

DESPATCH

EAST AFR. PROT.
N <sup>o</sup> . 3231 $\frac{05}{06}$

C.O.
3231
REC <sup>d</sup>
REG 29 JAN 76

1905  
Dec 17  
at previous Paper.

(Subject.)

Native Courts Amendment Order,  
No 13 of 1905

Yes - with letter from Comm. Advocate

(Minutes.) (For copies to Library)

Mr. Riley, We have already printed out the  
 as well as in the Circular of 13 Aug 1902  
 despatch 29745 & that the S. of S.'s policy is to  
 limit the number of copies to 25 in the  
 case of admitted - I would tell the Comm. that  
 the number is not to be exceeded & that in the  
 order is to be made by the institution of  
 24 to 25.

H J R

5/2

has not been

3 copies to work as proposed & require non disallowance

J.R. G.

W. J. G.



C. O.  
3231  
REC<sup>d</sup>  
REG 29 JAN 06

No. 18.

CROWN ADVOCATE'S OFFICE,

MOMBASA,

DECEMBER 6th 1905.

Sir,

I have the honour to forward for your approval a draft Ordinance amending the "East Africa Courts Amendment Ordinance 1902." Legislation is in my opinion necessary to remove a doubt which has arisen as to the powers of a Special Court in relation to the punishment of whipping.

Under the Native Courts Regulations 1897 a Collector presiding over a District Court has the power of a Magistrate of the Second Class and may, under Section 72 of the Regulations impose a sentence of whipping in lieu of or in addition to imprisonment for any offence provided that the greatest number of lashes which he shall impose shall be fifty.

Under the East Africa Courts Amendment Ordinance 1902 there is constituted in every Special District a "Special Court", with full Civil and Criminal jurisdiction over all natives in the special district.

Section 11 (1) of the Amending Ordinance provides that "A Special Court may impose a sentence of whipping not exceeding fifty lashes".

It has been contended that as it was clearly intended that a Special Court should have greater powers than a District Court the former Court has been given the power to impose a sentence of whipping up to fifty lashes in all cases when the latter could impose a sentence of whipping. Whilst agreeing that it was probably

H. W. Commissioner,

Mombasa.

2.

probably the intention of the legislature that a Special Court should have the power claimed, I am clearly of the opinion that such power is not given by the Ordinance and that any sentence of whipping imposed by a Special Court except in accordance with the provisions of the Indian Penal Code is illegal.

It is undesirable that there should be any doubt on this question. I, therefore, submit for your approval an amending Ordinance giving the Special Court the power to impose a sentence of whipping in lieu of or in addition to imprisonment, which, I think, carries out the original intention of the legislature.

As this appears to me to be a good opportunity of giving effect to the suggestions contained in the Colonial Office Circular of 13th August 1902, I have further amended the Ordinance by reducing the number of lashes which may be imposed by a Special Court from fifty to twenty-five.

I have the honour to be,  
sir,

Your most obedient

humble servant,

(Sd) R.M.Combe.

CROME ADVOCATE.

DRAFT

E. A. P. n: 86

Henry ...

Ans d 15-83

16 February 1883

Sir *Proby*

I have the honor  
to acknowledge the receipt of  
Mr Jackson's despatch n: 657  
of the 11th of December 1882  
and to inform you  
that the power of  
disallowance will not be  
exercised with respect  
to the "East Africa  
Native Courts Amendment  
Ordinance (n: 13 of 1882),"  
a transcript of which  
accompanies the despatch.

2. I have to point out  
however that the  
policy of His Majesty's  
Government in regard  
to the number of lashes

MINUTE.

- Mr. Lub  $\frac{2}{2}$
- Mr. ... *M. J. / v. P.*
- Mr. Antrobus
- Mr. Cox
- Mr. Lucas
- Mr. Graham
- Sir H. Osmalley
- The Duke of Marlborough
- Mr. Lytton

DRAFT

S.A.P. h: 86

Simon Fraser Esq.

MINUTE.

- Mr. Laid  $\frac{0}{2}$
- Mr. [unclear] *M. J. [unclear]*
- Mr. Antrabbe
- Mr. Cox
- Mr. Lucas
- Mr. Graham
- Sir M. O'Malley
- The Duke of Marlborough
- Mr. Lyttelton

Ans'd 15/4/83

16 February 1883

Sir,

I have the honor  
 to acknowledge the receipt of  
 Mr. Jackson's despatch h: 657  
 of the 11th of December 1882  
 and to inform you  
 that the power of  
 disallowance will not be  
 exercised with respect  
 to the "East Africa  
 Native Lands Amendment  
 Ordinance (No. 10 of 1882)"  
 which was accompanied that day  
 as I have to point out  
 however that the  
 policy of the Imperial  
 Government in regard  
 to the purchase of land