMMITTEE OF
LEGISLATIVE COUNCIL APPOINTED
TO CONSIDER AND REPORT ON THE
PROVISIONS OF A BILL TO ESTABLISH
A CODE OF CRIMINAL LAW.

NAIROBI
PRINTED BY THE GOVERNMENT PRINTER
1963

Report of Select Committee of Legislative Council
appointed to Consider and Report on the Provisions
of a Bill to Establish a Code of Criminal Law.

61

Report of Select Committee of Legislative Council
appointed to Consider and Report on the Provisions
of a Bill to Establish a Code of Criminal Law.

YOUR EXCELLENCY,

We, the members of the above Committee of Legislative Council, have held several meetings for the discussion of the Penal Code and the Criminal Procedure Code, and we also had the advantage of the notes and suggestions of the Committee appointed by Your Excellency in August last, which Committee held eight meetings and fully considered the detailed provisions of the Codes.

We recommend that the following amendments be made to the Penal Code:—

1. That Clause 5 be amended—
 - (a) by substituting the word "member" for the word "membrane" in the definition of "main";
 - (b) by substituting the word "terms" for the word "term" and the word "include" for the word "includes" in two places in the definition of "person" and "owner";
 - (c) by inserting the words "in possession of" after the word "be" in the first line of the definition of "possession."
2. That Clause 18 be amended by substituting the word "shall" for the word "may" in the first line of the clause.
3. That Clause 20 be amended by substituting the words "punished twice" for the words "twice criminally responsible" in the first line of the clause.
(Note.—A corresponding change in the marginal note is necessitated.)
4. That Clause 21 be amended by substituting the words "last mentioned" for the word "fourth" in the twelfth line of the clause, and by deleting the word "himself" in the same line of the clause and in the last line of the clause.
5. That Clause 24 be amended by inserting as (5) the following:—

"(5) Forfeiture"

and by renumbering (5) and (6) as (6) and (7).
6. That Clause 27 be amended by substituting the words "grave or permanent" for the word "physical" in the fourth line of sub-section (5).
7. That Clause 28 be amended by substituting the words "in addition to" for the words "excess of" in the third line of sub-section (a) (4).
8. That the following clause be inserted as Clause 29:—

"29. When any person is convicted of an offence under any of the following sections, namely, sections 88, 89, 90, 104 and 105, the Court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to His Majesty of any property which has passed in connexion with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the Court shall assess as the value of the property; and any

property or sum so forfeited shall be dealt with in such manner as the Governor may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine."

9. That Clauses 29 to 46 be renumbered 30 to 47.
10. That Clause 31 be amended by inserting the word "conditioned" after the word "in" in the fourth line of the clause.
11. That Clause 32 be amended by substituting the word "to" for the word "and" in the fourth line of the clause.
12. That Clause 38 be amended by deleting the word "mandate" wherever it occurs in sub-clauses (b) and (c) and substituting therefor the words "in respect of which His Majesty has accepted a mandate."
13. That Clause 46 be deleted and the following substituted therefor:—
 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."
14. That the following clause be inserted as Clause 48:—
 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."
15. That the following clause be inserted as Clause 49:—
 49. A person cannot be convicted of any offences against section 47 or section 48 on the uncorroborated testimony of one witness."

16. That the following clause be inserted as Clause 50:—

"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."

17. That the following clause be inserted as Clause 51:—

"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 authorised 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."

18. That the following clause be inserted as Clause 52:—

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

19. That the following clause be inserted as Clause 53:—

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

20. That the following clause be inserted as Clause 54:—

"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."

21. That Clause 47 be renumbered 55, and be amended by substituting the words "eight last preceding sections" for the words "last preceding section" in the first line of the clause, and by substituting the words "the inhabitants" for the words "His Majesty's subjects or natives" wherever these words occur in the clause.

22. That Clauses 48 to 51 be renumbered 56 to 59.

property or sum so forfeited shall be dealt with in such manner as the Governor may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine."

9. That Clauses 29 to 46 be renumbered 30 to 47.
10. That Clause 31 be amended by inserting the word "conditioned" after the word "in" in the fourth line of the clause.
11. That Clause 32 be amended by substituting the word "to" for the word "and" in the fourth line of the clause.
12. That Clause 33 be amended by deleting the word "mandate" wherever it occurs in sub-clauses (b) and (c) and substituting therefor the words "in respect of which His Majesty has accepted a mandate."
13. That Clause 46 be deleted and the following substituted therefor:—
 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."
14. That the following clause be inserted as Clause 48:—
 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 sub-section (1) shall not be liable to be convicted of an offence under paragraph (c) of section 47 of this Code.
15. That the following clause be inserted as Clause 49:—
 49. A person cannot be convicted of any offences against section 47 or section 48 on the uncorroborated testimony of one witness."

16. That the following clause be inserted as Clause 50:—

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.

17. That the following clause be inserted as Clause 51:—

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 authorised 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 officers, 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."

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20. That the following clause be inserted as Clause 54:—

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."

21. That Clause 47 be renumbered 55, and be amended by substituting the words "eight last preceding sections" for the words "last preceding section" in the first line of the clause, and by substituting the words "the inhabitants" for the words "His Majesty's subjects or natives" wherever these words occur in the clause.
22. That Clauses 48 to 51 be renumbered 56 to 59.

33. That the following clause be inserted as Clause 60—

"60. Any person who makes, publishes or circulates any statement, rumour or report—

- (a) with intent to cause, or which is likely to cause, any person employed in the public service to disregard or fail in his duty; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State, or against the public tranquility; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit an offence against any other class or community.

is guilty of a misdemeanour and is liable to imprisonment for two years.

Provided that it shall not amount to an offence under this section when the person making, publishing or circulating any statement, rumour or report has reasonable grounds to believe that the same is true, and makes, publishes, or circulates it without any such intent as aforesaid.

34. That Clauses 59 to 64 be renumbered 61 to 66.

35. That Clause 61 be amended by substituting the word "vessel" for the word "ship" wherever that word occurs in the clause.

36. That the following clauses be inserted in Chapter IX as Clauses 64 to 70—

64. (1) A society includes any combination of ten or more persons whether the society be known by any name or not.

(2) A society is an unlawful society—

(i) if formed for any of the following purposes—

- (a) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Colony; or
- (b) killing or injuring or inciting to the killing or injuring of any person; or
- (c) destroying or injuring or inciting to the destruction or injuring of any property; or
- (d) subverting or promoting the subversion of the Government or of its officials; or
- (e) committing or inciting to acts of violence or intimidation; or
- (f) interfering with or resisting, or inciting to interference with or resistance to the administration of the law; or
- (g) disturbing or inciting to the disturbance of peace and order in any part of the Colony; or

(ii) if declared by an order of the Governor in Council to be a society dangerous to the good government of the Colony.

"65. Any person who manages or assists in the management of an unlawful society, is guilty of a felony and is liable to imprisonment for seven years.

"66. Any person who—

- (a) is a member of an unlawful society; or
- (b) knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control,

is guilty of a felony, and is liable to imprisonment for three years.

67. (1) A prosecution for an offence under the two last preceding sections shall not be instituted except with the consent of the Governor.

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Governor to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) In any prosecution for an offence under the two last preceding sections it shall not be necessary to prove that the society consisted of ten or more members, but it shall be sufficient to prove the existence of a combination of persons, and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to ten.

(3) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of the society.

(4) Any person who has in his possession or custody or under his control any of the insignia, banners, arms, books, papers, documents, or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless and until the contrary is proved, to be a member of the society.

68. Any peace officer, and any police officer authorised in writing by a peace officer, may enter with or without assistance any house or building or into any place in which he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and to arrest or cause to be arrested all persons found therein and to search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which he may have reasonable cause to believe to belong to any unlawful society, or to be in any way connected with the purpose of the meeting.

For the purposes of this section the expression "peace officer" means any magistrate or any police officer not below the rank of Assistant Superintendent.

69. (1) When a society is declared to be an unlawful society by an order of the Governor in Council, the following consequences shall ensue—

(a) the property of the society within the Colony shall forthwith vest in an officer appointed by the Governor;

(b) the officer appointed by the Governor shall proceed to wind up the affairs of the society and after satisfying and providing for all debts and liabilities of the society and the cost of the winding up, if there shall then be any surplus assets shall prepare and submit to the Governor a scheme for the application of such surplus assets.

- (c) such scheme, when submitted for approval, may be amended by the Governor in such way as he shall think proper in the circumstances of the case;
- (d) the approval of the Governor to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the Governor, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed;
- (e) for the purpose of the winding up the officer appointed by the Governor shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realisation thereof.

(3) The Governor may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of this section for such period as to him shall seem expedient.

(3) The provisions of sub-section (1) shall not apply to any property seized at any time under section 68.

70. Subject to the provisions of the last preceding section, the insignia, banners, arms, books, papers and documents and other property belonging to an unlawful society shall be forfeited to His Majesty, and shall be dealt with in such manner as the Governor may direct.

- 37. That Clauses 55 to 61 be renumbered 71 to 107.
- 25. That Clause 58 be amended by substituting the words "any commissioned or non-commissioned officer of police not below the rank of European constable" for the words "any police officer of or above the rank of assistant superintendent" in the first and second lines of the clause.
- 29. That Clause 61 be amended by substituting the figure "74" for the figure "58" in the second line of the clause.
- 30. That Clause 64 be deleted and the following clause substituted therefor —

70. All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder, or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any railway, vehicle or vessel with intent so to do.

(Note.—The marginal note should then read "Riotously interfering with railway, vehicle or vessel.")

- 31. That Clause 72 be amended by substituting the word "felony" for the word "misdemeanour" and the word "seven" for the word "three" in the last line of the clause.
- 32. That Clause 73 be amended by substituting the word "reward" for the word "award" in the third line of the clause.
- 33. That the following clause be inserted in Chapter XI after Clause 91 —

108. (1) Any person who—
(a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

- (b) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended, refuses to be sworn or to make an affirmation or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or
- (c) causes an obstruction or disturbance in the course of a judicial proceeding; or
- (d) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
- (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
- (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or
- (g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or
- (h) wrongfully retakes possession of land from any person who has lawfully obtained possession by a writ of court; or
- (i) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken.

is guilty of an offence, and is liable to imprisonment for three months.
(2) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the Supreme Court to punish for contempt of court.

- 34. That Clauses 92 to 120 be renumbered 109 to 137.
- 25. That Clause 95 be deleted and the following clause substituted therefor —
110. Any person who, being in lawful custody, escapes from such custody, is guilty of a misdemeanour.
- 35. That Clause 97 be amended by substituting the words "person employed in the public service" for the words "public officer" in the first line of the clause.
- 37. That Clause 98 be amended by substituting the words "person employed in the public service" for the words "public officer" in the first line of the clause, and the words "ordinary courage might be expected to face" for the words "ordinary firmness and activity may be expected to encounter" in the fourth and fifth lines of the clause.
- 38. That Clause 110 be amended by deleting the words "or assessors" and inserting the word "or" between the words "court" and "jury" in the eighth line of the clause.
- 39. That Clause 111 be amended by deleting the words "or assessors" and inserting the word "or" between the words "court" and "jury" in the eighth line of the clause.

40. That Clause 113 be amended by substituting the words "subject to the provisions of section 27" for the words "if a male person" in the fifteenth line of the clause.
41. That Clause 113 be amended by deleting sub-section (2) and renumbering sub-section (3) as sub-section (2).
42. That Clause 120 be amended by inserting the words "knowingly lives wholly or in part on the earnings of prostitution or who" after the word "who" in the first line of the clause.
43. That the following clause be inserted after Clause 126:—
138. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.
44. That Clauses 131 to 134 be renumbered 133 to 136.
45. That Clause 134 be amended by inserting the words "being with child" after the word "who" in the first line of the clause, and by deleting the words "whether she is or is not with child" in the second line of the clause.
46. That Clause 129 be amended by adding the words "with or without corporal punishment" at the end of sub-section (3).
47. That Clause 135 be amended by substituting the figures "145" for the figures "130", the figures "128" for the figures "111" and the figures "126" for the figures "112" wherever these last-mentioned figures occur in the clause.
48. That Clause 134 be amended by substituting the figures "148" and "149" for the figures "130" and "131" respectively.
49. That Clause 133 be deleted.
50. That Clauses 155 to 201 be renumbered 153 to 218.
51. That Clause 137 be amended by substituting the words "goes through a ceremony of marriage which" for the words "marries in any case in which such marriage" in the first and second lines of the clause.
52. That Clause 139 be amended by substituting the word "fourteen" for the word "twelve" in the second line of the clause.
53. That Clause 144 be amended by deleting sub-clause (2) and substituting therefor the following:—
- (2) In this section 'unlawful gaming' means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet.
54. That Clause 145 be amended by adding at the end of the clause the following proviso:—
- Provided always that nothing herein contained shall make illegal the use of a totalisator by a race club, gymkhana club or sports club recognised by the Government at any public meeting,

with the approval in each case of the Commissioner of Police. In this proviso 'totalisator' means and includes the instrument, machine or contrivance commonly known as the totalisator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

55. That Clause 146 be deleted, and the following clause substituted therefor:—
153. (1) Any person who opens, keeps, or uses any place for carrying on a lottery not authorised by the Commissioner of Police is guilty of a misdemeanour.
- (2) Any person who prints or publishes or causes to be printed or published, any advertisement or other notice or relating to any lottery not so authorised, or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery not so authorised, is liable to a fine of fifty pounds.
- (3) In this section the term 'lottery' includes any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel or trained animal, or otherwise howsoever.
- (4) When any person is convicted of an offence under this section the court may, in addition to, or in lieu of, any penalty which may be imposed, order the forfeiture to His Majesty of any instrument or thing used in connexion with the lottery concerning which the conviction has taken place.
56. That Clause 147 be amended by substituting the figures "161" "162" and "163" for the figures "144" "145" and "146" respectively.
57. That Clause 148 be amended by adding the following as sub-clause (6):—
- (6) Every person committing any such misdemeanour as aforesaid forfeits to His Majesty all obscene books, pamphlets, papers, drawings, paintings, representations or figures or any other obscene objects whatsoever connected with the committing of such misdemeanour.
58. That Clause 161 be deleted and the following substituted therefor:—
178. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter, the person concerning whom such matter is published is living or dead.
- Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Attorney General.
59. That Clause 173 be amended by substituting the words "is shown to have caused" for the word "causes" in the first line of the clause.
60. That Clause 176 be amended:—
- (a) by deleting the word "not" in the second line of the clause,
- (b) by deleting the words "which causes" in the first line of paragraph (a) of the clause and substituting therefor the words "person in consequence of which that other person under-

- (c) by deleting the word "a" in the first line of paragraph (b) of the clause; and
- (d) by deleting paragraph (c) of the clause and substituting therefor the following:—
- (c) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused."
61. That Clauses 179, 180, 181, 182 and 183 be amended by substituting the words "shall be deemed" and "adversely affect" for the words "is held" and "result to" respectively, wherever those last-mentioned words occur in these clauses.
62. That the following three clauses be inserted after Clause 201 in Chapter XXII as Clauses 210, 220 and 221:—
- "210. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.
- "220. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.
- "221. Notwithstanding anything contained in section 320, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused."
63. That Clauses 222 to 249 be renumbered 222 to 259.
64. That Clause 234 be amended by substituting the figures "215" for the figures "196" in the second line of the clause.
65. That Clause 211 be amended by adding the words "and is liable to imprisonment for five years."
- (Note.—Marginal note requires corresponding amendment.)
66. That Clause 252 be amended by substituting the word "three" for the word "five" in the last line of the clause.
67. That Clause 235 be amended by inserting the word "ostrich" after the word "camel" in the second line of the clause, by deleting the words "or the young of any such animal" in the third line of the clause, and by substituting the word "ten" for the word "seven" in the last line of the clause.
68. That Clause 242 be amended by substituting the figures "259" for the figures "232" in the second line of the clause.
69. That the following clause be inserted in Chapter XXVII after Clause 249:—
- "270. Any person who unlawfully and without colour of right, but so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal or any vehicle or cycle however propelled or any vessel, shall be guilty of a

- misdeemeanour, and shall be liable to imprisonment for six months or to a fine of fifty pounds, or to both such imprisonment and such fine."
70. That Clauses 250 to 265 be renumbered 271 to 284.
71. That Clause 256 be amended by deleting the first line of paragraph (b) and substituting therefor the words "to write any name or impress or affix any seal upon or to any paper."
72. That the following clause be inserted in Chapter XXIX after Clause 269:—
- "285. When any person is convicted of an offence under this Chapter the Court may order that any instrument of house-breaking used in connexion with any such offence shall be forfeited to His Majesty."
73. That Clauses 264 to 322 be renumbered 286 to 344.
74. That Clause 266 be amended by deleting the words "write, impress or affix any name or seal" in the third and fourth lines of the clause, and substituting therefor the words "with any name or impress or affix any seal."
75. That Clause 268 be amended by inserting the word "conceals" before the word "sells" in the first line of sub-clause (3), and by substituting the word "after" for the word "since" in the second line of the same sub-clause.
76. That Clause 273 be amended by substituting the word "seven" for the word "fourteen" in the last line of sub-clause (1) of the clause.
77. That Clause 274 be amended by deleting all the words after the word "misdeemeanour" in the fifth line of the clause.
78. That Clause 285 be amended by substituting the words "fourteen years" for the word "life" in the ninth line of the clause.
- (Note.—The marginal note should read "Casting away vessels.")
79. That Clause 286 be amended by substituting the word "seven" for the word "fourteen" in the fourth line of the clause.
- (Note.—The marginal note should read "Attempts to cast away vessels.")
80. That Clause 287 be deleted and the following substituted therefor:—
- "309. Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen is guilty of a misdemeanour."
81. That Clause 294 be amended by deleting the words "ship or" in the fifth line of the clause and by substituting the word "seven" for the word "ten" in the last line of the clause.
82. That Clause 300 be amended by adding at the end of the clause the words "and the Court may in addition order that any such document as aforesaid shall be forfeited to His Majesty."
83. That Clause 301 be amended by substituting the word "seven" for the word "ten" in the second line of the clause.
- (Note.—Marginal note should read "Imprisonment for seven years.")

84. That Clause 302 be amended by inserting after the word "revenue" in sub-clause (1) and sub-clause (3) the words "or accounting," and by inserting the word "Department" after the word "Government" in sub-clause (1) of the clause.
85. That Clause 309 be amended by inserting after the word "note" in the third line of the clause the words "or currency note."
(Note.—The marginal note should read "Purchasing forged notes.")
86. That Clause 314 be amended by deleting the definition of "current" and substituting the following definition:—
"The term 'coin' includes any coin coined in any of His Majesty's mints, or lawfully current by virtue of any Order-in-Council, Ordinance, Proclamation or otherwise in the Colony or in any part of His Majesty's dominions or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate and any coin of a foreign Sovereign or State."
87. That Clause 315 be deleted and the following clause substituted therefor:—
"337. Any person who makes or begins to make any counterfeit coin is guilty of a felony and is liable to imprisonment for life."
88. That Clause 316 be amended by deleting the last two paragraphs of sub-section (3) and by adding after the word "felony" the words "and is liable to imprisonment for life."
89. That Clause 317 be amended by deleting the word "current" where it occurs in the first and third lines of the clause.
90. That Clause 318 be amended by deleting the word "current" in the third line of the clause.
91. That Clause 319 be amended by deleting the two last paragraphs of the clause.
92. That Clause 320 be amended by deleting the word "current" wherever it occurs throughout the clause.
93. That Clause 321 be deleted and the following clause substituted therefor:—
"343. Any person who, with intent to defraud, utters as and for coin any metal or piece of metal, whether a coin or not, which is of less value than the coin as and for which it is uttered, is guilty of a misdemeanour and is liable to imprisonment for one year."
94. That the following clause be inserted in Chapter XXXVI after Clause 322:—
"345. When any person is convicted of an offence under this Chapter, or the preceding Chapter, the Court may order the forfeiture to His Majesty of any forged bank-note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine, press, or any coin, bullion, or metal used or employed in the commission of any such offence."
95. That Clauses 323 to 332 be renumbered 346 to 355.

96. That Clause 323 be amended by adding at the end thereof the words "and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited to His Majesty."
97. That Clause 324 be amended by substituting the words "shall be" for the word "are" in the fifteenth line of the clause.
98. That Clause 326 be amended by substituting the words "shall forfeit" for the word "forfeits" in the twenty-fifth line of the clause.
99. That after Clause 333 there be inserted the following:—

CHAPTER XI.

SECRET COMMISSIONS AND CORRUPT PRACTICES.

"356. (1) For the purpose of this Chapter the expression 'consideration' includes valuable consideration of any kind; the expression 'agent' includes any person employed by or acting for another; and the expression 'principal' includes an employer.

(2) A person serving under the Crown or under any municipal council or board or under any other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, and a member of any such municipal council or board or other public body is an agent within the meaning of this Chapter.

"357. If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration, or an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particulars, and which to his knowledge is intended to mislead the principal.

He shall be guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred pounds or to both such imprisonment and such fine.

"358. Any person convicted of an offence under this Chapter shall, where the matter of transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, or a sub-contract to execute any work comprised in such contract, be liable to imprisonment for seven years or to a fine of five hundred pounds or to both such fine and such imprisonment.

"359. Where in any proceedings against a person for an offence under this Chapter it is proved that any money gift or other consideration has been paid or given to or received by a person in

the employment of the Crown or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, by or from a person or agent of a person holding or seeking to obtain a contract from the Crown or any Government department or municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this Chapter unless the contrary is proved.

360. A prosecution for an offence under this Chapter shall not be instituted without the consent of the Attorney General or Solicitor General.

100. That Chapter XL be renumbered Chapter XLI.

101. That Clauses 338 to 339 be renumbered 361 to 363.

102. That the following clause be inserted after Clause 335—

364. Any person who solicits or incites or attempts to procure another to do any act or make any omission, whether in the Colony or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed, under the laws of the Colony, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in the Colony.

Provided that if the act or omission is proposed to be done or made at a place not in the Colony, the punishment shall not exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

Provided also that in the last-mentioned case, a prosecution shall not be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

103. That Clauses 336 to 343 be renumbered 365 to 372.

104. That Chapter XLI be renumbered Chapter XLII.

105. That Chapter XLII be renumbered Chapter XLIII.

[Major E. S. Grogan did not attend any meetings of the Committee and has not signed this report.]

We have the honour to be,
Your Excellency's most obedient servants.

A. D. A. MACGREGOR,

Chairman.

T. D. H. BRUCE,

H. E. SCHWARTZ,

E. V. KENEALY

(Subject to the reservation of
certain points to be mentioned
in Legislative Council.)

A. H. MALIK.

3/1/30

25402/30,

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

(Sent 12.15 p.m. 24th January, 1930)

24th January.

Your despatch of 18th December No. 777. regret to learn that enactment of Bills is likely to be delayed and that objections to principle are being pressed. I concur in your view that objections raised afford no reason why Bills should not be passed at an early date. Fundamental issue is substitution of English for Indian law, which I must regard as settled in principle. I cannot agree with view expressed in paragraph 7 of letter from Law Society that change is unnecessary or that difficulty will arise owing to unfamiliarity of Magistrates with proposed codes. I cannot see why difficulty should arise in a British Colony in the administration of English law by English Judges. Courts will have benefit of English Case Law and of numerous commentaries. I am telegraphing in a similar sense to Tanganyika and Uganda, and consider that each dependency should now proceed with legislation without regard to the action taken by the others. In the circumstances, I hope that it will be possible for Bills to pass third reading at an early date without substantial amendment. Amendments of detail not affecting main principles of Bills can be agreed to at your discretion, and I should see no objection to operation of codes being postponed for reasonable interval after enactment of Bills.



THE SECRETARIAT
NAIROBI,
KENYA.

70

WHEN REPLYING
PLEASE QUOTE
No. S. 22. L. G. Co. 35/4.
AND DATE

RECEIVED
- 2 JUN 1930
COL. OFFICE

28th April, 1930.

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies and has the honour to transmit twelve copies of the undermentioned documents for information:

- 16192/30 — Report of Inquiry into Organisation of Administrative Offices.
- 16189/30 — Registrar General's Annual Report, 1929.
- 16176/30 — Report of a Committee appointed to consider a revision of the Customs Tariff of Kenya, Uganda and Tanganyika Territory.
- 16190/30 — Report of Select Committee of Legislative Council appointed to consider and report on the provisions of a Bill to make provisions for the procedure to be followed in Criminal Cases.
- 16194/30 — Report of Committee on Grants-in-Aid of African Hospitals.
- 16153/30 — Civil Procedure (Amendment No. 2) Rules, 1929.
- 16191/30 — Report of Select Committee of Legislative Council appointed to consider and report on the provisions of a Bill to establish a Code of Criminal Law.
- 16049/30 — A Scheme to advance money to Asian Civil Servants to enable them to build their own houses.
- 16100/30 — Colonial Loans Statement April, 1930.
- 15844/29 — Return of Land Grants, etc., — 1st October, 1929, to 31st December, 1929.
- 16007/29 — Statement under Section 150 of Electric Power Ordinance for year ended 31st December, 1929.

- 16192/30 — Summaries of Local Native Fund Accounts, 1929.
- 16010/30 — Native Lands Trust Bill: Confidential Despatch from Secretary of State dated 6th March, 1930.
- 16208/30 — Report of a Select Committee of the Legislative Council appointed to consider and report on the provisions of a Bill to make provision for the prevention of adulteration of Food and Drugs.
- 15999/30 — Statement of Anti Malaria work carried out by the Medical Department during the quarter ending 31st December, 1929.
- 16195/30 { Civil Debts (Summary Recovery) Rules, 1930.
Rules of Court (Court Fees) No. 2 of 1930.
- 15999/30 — Progress Report of Anti Malaria Works in Nairobi for period ending 31st December, 1929.
- 15973/30 — Report of Food Control Board, 1929.



COLONY AND PROTECTORATE OF KENYA

REPORT

OF

SELECT COMMITTEE OF LEGISLATIVE
COUNCIL APPOINTED TO CONSIDER AND
REPORT ON THE PROVISIONS OF A
BILL TO MAKE PROVISIONS FOR THE
PROCEDURE TO BE FOLLOWED IN
CRIMINAL CASES.

NAIROBI

PRINTED BY THE GOVERNMENT PRINTER, 1930.

Report of Select Committee of Legislative Council
appointed to Consider and Report on the Provisions
of a Bill to make Provisions for the Procedure to be
followed in Criminal Cases.

Report of the Select Committee of Legislative Council appointed to Consider and Report on the Provisions of a Bill to make Provisions for the Procedure to be followed in Criminal Cases.

YOUR EXCELLENCY,

We, the members of the above Committee, recommend that the Criminal Procedure Code be amended in the following respects:—

1. That Clause 2 be amended by deleting the definition of "European" and substituting therefor the following:—

"European" means a person of European origin or descent and includes an American who is not of origin or descent other than European;

by deleting the definition of "Proclaimed person" and "Proclaimed offender", and by substituting the figures "83" for the figures "82" in the definition of "Public prosecutor";
2. That Clause 14 be amended by inserting the words "if satisfied that the necessity exists" after the word "Council" in the first line of the clause.
3. That Clauses 10 and 15 be amended by substituting the figures "36", "37" and "38" for the figures "35", "36" and "37" where they occur in the clauses.
4. That Clause 21 be amended by inserting the words "or otherwise effect entry into such house or place" after the word "person" where it occurs for the second time in the ninth line of sub-section (2).
5. That Clause 22 be amended by substituting the word "out" for the words "open any outer or inner door or window" in the second line of the clause.

(Note.—The marginal note requires corresponding amendment.)
6. That Clause 27 be amended—
 - (a) by deleting paragraph (d) and by substituting therefor the following:—

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing";
 - (b) by adding the words "or Air Force" at the end of paragraph (e);
 - (c) by deleting the words "lying or entering" in paragraph (f), and
 - (d) by substituting the figures "39" for the figures "37" in paragraph (g).
7. That Clause 29 be amended by substituting the words "such offence" for the word "his" in the third line of the clause.
8. That Clause 32 be amended by deleting all the words in sub-clause (1) after the word "felony" in the third line of the sub-clause.

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Report of the Select Committee of Legislative Council
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4. That Clause 21 be amended by inserting the words "or otherwise effect entry into such house or place" after the word "person" where it occurs for the second time in the sixth line of sub-section (3).
5. That Clause 22 be amended by substituting the word "out" for the words "open any outer or inner door or window" in the second line of the clause.

(Note.—The marginal note requires corresponding amendment.)
6. That Clause 27 be amended:—
 - (a) by deleting paragraph (d) and by substituting therefor the following:—

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 - (b) by adding the words "or Air Force" at the end of paragraph (e);
 - (c) by deleting the words "lying or harboring" in paragraph (f); and
 - (d) by substituting the figures "390" for the figures "337" in paragraph (g).
7. That Clause 29 be amended by substituting the words "such officer" for the word "his" in the third line of the clause.
8. That Clause 31 be amended by deleting all the words in sub-clause (1) after the word "felony" in the third line of the sub-clause.

- 9. That Clause 34 be amended by substituting the word "warrant" for the word "warrant" in the second line of the clause.
- 10. That Clause 35 be amended by substituting the word "not" for the word "otherwise" at the end of the clause.
- 11. That under the heading "Escape and Retaking" after Clause 39 there be inserted the following clause:—
 - 40. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—
 - (a) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorized to arrest;
 - (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.
- 12. That Clauses 40 to 110 be renumbered 41 to 111.
- 13. That Clause 40 be amended by inserting the words "on oath" after the word "informed" in the second line, and by deleting the words "to fix" in the last line of sub-clause (1).
- 14. That Clause 41 be deleted, and the following clause substituted therefor:—
 - 42. Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.
- 15. That Clause 42 be amended by substituting the words "is informed on oath" for the words "receives information" in the second line, and by deleting the words "to fix" at the end of the clause.
- 16. That Clause 43 be amended by substituting the figures "41" "42" and "43" for the figures "40" "41" and "42".
- 17. That Clause 47 be amended by substituting the figures "45" for the figures "44" in the third line of the clause.

(Note.—The marginal note requires corresponding amendment.)
- 18. That Clause 49 be amended by substituting the figures "45" "46" and "47" for the figures "44" "45" and "46", and by substituting the words "comes within the provisions of section 43" for the words "is an habitual offender" in the second line of sub-clause (3).
- 19. That Clause 50 be amended by substituting the figures "45" for the figures "44" in proviso (a).
- 20. That Clause 51 be amended by substituting the figures "50" for the figures "49" in the first line of the clause.
- 21. That Clause 52 be amended by substituting the figures "45" and "51" for the figures "44" and "50" in the second line of the clause.

- 22. That Clause 58 be amended by substituting the figures "54" "55" "56" "57" and "51" for the figures "53" "54" "55" "56" and "50" in sub-clause (3).
- 23. That Clause 66 be amended by substituting the figures "51" for the figures "81" in the fourth line of the clause.
- 24. That Clause 68 be amended by substituting the figures "67" "77" and "79" for the figures "66" "76" and "78" in the first and second lines of the clause.
- 25. That Clause 86 be amended by substituting the word "with" for the word "for" in the last line but one of the clause.
- 26. That Clause 92 be amended by substituting the figures "90" for the figures "89" in the sixth line of the clause.
- 27. That Clause 93 be amended by inserting after the word "Colony" in the fifth line of the clause the words "as the registered office of such company or body corporate".
- 28. That Clause 97 be amended by adding at the end of the clause the words "But no such warrant shall be issued unless a complaint or charge has been made upon oath."
- 29. That Clause 98 be amended by substituting the figures "97" for the figures "96" in the third line of the clause.
- 30. That Clause 102 be amended by deleting the words "proclaimed offender" in sub-clause (1) and by substituting the figures "101" for the figures "100" at the end of sub-clause (3).
- 31. That Clause 105 be amended by substituting the figures "101" for the figures "100" in the second line of the clause.
- 32. That Clause 109 be amended by substituting the figures "101" for the figures "100" wherever these figures occur in the clause.
- 33. That Clauses 111, 112 and 113 be deleted.
- 34. That Clauses 114 to 149 be renumbered 112 to 147.
- 35. That Clause 119 be amended by substituting the words "sunrise and sunset" for the words "sunrise and sunrise".
- 36. That Clause 121 be amended by substituting the word "or" for the word "and" in the third line of sub-clause (3).
- 37. That Clause 122 be amended by substituting the figures "100" "102" "104" "107" "108" "109" and "116" for the figures "99" "101" "103" "106" "107" "108" and "118".
- 38. That Clause 123 be amended by inserting at the beginning of sub-clause (3) the words "Notwithstanding anything contained in sub-section (1) of this section".
- 39. That Clause 125 be amended by substituting the figures "121" for the figures "123" in sub-clause (3).
- 40. That Clause 126 be amended by substituting the figures "132" for the figures "134" in the last line of the clause.

41. That Clause 139 be amended—

- (a) by deleting the words "or acquittal" in the second line of sub-clause (1) and in the third line of sub-clause (1)(a);
- (b) by deleting the words "in case of a conviction, either" at the beginning of sub-clause (1)(b);
- (c) by deleting the words "or acquitted" in the last line of sub-clause (1) and in the fifth line of sub-clause (2); and
- (d) by adding the following sub-clause as sub-clause (3):—

(3) A previous conviction in any place outside the Colony may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the finger prints, or photographs of the finger prints of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

(Note.—The marginal note should read "Previous conviction how proved.")

42. That Clause 150 be deleted.

43. That Clause 151 be renumbered 148, and be amended by substituting the words "under any law in force for the time being" for the words "under the common law of England" in paragraph (a).

44. That Clause 152 be deleted.

45. That Clauses 153 to 162 be renumbered 149 to 158.

46. That Clause 156 be amended by substituting the figures "149" and "161" for the figures "153" and "155" in sub-clause (1).

47. That Clause 157 be amended by substituting the figures "151" and "153" for the figures "153" and "155."

48. That Clause 158 be amended by substituting the word "hereinafter" for the word "hereinafter" in proviso (3), and by substituting the figures "218" for the figures "222" in proviso (3).

49. That Clause 160 be amended by adding at the end thereof the following:—

"Provided that the Attorney General or Solicitor General, when appearing personally as advocate for the prosecution shall in all cases have the right of reply."

50. That Clause 165 be amended by substituting the words "medical officer in charge" for the word "superintendent" in the second line of the clause, and the words "medical officer" for the word "superintendent" in the sixth line of the clause.

(Note.—The marginal note should read "Certificate of medical officer of asylum, &c.")

51. That Clause 167 be amended by substituting the figures "367" for the figures "373" in sub-clause (4).

52. That Clause 170 be amended by substituting the figures "166" for the figures "172" in sub-clause (3).

53. That the following clause be inserted after Clause 162:—

179. When a person is charged with any offence under sections 257, 258 or 259 of the Penal Code it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates."

54. That Clauses 183 to 187 be renumbered 180 to 184.

55. That Clause 183 be amended by substituting the figures "181" for the figures "114" where the latter figures occur twice in the clause.

56. That Clause 187 be amended by substituting the figures "187" for the figures "191" in the second line of the clause.

57. That Clause 188 be deleted.

58. That Clauses 189 to 219 be renumbered 185 to 215.

59. That Clause 189 be amended by substituting the words "in a language understood by him" for the words "in the language of the Court" and by adding as sub-clause (4) the following:—

(4) The language of the Supreme Court shall be English, and the language of a subordinate court, other than a subordinate native court, shall be English or Swahili."

60. That Clause 191 be amended by substituting the figures "228" for the figures "208" in sub-clause (2)(c).

61. That Clause 192 be amended by adding at the end of proviso (a) the words "and shall be informed of such right by the second magistrate when he commences his proceedings" and by substituting the word "had" for the word "held" in the fourth line of proviso (b).

62. That Clause 195 be amended by substituting the figures "97" for the figures "90" in the fifth line of the clause.

63. That Clause 197 be amended by substituting the word "fifteen" for the word "eight" in the second line of the proviso.

64. That Clause 204 be amended by deleting the second paragraph.

65. That Clause 207 be amended by substituting the word "twelve" for the word "six" in the fifth line of the clause.

66. That Clause 208 be amended by substituting the figures "77" for the figures "76" in the last line of sub-clause (2).

67. That Clause 210 be amended by substituting the figures "187" for the figures "191" in paragraph (c).

68. That Clause 214 be amended by adding at the end thereof the following:—

"On trials for murder or treason the number of the jury shall be twelve; on trials for other offences the number of the jury shall be nine."

66. That the following clause be inserted after Clause 219.—

" 216. (1) At any preliminary inquiry under this Part any document purporting to be a report under the hand of a medical officer or a Government analyst upon any examination or analysis carried out by him shall, if it bears his signature, be admitted in evidence.

(2) The magistrate may presume that the signature to any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it."

70. That Clauses 220 to 223 be renumbered 217 to 222.

71. That Clause 221 be amended by substituting the word "fifteen" for the word "eight" in the fifth line of the clause.

72. That Clause 222 be amended by substituting the figures "221" for the figures "224" in the fourth line of the clause.

73. That Clauses 226 and 227 be deleted.

74. That Clauses 228 to 251 be renumbered 243 to 246.

75. That Clause 237 be amended by substituting the word "complainant" for the word "complainant" in the third line of the clause.

76. That Clause 238 be deleted and the following clause substituted therefor.—

" 234. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the Supreme Court, the Attorney General shall be of opinion that there is in any case committed for trial any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General—

(a) may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinafter provided; or

(b) may call such witness or witnesses before the Supreme Court notwithstanding that such witness or witnesses did not give evidence before the court which committed the accused; provided that in such case he shall give to the Registrar of the Supreme Court and to the accused person notice of his intention to call such witness or witnesses together with a copy of the evidence which each such witness will give."

77. That Clause 247 be amended by substituting the figures "236" and "81" for the figures "241" and "80."

78. That Clause 251 be deleted and the following clause substituted therefor.—

" 240. Subject to the provisions of Part VII, all trials before the Supreme Court shall be with the aid of assessors."

79. That Clauses 252 and 253 be deleted.

80. That Clauses 254 to 294 be renumbered 247 to 287.

81. That Clause 257 be amended by deleting paragraph (b) and substituting therefor the following:—

(b) Members of the Legislative Council";

and by adding as (g) "Members of the Police Force", and by lettering (g), (h) and (i) as (k), (l) and (m).

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82. That Clause 259 be amended by substituting the figures "250" for the figures "257" in the eighth line of the clause.

83. That Clause 263 be amended by substituting the figures "252" for the figures "259" in the last line of sub-clause (1).

84. That Clause 273 be amended by substituting the figures "264" for the figures "271" in the third line of the clause.

85. That Clause 294 be amended by inserting the words "absent from the Colony or" after the word "be" in the fifth line of condition (d), and by substituting the figures "227" for the figures "232" in the fourth line of that condition.

86. That Clause 295 be deleted.

87. That Clauses 296 to 300 be renumbered 288 to 292.

88. That Clause 297 be amended by deleting all the words between the word "offence" in the fourth line of sub-clause (4) and the words "the court" in the eighth line of sub-clause (4).

89. That the following clause be inserted under the heading "Case for the Defence" after Clause 300.—

" 303. If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence, the advocate for the prosecution shall then run up the case against the accused person and the court shall then call on the accused person personally or by his advocates to address the court on his own behalf."

90. That Clauses 301 to 322 be renumbered 304 to 325.

91. That Clause 323 be amended by inserting after the word "buried" in the seventh line of sub-clause (3) the words "or cremated"; and by adding at the end of sub-clause (3) the following proviso:—

" Provided that the Governor's order may direct that the execution shall take place at such time and at such place, and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the order."

92. That Clause 335 be amended by substituting the figures "326" for the figures "333" in the second line of the clause.

93. That Clause 340 be amended by adding at the end of sub-clause (1) the words "and shall be so informed by the magistrate at the time when sentence is passed."

94. That Clause 345 be amended by substituting the figures "336" for the figures "343" in the second line of the clause.

95. That Clause 347 be amended by deleting the word "not" in the first line of sub-clause (2) and adding at the end of that sub-clause the words "unless his appeal is being conducted by an advocate."

96. That Clause 351 be amended by deleting the words "the appeal shall be dismissed" at the end of the clause and substituting therefor the words "the appeal shall be reheard before three judges."

97. That the following clause be inserted after Clause 352.—

" 346. Any person aggrieved by a decision of the Supreme Court in its appellate jurisdiction under this Part may appeal to the Court of Appeal for Eastern Africa on a matter of law (not including severity of sentence) but not on a matter of fact."

Every such appeal shall be entered within thirty days of the date of the order appeal against and the provisions of sections 336 to 345 inclusive shall apply *mutatis mutandis* to appeals from the Supreme Court to the Court of Appeal for Eastern Africa."

98. That Clauses 353 to 384 be renumbered 347 to 378.
99. That Clause 355 be amended—
- by deleting paragraph (a);
 - by renumbering paragraph (b) as (a) and by substituting therein the figures 340, 342 and 343 for the figures 347, 349 and 350; and
 - by renumbering paragraph (c) as (b) and inserting therein after the word "order" in the first line of the paragraph the words "other than an order of acquittal".
100. That Clause 366 be amended by substituting the figures "333" for the figures "340".
101. That Clause 368 be amended by substituting the words "the case stated shall be reheard before three judges" for the words "the decision of the subordinate court shall be affirmed".
102. That Clause 369 be amended by substituting the figures "353," "354" and "356" for the figures "359," "360" and "362".
103. That Clause 373 be amended by substituting the figures "252" for the figures "259".
104. That Clause 389 be amended by inserting the words "justice of the peace or" before the word "commissioner" in the last line of the clause.
105. That the First Schedule be amended in the following respects—
- that the numbers in the first column be altered where necessary to correspond with the numbers of the sections of the Penal Code as finally approved by Legislative Council;
 - that the entry in the third column of the Schedule relating to section 80, "Persuading public officers," be deleted, and the words "may arrest without warrant" be substituted;
 - that the entry in the third column relating to section 207, "Causing danger or obstruction in public way or line of navigation" be deleted, and the words "shall not arrest without warrant" be substituted;
 - that the fourth column be amended by substituting the figures "34" for the figures "33" in the note at the top of each page of the Schedule;
 - that the fourth column be further amended by substituting the word "seven" for the word "three" opposite section 72; the word "seven" for the word "fourteen" opposite section 273 (4); the words "two years" for the words "three months" opposite section 274; the words "fourteen years" for the word "life" opposite section 285; the word "seven" for the word "fourteen" opposite section 286; and the word "seven" for the word "ten" opposite sections 294 and 301;
 - that the entry relating to section 287 be deleted and the following substituted therefor—

1.	2.	3.	4.	5.
287.	Killing or wounding animals.	May arrest without warrant.	Imprisonment for two years.	Any magistrate.

(g) that the entry relating to section 46, "Seditious conspiracy and libel," be deleted.

(h) that the following new matter be inserted in the Schedule, in each case in its appropriate numerical position—

1.	2.	3.	4.	5.
47.	Seditious conspiracy, libel and publication.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
47.	Seditious conspiracy, libel and publication (after previous conviction).	Do.	Imprisonment for seven years.	Subordinate court of the first class.
48.	Possessing seditious publications.	Do.	Imprisonment for one year.	Subordinate court of the first or second class.
60.	Publishing false reports.	Shall not arrest without warrant.	Imprisonment for two years.	Do.
68.	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
69.	Being member of unlawful society.	Do.	Imprisonment for three years.	Subordinate court of the first or second class.
108.	Contempt of court.	Do.	Imprisonment for three months.	Any magistrate.
270.	Unlawfully using vehicle, animal, etc.	Do.	Imprisonment for six months and/or fine of fifty pounds.	Subordinate court of the first or second class.
357.	Corrupt practices.	Shall not arrest without warrant.	Imprisonment for two years and/or fine of three hundred pounds.	Do.
358.	Breach commission in Government contracts.	Shall not arrest without warrant.	Imprisonment for seven years and/or fine of five hundred pounds.	Subordinate court of the first class.
364.	Soliciting or inciting others to commit offence in Colony or elsewhere.	May arrest without warrant if offence solicited or incited may be made without warrant, but not otherwise.	Same punishment as for the offence solicited or incited.	Any court to which offence would be triable.

(i) that the portion of the Schedule relating to offences under Chapter XXXVI be deleted, and the following substituted therefor:—

1.	2.	3.	4.	5.
337	Counterfeiting coin.	May arrest without warrant.	Imprisonment for life.	
338	Making preparations for cutting.	Do.	Do.	
339	Clipping coin.	Do.	Imprisonment for seven years.	Subordinate court of the first class.
340	Being in possession of clippings.	Do.	Do.	Do.
341	Uttering counterfeit coin.	Do.	Imprisonment for two years.	Do.
342	Repeated uttering of counterfeit coin.	Do.	Imprisonment for three years.	Do.
343	Uttering piece of metal as coin.	Do.	Imprisonment for one year.	Do.
344	Exporting counterfeit coin.	Do.	Imprisonment for two years.	Do.

106. That the Second Schedule be amended by altering the numbers in each statement of offence throughout the Schedule to correspond with the numbers of the appropriate sections of the Penal Code as finally approved by Legislative Council.

107. That the Third Schedule be amended by substituting the figures " 554 " for the figures " 390 " in the first and sixth lines of the Schedule.

[Major E. B. Grogan did not attend any meetings of the Committee and has not signed this report.]

We have the honour to be,

Your Excellency's most obedient servants,

A. D. A. MACGREGOR,

Chairman.

T. D. H. BRUCE,

H. E. SCHWARTZ,

E. V. KENEALY

(Subject to certain reservations to be mentioned in Legislative Council).

A. H. MALIK.