

EAST AFR. PROT

7633

7633

REC'D
MAR 14 1910

and 62

1910

8 Feb.

previous Paper.

28278

Draft K.A.R. order.

Submit further amendments.

Col. Stanger

H. J. R.

17/III

Mr. Butler

I suggest that these come before the Committee which is about to assemble.

4/17 19/3

W. Read

Yes when Mr. Parkinson returns from leave

H.A.B.

March 18

at rec.
L. J. R.
18/III

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Brought before Committee
considered in connection
with other proposed amendments.

all.
9/9

W. R. R. R.
W. R. R. R.

Amendment 571 for consm in accordance
with min. on Gov/40902/Nyasa
/09 K.R.

all.
7/9

GOVERNMENT HOUSE,

Nairobi,

February 8th 1910.

EAST AFRICA PROTECTORATE.

No. 62

(Incl. 2)

My Lord,

4-2
18
19
10

Amendments
Memorandum

With reference to Your Lordship's despatch No. 579 of the 24th of September last, I have the honour to submit for Your Lordship's consideration further amendments recommended by the Crown Advocate to the draft King's African Rifles Ordinance.

2. The amendments are in addition to those already approved by Your Lordship, and I am in agreement with them as a whole.

3. The Officer Commanding Troops has recorded his opinion in the enclosed Memorandum.

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


GOVERNOR.

THE RIGHT HONOURABLE

THE EARL OF CREWE, K.G.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

INCLOSURE

In Despatch No. 65 of 8 > 18/6

332
14. MAR 10

EAST AFRICA PROTECTORATE

THE KING'S AFRICAN RIFLES ORDINANCE 19... AS DRAFTED BY THE INSPECTOR GENERAL.

---:080-080:---

Amendments submitted for consideration.

tion 2.

(a) I do not understand what is intended by the expression 'every other person subject to this Ordinance' in the interpretation of the term 'Soldier'. All 'followers' as defined in the same section are subject to the Ordinance but it cannot be intended that any non-European who may be in the lines should be deemed to be a 'Soldier' for the purposes of the Ordinance. I would recommend that the definition should be deleted and that there should be substituted the following:-

"Soldier" includes a native officer, a non-commissioned officer, a private and an enlisted gun carrier.

If there are any other persons holding any office or appointment under the Ordinance who should be deemed to be Soldiers for the purposes of the Ordinance they should be added to the definition.

I have deleted "machine" before "gun" as I understand that there is a possibility of the Regiment being supplied with light guns, not being machine-guns.

(b) In the definition of "Superior Officer" the words "Native Officers, British Non-commissioned Officers" should be inserted after "Officers".

As defined in the Ordinance an Officer does not include a Native Officer, and a British Non-commissioned Officer is not a Non-commissioned Officer.

(c) I have not found the word "enemy" mentioned elsewhere in this Ordinance. Unless I am mistaken in this, the definition of that word should be deleted.

Section 34. If it is intended that such offences as are described in (3) of Section 34 and (2) & (4) of Section 37 should be punishable under this Ordinance if committed by followers the term "Superior Officer" should be defined in relation to "followers".

This could be done by inserting the words "or follower" after the word "Soldier" in the definition of "Superior Officer" in Section 34.

As followers would include transport porters the provisions above referred to would appear to be applicable to some followers.

Section 37. (1) Having regard to the definition of the term "commanding officer" it would seem that the words "superior officer" should be substituted for "commanding officer" in (1) (a) of this section so as to cover the case of a private under the command of a Non-commissioned officer, or a Non-commissioned officer under the command of any Officer or Native Officer.

(2) As Non-commissioned Officers are authorised to arrest persons subject to the Ordinance some provision should be made for the punishment of persons who detain a person in custody for an unnecessary time without bringing this case before the proper authority. I would suggest that before the present (14) of this section the following provision should be inserted :-

Irregular imprisonment.

14. (c) Unnecessarily detains a prisoner in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation.

(3) In (14) (a) of this section the words "or follower" should be inserted after "Soldier".

(4) In (7) (c) & (d) it is uncertain as to what is intended by the term "his officer".

I would suggest that the words "his Commanding Officer or Company Commander" should be substituted.

The "or" before "Soldier" should be deleted.

for 39.

Sub-section (3).

As native officers and followers are subject to this part of the Ordinance provision should be made in Sub-section (3) of this section for placing them under military arrest.

Further it should be considered whether a Native Officer, British Non-commissioned Officer and a Native Non-commissioned Officer should not be authorised to arrest a Native Non-commissioned Officer.

I would suggest that the first part of Sub-section (3) should read:

"An officer or native officer may order into military custody any native officer, non-commissioned officer, or private of the Regiment or any follower, and any British Non-commissioned Officer or non-commissioned officer may order into military custody any non-commissioned officer, private or follower."

The remainder of the Sub-section as in the original draft.

sub-section (4)

In lines 1, 3, 4 and 5 of sub-section (4) the words "Native Officer, British Non-combatant" should be inserted after "Officer", should be alterations suggested to be made in sub-section (3).

ion 40.

In (d) of this section "24 lashes" should be substituted for "25 lashes". A Court Martial cannot award more than "24 lashes".

ion 41.

An officer is authorised by this section to enquire into a charge against a native officer yet (d) of this section he may reprimand him. Either the word "native officer" should be inserted before "non-combatant" in the ^{3rd} line of the first paragraph or the words "a native" should be deleted from (g).

An officer commanding a detachment should be authorised to enquire into a charge against a "follower". In the 3rd line of 41 the words "or follower" should be inserted after "private" and the "or" before "private" should be deleted.

In the first line of (1) the words "or follower" should be inserted after "private".

ion 42.

The provision of sub-section (1) of this section would better form the subject of a sub-section of the preceding section.

A Head Note in the middle of a section would thus be avoided.

The figures '33' in this Sub-section should be deleted and '40' substituted.

Section 33 relates to the powers of Court Martial, Section 40 to the powers of Commanding Officers.

ion 45.

1. No provision is made for the execution of a sentence of imprisonment imposed upon a native officer, or a follower.

This should be corrected by substituting 'any person subject to this Ordinance' for 'any non-commissioned officer or private of the regiment' in line 3.

In lines 10, 12 and 14 'persons' should be substituted for 'soldiers of the regiment'.

2. In Sub-section (3) 'person subject to this Ordinance' should be substituted for 'soldier of the regiment'.

3. In the same sub-section and in the first line of sub-section (1) 'penal servitude' should be inserted before 'imprisonment'.

There is no provision in this Ordinance or in any other law in the Protectorate regarding the execution of a sentence of 'penal servitude'.

4. I notice that in the Colonial Office despatch No. 579 of September 24th, 1909 His Lordship expresses the opinion that it will be unnecessary to incorporate in this Ordinance the provisions of Sections 3 and 4 of 'The King's African Rifles Amendment Ordinance, 1909' with reference to military prisons. I would respectfully ask that while this Ordinance is again before His Lordship this matter may be further considered.

If, as I understand it is the intention that the Ordinance would be substituted for the other existing laws relating to the same matters, it would certainly be convenient that all such Ordinances should be repealed and that the provisions of these laws so far as they are required should be incorporated in this Ordinance.

A military prison has been established under the 1905 Ordinance but it is possible that at some future date it may be necessary to declare some of our buildings to be a military prison in the place of the existing building. In order to avoid retaining in the law in force an Ordinance which must well be repealed by this Ordinance, and to provide for the establishment of military prisons in the future

I would again suggest that Section 45 of the said Ordinance should be altered as follows:-

(a) By inserting in line 3 before the word prison the words 'military or civil'.

(b) By inserting after sub-section (1) a new sub-section as follows :-

(2) The Governor may by notice in the Gazette declare any building as he may deem suitable to be a Military Prison for the purposes of this Ordinance, and may from time to time make rules for the government of such prisons, and with regard to the admission, discharge, custody, removal, safe-keeping, diet, labour, occupation, discipline, instruction, and offences of persons confined therein, and with regard to any and every other matter or thing relating to and connected with the carrying out and management of imprisonment in such prisons."

Section 55.

I gather from section 55 of the Ordinance that any person who shall be charged with an offence which is punishable both under this Ordinance and under some other law, may be tried either as provided in this Ordinance or by a Civil Court. Even if such is not the intention I would submit that having regard to such offences as are mentioned in section 55 (1), and (2) the Civil Courts must have the power to deal with soldiers and followers who commit offences which are punishable under other laws as well as under this Ordinance.

The alterations in Section 55 which I would suggest are as follows:-

in lines 1 and 4 delete "any non-commissioned officer or private of the regiment" and substitute "any person subject to this Ordinance".

In line 3 delete "other than offences hereinbefore mentioned or referred to" and substitute "punishable under any other law in force in the protectorate".

Section 65. Sub-section (1).

This sub-section should, I think, apply to native officers and followers. The words "native officers" to be inserted before "non-commissioned officer and followers" inserted after "regiment".

Section 66. The words "and corporal punishment not exceeding 25 lashes" should be deleted. Such punishment should not be inflicted on a non-native convicted of the offences specified in the section.

A Court convicting a native of an offence under the section can impose flogging by virtue of the Courts Ordinance 1907.

Section 67. The same alterations should be made in this section.

Section 68. This section is inconsistent with the Part III of the Ordinance. Other than part followers who do not belong to the regiment can be punished by the military authorities.

This section should be altered by the deletion of the words "not belonging to the regiment" and by the substitution of the words "not being subject to Part III of this Ordinance".

Section 72.

The laws mentioned in this section have been repealed.

This section should read:

72. The King's African Rifles Ordinance 1902, The King's African Rifles Amendment Ordinance 1903, The King's African Rifles Amendment Ordinance 1905, and the King's African Rifles Amendment Ordinance 1909 are hereby repealed.

revised as follows :-

- (1) All officers and soldiers serving with the King's African Rifles at the date of the commencement of this Ordinance shall be deemed to have been enlisted or enrolled under this Ordinance.
- (2) All rules, regulations, orders and directions made or given under any of the repealed Ordinances shall be deemed to have been made and given under this Ordinance and shall continue in force until other provision shall be made under or by virtue of this Ordinance.

Section 73.

This section can be deleted.

S. P. B. S.

DRAFT K. A. R. ORDINANCE.Remarks by Officer Commanding Troops East Africa Protectorate onAmendments suggested by the Crown Advocate.

14 MAR 10

211

Section 39.

It is essential in my opinion that British Non-Commissioned Officers, Native Officers and Native Non-Commissioned Officers should be authorized to place Native Non-Commissioned Officers in arrest.

Section 55.

The Crown Advocate's amendment leaves it open to both the Civil and Military Authorities to claim the right of trial for numerous offences, this might lead to friction under certain circumstances, and I submit therefore that if the amendment is accepted it should be qualified by "instructions" from the Governor or Principal Judge in the several Protectorates defining as clearly as possible the powers of jurisdiction over the soldier between the Civil and Military Authorities.

It is desirable from the Military point of view that a soldier committing an offence should be handed over to the Military Authorities for disposal in nearly every case excepting offences against the persons or property of Civilians.

I am in agreement with the remainder of the amendments suggested by the Crown Advocate : as regards "followers" however I consider that it is essential for a Commanding Officer to have certain disciplinary powers at all times over certain persons residing in the Lines namely :

- (1) transport syces and sweepers employed with the King's African Rifles.
- (2) Wives of soldiers - this is especially necessary upon foreign service.

400/111

Nairobi.
27.1.10.

P. H. Kinnear

Lieut. Col.

Commanding Troops, East Africa Protectorate.

[Handwritten signature]

Answer to 566/10

DRAFT.

EAST AFRICA PROTECTORATE

DOWNING STREET,

No: 630

September, 1910

GOVERNOR
COLONEL SIR PERCY GIROUARD, K.C.M.G.
&c., &c., &c. D.S.O., R.E.

21 October

MINUTE.

Sir,

Mr. Parkinson 2/9
Mr. Risley 30
Mr. Butler Oct 1

I have the honour to acknowledge the

X Mr. Fiddes. 3

receipt of your despatch No. 62 of the 8th of

Mr. Just.

February, submitting for my consideration

Mr. Cox.

further amendments recommended by the Crown

Sir C. Lucas.

in connection with

Sir F. Hopwood.

Advocate to the Draft King's African Rifles

X Col. Seely. 8/10

Ordinance, and to transmit to you the two ac-

X Lord Crewe. 8/10

companying prints relating to this Ordinance,

in connection

together with a copy of correspondence ^{with} to the

African 949

Officers Administering the Governments of Uganda

African 955 *X*

and Nyasaland explanatory of amendments pro-

posed by them.

WA

enclosure continued

subject & drafts

Mr. Speak time about this

acknowledgment, have been ^{closely} minutely examined,

careful consideration being ^(in every case) given to the

reasons adduced ^{in support of the proposed} ~~in every case~~

~~amendments~~

4. With the exception of a few minor differences to suit the local requirements of Nyasaland, I propose that the Ordinances should be identical in the East African Protectorates; as any attempt to introduce important changes in the Ordinance of one Protectorate only, must necessarily lead to confusion and difficulty. I have to request therefore, that you will enact the Ordinance as now revised.

5. In the event of your wishing to press for any amendments, you should submit ^{to me, after giving} your proposals ~~through~~ the Inspector General

of King's African Rifles in order that he may

^{we with} furnish his observations ^{on them} ~~before they~~ ^{at the same time} ~~are sent to this Department.~~

It is at the time
present in the pt.
of the party
considering them,

6. You will observe that, in the ^{print of the} Ordinance
as now revised, ~~many alterations have~~
^{no explanation has}
~~been given of the majority of the~~
~~alterations made, as~~
~~some explanation has been added in the margin~~
~~of the print. I consider that an~~

An examination of the various Ordinances,
as they appear in the first enclosure, and of
the correspondence referred to above, will in-
dicate the reasons for the adoption or rejec-
tion of amendments which you have suggested. ^{however,}
but I have no doubt that the Inspector-general
of the King's African Rifles ^{on his forthcoming visit to the place} will be glad
to furnish verbally any further explanations
which you may require.

I have &c.,