

1933.

*Henry*

No. 3057

SUBJECT

C0533/432

*Water Tribunal Ordinance*

Previous

15010/32

Subsequent

Ord 3548/33, 4172  
23298/34

1. Governor Byrne 57 \_\_\_\_\_ 7 Jan 33  
Trans two authenticated & 12 printed copies of  
The Native Tribunal (Amndt) Order No 35 of 1932

2. Governor Byrne 60 \_\_\_\_\_ 19 Jan 33  
Himself report on the organization of the Native  
Tribunals gives details of difficulties which have been  
encountered. Encs a copy of Gov's Order Amndt Rules 1932  
together with schedule of fees leviable on Native Tribunals

No 1. This is a further step in the direction  
suggested in 14 of 16092/30  
& subject to any legal objections  
signify order

No 2. It was properly laid down in  
para 5 of 10 of 16092/30 that annual  
reports on the working of the system  
should reach this office not later than 30  
June. This ruling has not  
modified subsequently.  
It appears that the Native  
Tribunals are still in the whole process  
of organization

as regards the question of finance  
it should be possible to arrange for  
only a proportion of the members to sit  
on normal occasions and to fix the  
sitting fees with regard to other official  
allowments which the members may get.

The amended rates of Court fees  
as shown in the Schedule are on the high side  
in civil cases if the maximum rate is  
approved. In any case it seems undesirable  
to give a provision for occasional discretion

to fix ratios - as this will cause ratio  
to vary and to be fixed with a view to  
balancing court accounts. The P.C. or  
D.C. should know how power to vary  
or reduce is used for purposes.

These points are perhaps worth submitting  
the general review of the present work

20<sup>th</sup> June 1933 to the  
I attach a copy of the Native Affairs Report & Budget for 1933-34  
ack and response since

doubt as to the advisability of the  
in order to fix with proper  
awards to Government - recommendations  
in the Order & General as suggested  
in section 44.

I pass through the address to see Mr  
Buckley's minute of 2/2 in 1897/32

H. P. P. M. M.  
14/2/33

See - the new rule  
minute on 3548/33 Uganda

A. B. F. H. D.  
2/2

No. 1 ...  
but may be allowed  
5.10.33 on disallowance

No. 2 The new rules have been in force for a year,  
ack. rest of say the Dept. will, we should  
consider this point (under alias in reviewing the  
business later on.

J. S. W. Kent  
20.3.33  
above

3  
20/4/33 } To Gov 260 (1 answer) 1/3  
H - 261 (2) } 20 APR 1933

note 3  
H  
H

Govt. Notice No. 70 of 1933  
Order

Patry ...  
18/7/37  
above

6. A/Gov. 498. .... 28th Aug. 33.

Trans. two authenticated, and twelve printed copies  
of the Native Tribunals (Amendment) Order, No. 31 of 1933  
together with Report by Attorney Genl.

(Spare copies to Library)

Please see para 5 (ii) of N<sup>o</sup> 10 in 16092

By para 5 (ii) we should have had a report  
on the working of the Ord<sup>s</sup>. rules, and Govt.  
recommendations as regards the future. We  
have had neither; & it is rather odd  
that, within three months of the date  
when the Principal Ord<sup>s</sup> is due to expire,  
they should send down this relatively  
brief amending Ord<sup>s</sup>

? Tel. as in d. l.

J. P. Austin  
18.9

air mail  
will do for  
this.

J.

By air mail  
20/9/33  
M.C.  
15/10/33  
to note 7

To Kenya 7 21 (6 annexes) Cons 19 SEP 1933

8. A/B...  
Please to ask for...  
Declaration...  
Bill...  
requests to be...

I attach opposite a note outlining the correspondence that has passed between the Secretary of State and the Government of Kenya on the subject of the Native Tribunals Ordinance.

As I suggest in my note, No. 8 is unsatisfactory, and is so brief that it may be said in effect to ignore the requests made in No. 7.

I think, however, that it effectually forces the Secretary of State's hand since, presumably, the Ordinance cannot be allowed just to lapse, and native tribunals thus be left suddenly completely in the air without any legal sanction. It is moreover, dangerously late to delay matters farther by asking for more details.

I suggest that a telegram should be sent to the Governor agreeing to the continuance of the Ordinance for one year only and pointing out that the requests made in No. 7 have not been answered. Furthermore, the telegram

might

Of course to these  
must go on it is  
in light of these  
sections which are  
Crown in f.B.

might note that the O.A.C. has several amendments in mind to make to the Ordinance, and it might ask that these may be submitted in draft form to the Secretary of State as early as possible and that they should be accompanied not only by a fully adequate discussion of the facts that have made them desirable, but also by a reasonably detailed account of the way in which the Ordinance, and especially Appeals under the Ordinance, is working.

In connection with the matter of appeals, it is interesting to read Mr. Acheson's minute - No. 1 on 3548/33 - upon Appeals, etc., in Uganda. The tendency <sup>in Uganda</sup> is to increase rather than decrease Appeals from Native Courts to the Administration. I do not think, however, that Kenya will be directly affected by what it has been decided to do in Uganda or Nigeria.

The most charitable explanation of Kenya's discourtesy in ignoring N° 7 is that N° 8 was already in draft when it arrived, and no one troubled to alter the opening references!

? As Mr. Davies proposes.

(We may get some light on the matter from Mr. Stackpoole, who is due to arrive in about a fortnight.)

8/11

Banyoro, Tiso, &  
Kisumu, Kisumu, etc.

In Uganda (apart from Buganda)  
there is no hereditary & tribal basis.

The chiefs or elders are really  
Civil servants, & were introduced  
by us.

I think I am right in saying that  
the same thing has been in Kenya.

So that both would seem to face  
the same problem in the African  
decisions.

As regards TT, Mr Mitchell told  
me that if African the High Court was  
properly organized to do its work - he  
would welcome appeals to it, & that  
Lord Cameron's action was due really  
to the fact that the H.C. was incapable  
as organized, for doing the work.

So I think we should go slow  
in Kenya

Perhaps we could discuss this with  
Mr Meyer? A.B.  
gfu

We can't wait. The Ordinance must go on &  
we have got here a very clear though very brief  
recommendation from the O.A.B. that it should.  
(Para 2 & 3) The question of amending can be  
considered later.

I advise that we telegraph approval of the

issue of a Proclamation as proposed

And in a deep way the 3 of us will want to understand  
with interest and care for the Govt's views on the question of  
appeals.

(I don't want to harass Kenya too much from how it  
is their affair & they have to work the thing. If it does work  
then let it. We are right in raising questions but must be  
guided by the Governor.)

J. W. Hood  
10-11

We must consider seriously with  
the Major, & the Governor  
during the Nov. Conference.

Also there is no point in our  
re-opening the case and must  
wait at least 6 months before the  
one year period would be  
sufficient.

Therefore, death in the House  
is better, but let us make sure  
against it. The best way is  
to give the ordinance called  
into question.

11-11-33

9 To Govt No. 236, 8 answers - 14th Nov 1933

3/11/0 To Kenya 868 (8 answers) Comp 16 NOV 1933

2/12

M



11. Govt Notice No 688.

the Native Tribunals (Appeals in Criminal Cases) Rules 1933.

These rules will be made under S-36 of the principal Ord<sup>s</sup> (behind No 13 on 16/9/33)

They differ only very slightly from the 1931 Rules (in 17305A)

We might take an opportunity of talking to Mr. Nalagya about the revision of the Ord<sup>s</sup> (v. Mr. Buech's minute of 9<sup>th</sup> Nov here)

Director  
2/12

Yes, I think he has left it for Mr. Nalagya

Spoke to Mr. Nalagya today (he has also, I gather, had some talk with Mr. Buech on the subject.)

When Mr. Nalagya left Kaya, the dft. revising Ord<sup>s</sup> was discussed for discussion at a P.C.'s meeting early in Nov. We shall no doubt receive a dft. in due course

Pately

Director  
(2 at)

12 Govt Notice No 526 of 1933.

The Secy. has

13 N A O Circular No. 2 of 26 Sept 33  
(Right: vide minute of 5 Jan 34 on 25005/34 Kenya)

The reply to No 10 has yet been received.

Director

Received no reply to No 10 received

Noted as per note

Revised note minute above

Copy to wait.

Noted at 8/12 27/12/34

Approved  
27/12

Rec'd. vide minute of 27<sup>th</sup> Aug 34.

*[Signature]* 31.5.34  
Reg 471

No 10 has been in the  
Company for over 6 months, but  
a reminder I might wait  
for 2 months

*[Signature]*  
27/9/34

I think we should remind

*[Signature]*  
1 Sept. The appeal point has  
recently caused frustration (the tax case)  
2.6

H.R.

Rec'd. vide minute above

*[Signature]* 4.9.34.  
Reg 207

Ask how this matter stands - remaining mail

*[Signature]*  
1/10/34

Let to change 241 - cons

11 SEP 1934  
10/10/34

H.R.



3057/33

7  
164

C. O.

Miss Powell 5/9

Mr. Venning 5/9/34

Mr.

Mr. Parkinson

Sir G. Tomkinson

Sir C. Balfour

Sir J. Shuckburgh

Print. U.S. of S.

Party. U.S. of S.

Secretary of State.

11 September, 1933

Answered No. 23278/34

RECEIVED  
5 SEP  
1933

I have the honour

to refer to my despatch

(10) No. 868 of the 16th of November, 1933,

and to state that

I shall be glad

to learn what

is the position

regarding the

proposed amendment

of

DRAFT.

Kenya.

no 741

gov.

FURTHER ACTION

8 13

NATIVE AFFAIRS DEPARTMENT,

Nairobi.

26th September, 1933.

Ref. No. NL & O. 1/1/13, II.  
N.A.D. Circular No. 45.

To all Provincial Commissioners, (with sufficient copies for District Commissioners).

THE NATIVE TRIBUNALS ORDINANCE, 1930.  
Ref. Minute No. 27 of the Provincial Commissioners' Meeting, held in July, 1933.

At the Provincial Commissioners' Meeting held in July last, the Provincial Commissioner, Kikuyu, proposed that Government Notice No. 70. of 25.1.33. should be amended to enable Native Tribunals to try cases under Sections 252, 255 and 295 of the Penal Code in which the subject matter of the charge did not exceed Sh.200/- in value.

2. The Meeting agreed with the suggested amendment but considered that the figure "Sh.200/-" should be raised to "Sh.500/-".

3. The amendment was referred to Government and it has been decided that Sh.200/- should be fixed as the maximum value of the subject matter of the charge under the above Sections of the Penal Code, on the ground that the theft of articles or things valued at Sh.500/- is in the nature of a serious crime, the trial of which should not be entrusted to Native Tribunals in their present state of development.

4. The necessary amendment of Government Notice No. 70. of 25. 1. 33. will be published in the next issue of the Official Gazette.

S. H. LA FONTAINE.

ACT. CHIEF NATIVE COMMISSIONER.

GOVERNMENT NOTICE No. 826

THE NATIVE TRIBUNALS ORDINANCE, 1933

WHEREAS the powers conferred upon the Native Tribunals by the Native Tribunals Ordinance, 1933, His Excellency the Governor has been pleased to order as follows:

All charges for offences against sections 303, 304, 305 and 306 of the Penal Code may be heard and determined by a native tribunal to the extent to which such native tribunal is empowered by warrant empowered to hear and determine such charges.

Provided that no native tribunal shall be empowered to hear and determine any charge under the above-mentioned sections of the Penal Code where the subject matter of the charge exceeds two hundred shillings in value.

By Command of His Excellency the Governor  
Nairobi.

20th December, 1933.

H. M. M. MURPHY,  
Secretary.

GOVERNMENT NOTICE NO. 688

## THE NATIVE TRIBUNALS ORDINANCE, 1930.

## RULES.

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

1. These Rules may be cited as "the Native Tribunals (Appeals in Trivial Cases) Rules, 1933."

2. No appeal from a Native Tribunal shall be beyond a District Commissioner

(a) in any criminal case where a sentence of imprisonment not exceeding one month or a fine of less than Sh. 50 is imposed;

(b) in any civil case where the sum claimed is less than two hundred shillings exclusive of costs.

3. The Native Tribunals (Appeals in Trivial Cases) Rules, 1931, are hereby revoked.

By Command of His Excellency the Governor in Council  
H. E. BADER.

18th October, 1933.

H. E. BADER.  
Clerk to the Executive Council.

C. O.

3057/31 Kenya.

10

Mr. Davies. 13/11

Mr. Freedom 13

Mr. W. B. ...

Mr. ...

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Answered by No. 25299/54

NOV 16 1932

**DRAFT**

KENYA

NO. 868

ask the rest of your Dept. No 611 of the 27<sup>th</sup> of Oct. and to

from your dept

... have ...  
 telegram No. 23600/14 Nov 14  
 in which I intimated that, subject to the concurrence of Legislative Council, I approve the issue of a Proclamation to continue the operation of the Native Land Ordinance.  
 I observe that you propose to forward an amendment Bill for my consideration at an early date and I shall await its arrival with interest. I presume that it will be submitted in draft, but I should be glad if it could be accompanied by an expression of your views upon the question of appeals to which, as I intimated you, in my despatch No. 17 of the 14<sup>th</sup> February, 1932, I wish to reserve further consideration at this juncture.

**FURTHER ACTION.**

(4 on) (18010/32)

C. O.

3057/3058

12 9

Mr. Davies 13/11

Mr. Froun 13

Mr. Bowde 14

Mr. Robinson Flood 14 almost

Mr. Tomlinson

Sir C. Bodomley

Sir Th. Shackburgh

Parly U.S. of S.

Parly U.S. of S.

Secretary of State

Coded & sent

70 pm 13/11

14/11/33

no. 236

Your dispatch No. 111 of the 11th

(8) 14th October relative to the 1st of October

copy

**DRAFT** telegram code: word for word

CONFIDENTIAL

OTB
R 15 NOV
R 15

2 MG

**FURTHER ACTION.**

Outline

The outline of the history of the Native Tribunals Ordinance is as follows:-

No. 4 on 16092/30

The Bill together with Rules were originally submitted by Sir E. Grigg in March, 1930.

No. 7

The Secretary of State sanctioned the Rules, but he only gave his sanction to the principle that Appeals should go to Executive Officers and not to the High Court with some hesitation, and he desired his approval to be regarded as provisional pending reconsideration in 1933 in the light of intervening experiences.

No. 10

In approving the introduction of the Bill Lord Passfield stipulated that it should be made to expire from the 31st of December, 1933, unless renewed before, and he said reports on the working of the system whether under Rules or Ordinance should be made and reach the Colonial Office not later than the 30th of June in each year, and the report to be made in 1933 should be accompanied by definite recommendations as to the future.

No. 13

The Ordinance, when it was submitted for non-disallowance, was not found to be altogether to the Secretary of State's satisfaction, and Lord Passfield pointed out that sections 30 and 34

No. 14

provided for Appeals to a Provincial Commissioner only. As he considered the law ought to be an appeal begins only in certain cases. He therefore suggested that cases which do not find their way to the

Courts either by transfer under section 30(c) or by Appeal to the Supreme Court by way of stated case under section 34(4) should be a final Appeal to the Governor; and he suggested that amending legislation should be introduced at an early opportunity to effect this, or else reasons should be furnished for the contrary course. This was in

November 1930.

No. 3 on 17803(B)31.

In January, 1932, Sir Joseph Byrne said he did not consider the amendment of section 30 necessary, since the present provisions were working well and the rate of appeal was already quite enough.

No. 3 on 18010/32

In another despatch, also written in January, 1932, the Governor's position was amplified. If provision was made for an appeal to the Governor from every decision of a P.C. it was suggested that the Governor would be overwhelmed by frivolous appeals. It was further urged that on issues dependent on native law or custom Provincial Commissioners are the best judges.

No. 4

The Secretary of State replied that further consideration would be given to the amendment suggested in No. 14 on 16092/30 when the Ordinance came up for revision during 1933. (See in this connection Mr. Allen's minute of 24.3.32 on 18010/32.)

No. 2 on the present file

In January of this year the Governor reported on the general situation regarding native tribunals and recounted several difficulties that had arisen, notable amongst which was the fact that the original fees laid down had proved inadequate.

No. 4 on the file.

In reply the Secretary of State said that the point about the fees would doubtless be considered further by the Governor when reviewing the Native Tribunals Ordinance later in the year.

No. 7

In September last the Secretary of State again wrote pointing out that he was still waiting: (a) a report on the working of the system

system which ought to have been furnished in June; (b) the Governor's views as to the continuance of the Ordinance after the end of 1933.

Note

No. 8 now before us seems to ignore No. 7. It can hardly be held to constitute a proper exposition either of the working of the system or of the desirability of its continuance. All it does is to state baldly that continuance is desirable.



Air Mail

15

KENYA.



GOVERNMENT HOUSE,  
NAIROBI.  
KENYA.

No. 611

RECEIVED  
26 NOV 1933  
O. O. REGY

29 OCTOBER, 1933.

Sir,

I have the honour to refer to your despatch No. 40 of 14th January 1933, and to Sir Joseph Byrne's despatch No. 60 of 19th January 1933, on the subject of the working of the native tribunals Ordinance.

Under Section 44 of that Ordinance it is laid down that it shall continue in force until the 31st day of December 1933 and shall then expire unless renewed by Proclamation with the approval of the Secretary of State and Legislative Council.

2. The consensus of opinion among provincial Commissioners and District Commissioners is that the Ordinance has been most successful in its working and has fully justified itself. This view was endorsed by the Attorney General at a meeting of Legislative Council on the 10th August last, at which he made the following statement:-

"I have, speaking as Attorney General, no experience of the working of the native tribunals in their civil jurisdiction; but I have, on the other hand, a very intimate acquaintance with the criminal work which they do, and I have no hesitation at all, Sir, in saying that under the wise guidance and supervision of Administrative Officers these tribunals are doing excellent work and are meting out substantial justice."

3. In view of the foregoing opinions, with which I fully concur, I propose, subject to your

approval ...

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

approval, to ask for the consent of my Legislative Council at the forthcoming meeting in November, to the issue of a proclamation which will continue the operation of the Ordinance for a further period of 3 years or until repealed. I shall be grateful if your approval may be communicated by telegram.

4. A number of amendments, which in the light of experience are deemed to be advisable, are now under discussion; and I hope to submit an amending Bill for your consideration at an early date embodying those which commend themselves to this Government.

I have the honour to be,

Sir,

Your most obedient, humble servant,



ACTING GOVERNOR.

Mr. J 18-9 fs

Mr.

Mr.

Mr. Parkinson

Mr. Timinison

Sir G. Ballmley

Sir J. Shuchburgh

Prinip. U.S. of S.

Prinip. U.S. of S.

Secretary of State

Air Mail

Answered by No 8.

O.N.  
R 19 SEP  
D 19

19 Sept. 1933

Sir

**DRAFT**

Kenya

770 721

O. A. G.

I have the hon to ack. receipt  
of your despatch No 498 of the 28<sup>th</sup> of  
August 9 to inform you the O.N.  
will not be advised to exercise the  
power of disallowance in respect of  
Ordinance No XXXI of 1933 of the  
legislature of Kenya entitled an  
Ordinance to amend the Native Tribunals  
Ordinance, 1930

In his telegram No 75 of the  
9<sup>th</sup> of June 1930 my predecessor  
asked to be furnished with a report  
on the working of the system not later  
than the 30<sup>th</sup> of June in 1931, 1932,  
or 1933 and requested that the last  
of these reports should be accompanied  
by definite recommendations as to  
the future course. In his despatch No  
695 of the 7<sup>th</sup> of Dec. 1931, Sir Joseph  
Byrne explained that he was not yet

(16092/30  
No 10)

**FURTHER ACTION.**

No 1 on  
18010/32

in a position to furnish a full report,  
and in my despatch 790 920 of the 20<sup>th</sup> of  
Dec. 1932 I enquired when it might  
be expected. A report was furnished  
accordingly in Sir Joseph's papers despatch 790  
60 of the 19<sup>th</sup> of Jan. <sup>1933</sup> This year

No 2 on  
18010/32

No 2 on  
3057/33

The report was received in time and have  
I feel satisfied your views as to the continuance  
of the Ordnance works in close connection with

3<sup>rd</sup> of Dec. and I have remained  
3<sup>rd</sup> I have therefore to request that you

will furnish me, as soon as may be  
possible, with your views as to the

future continuance of the Ordnance  
works in time for me to consider  
the situation before the Ordnance expires  
in December

(Sgd.) P. CONLIFFE-LISTER

KENYA.

No 498.



18. / 6  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
18 SEP 1933  
REGD

28 August, 1933

Sir,

*Amended (7)*  
I have the honour to forward herewith two authenticated and twelve printed copies of an Ordinance intituled "the Native Tribunals (Amendment) Ordinance 1933" which duly passed its third reading in the Legislative Council on the 10th August, 1933, and to which I assented in His Majesty's name on the 22nd August, 1933, together with a copy of the Legal Report by the Attorney-General.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Arthur Wood*

ACTING GOVERNOR.

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

LEGAL REPORT

THE NATIVE TRIBUNALS (AMENDMENT) BILL, 1933.

This Bill amends the Native Tribunals Ordinance, 1930, by conferring the power of hearing appeals from tribunals on all District Officers instead of restricting such power to District Commissioners as at present.

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

Nairobi,

11th August, 1933.

*R. O. O'Connell*  
ATTORNEY GENERAL.

No. XXXI.

1933



Colony and Protectorate of Kenya.

IN THE TWENTY-FOURTH 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 27 day of August,  
1933.

H. MONCK-MASON MOORE.

*Acting Governor.*AN ORDINANCE TO AMEND THE NATIVE  
TRIBUNALS ORDINANCE, 1930

**ORDINANCE No. XXXI of 1933**

**An Ordinance to Amend the Native Tribunals Ordinance, 1930.**

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 Native Tribunals (Amendment) Ordinance, 1933," and shall be read as one with the Native Tribunals Ordinance, 1930, hereinafter referred to as "the Principal Ordinance."

2. Section 33 of the Principal Ordinance is hereby amended by substituting the words "a district officer" for the words "the district commissioner"

Short title.  
No. 33 of 1930.  
Amendment of section 33 of the Principal Ordinance.

3. Section 34 of the Principal Ordinance is hereby amended by substituting the words "a district officer" for the words "the district commissioner" in sub-sections (1) and (2) of the section, and by substituting the words "district officer" for the words "district commissioner" in sub-sections (3) and (4) of the section.

Amendment of section 34 of the Principal Ordinance

4. Section 37 of the Principal Ordinance is hereby amended by substituting the words "district officer" for the words "district commissioner."

Amendment of section 37 of the Principal Ordinance.

5. Section 43 of the Principal Ordinance is hereby amended by substituting the word "following" for the word "following" in the second line of the section

Amendment of section 43 of the Principal Ordinance.

Passed in the Legislative Council the tenth day of June, to the year of Our Lord one thousand nine hundred thirty-three.

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.

**H. F. BAKER**

*Acting Clerk of the Legislative Council*



5

GOVERNMENT NOTICE No. 69

THE ROADS PROTECTION ORDINANCE, 1924.

ORDER

IN EXERCISE of the powers conferred upon him by section 3 of the Roads Protection Ordinance, 1924, His Excellency the Governor, with the concurrence of the Provincial Commissioner, Coast, has been pleased to order that the road described in the Schedule hereto be closed to all wheeled traffic other than—

- (a) Pedal cycles.
- (b) Motor-cycles with or without sidecar attachments.
- (c) Motor vehicles not exceeding 3,000 lb. tare weight, but excluding those fitted with metal tyres.

By Command of His Excellency the Governor

Nairobi.

23rd January, 1933

W. M. LOGAN,

for Colonial Secretary

SCHEDULE.

The new Tanga Road from Muhaka to Langa Langa via Kikoneni and Mrima.

GOVERNMENT NOTICE No. 70

THE NATIVE TRIBUNALS ORDINANCE, 1930.

ORDER

IN EXERCISE of the powers conferred upon him by section 14 of the Native Tribunals Ordinance, 1930, His Excellency the Governor has been pleased to order as follows:

1. All charges for offences against the sections mentioned in the second column of the Schedule hereto of the Ordinances mentioned in the first column of the Schedule hereto may be heard and determined by any native tribunal to the extent to which such native tribunal is by a warrant empowered to hear and determine such charges.

2. Notwithstanding anything in this Order contained no native tribunal shall be empowered to hear and determine any charge under section 252 or section 295 of the Penal Code if the subject-matter of the charge exceeds twenty-five shillings in

value or under section 255 of the Penal Code if the subject-matter of the charge exceeds twenty shillings in value.

3. Where a native tribunal is by this Order, and by its warrant empowered to hear and determine a charge for any offence it shall be entitled also to hear and determine a charge for attempting to commit or being an accessory after the fact to such offence.

By Command of His Excellency the Governor

Nairobi,

This 25th day of January, 1938.

A. DE V. WADE

for Colonial Secretary.

#### SCHEDULE

Ordinance	Section
1. The Outlying Districts Ordinance, Chapter 25	The whole Ordinance.
2. The Native Hut and Poll Tax Ordinance, Chapter 51	The whole Ordinance.
3. The Gambling Ordinance, Chapter 72	Sections 3, 4 and 5.
4. The Public Health Ordinance, Chapter 124	Sections 18, 19(1) (a) and (2), 40 and 46.
5. The Native Registration Ordinance, Chapter 127	Section 4.
6. The Native Foodstuffs Ordinance, Chapter 135	The whole Ordinance.
7. The Forest Ordinance, Chapter 149	The whole Ordinance.
8. The Kenya Cotton Ordinance, Chapter 154	The whole Ordinance.
9. The Diseases of Plants Prevention Ordinance, Chapter 155	The whole Ordinance.
10. The Diseases of Animals Ordinance, Chapter 157	Section 3(1) (a) and (d) and Rule 21.
11. The Prevention of Cruelty to Animals Ordinance, Chapter 160	The whole Ordinance.
12. The Game Ordinance, Chapter 161	The whole Ordinance.
13. The Fish Protection Ordinance, Chapter 162	The whole Ordinance.
14. The Trespass Ordinance, 1924	The whole Ordinance.
15. The Wildlife Ordinance, 1925	Sections 2, 3, 4, 5, 6 and 7.
16. The Crop Production and Live Stock Ordinance, 1926	The whole Ordinance.
17. The Game Birds Protection Ordinance, 1926	The whole Ordinance.
18. The Penal Code	Sections 72, 73, 84, 118, 119, 120, 121, 169, 217 (1), 218, 222 (a) and (c), 228, 229, 231 (a) and (c), 252, 255, 297, 299, 295, 296, 310 and 365.

C. O.

3057/33 Kenya.

23  
H

Mr. *Wool* 17/4/33

Mr. *Hall* 19/4

Mr. *Frederick*

Mr. *Parkinson*

Mr. *Tomlinson*

Sir *C. B. B. B.*

Sir *J. Stuckburgh*

Peru, U.S. of S.

Peru, U.S. of S.

Secretary of State

RECEIVED  
R 19 APR  
D 14 11

20 April, 1933.

Sir,

**DRAFT.**

(No. 2)

Kenya.

No. *26*

Gov.

I have etc. to acknowledge the receipt of your despatch No. 60 of the 19th of January, reporting on the working of the system of Native Tribunals.

2. I note from paragraph 4 of the despatch that the original fees as laid down by the Fees and Fines Rules, 1931, have in some cases proved inadequate, and that, in spite of certain increases, the fees of most of the Tribunals in the Kikuyu Province are still insufficient to pay the salaries of the Tribunal Elders. You will no doubt

consider this point, inter alia, when reviewing the Native Tribunals Ordinance at a later date.  
I have etc.  
(for the Secretary of State)  
(Signed) PLYMOUTH

and if.

para 11 of 2

para 6



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

KENYA  
No. 60

RECEIVED  
19 JANUARY, 1933.  
10 FEB 1933  
COL OFFICE

*Handwritten notes:*  
18108/32  
16092/30

No 5

18010/32

No 10

16092/30

No 1 18010/32

No 2

18108/32

Sir,

I have the honour to refer to your despatch No. 920 dated 20th December, 1932, in which you ask when the report on the working of the system called for in your telegram No. 76 of 5th June, 1930, may be expected. I fear that there has been some misunderstanding with regard to this matter. My first Report was sent to you on the 7th December, 1931, despatch No. 695, in which I explained that the reorganisation of the existing Tribunals was causing delay, and that a further Report would be sent at a later date. This explanation was acknowledged by you in your despatch No. 40, of 14th January, 1932. I have refrained from sending you a further Report because as will be seen from a later paragraph of this despatch the reorganisation is still not complete. At the same time a detailed account of the working of the Tribunals during 1931 was given in Chapter IV of the Native Affairs Department Annual report for that year.

2. I have now to report that the working of the organisation of the native tribunals throughout the Colony has met with a reasonable measure of success.

In ...

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

25

In the Nyanza Province complete reorganisation has taken place in the Central Kavirondo District only. The system appears satisfactory, though it is too early yet to say definitely whether it will prove entirely successful. In the North Kavirondo District no reorganisation has taken place but Warrants are to be issued in 1935. In the South Kavirondo District there has been no actual change except that all the old native tribunals now have a warrant under the 1930 Ordinance. In the South Lamota District three Native Tribunals have been established by warrant under the 1930 Ordinance but they have little to do when compared with the three Kavirondo Districts, as the Kipsigis do not indulge in much litigation.

The Provincial Commissioner, Kikuyu Province, reports that all the native tribunals in his Province have been reorganised under the new Ordinance and are working most satisfactorily.

In the Machakos and Kitui Districts of the Uthmanya Province the tribunals are reported to be working smoothly and efficiently. In the former District a complete reorganisation has taken place while the system that has been in force in the latter District for the last 3 years is being carried on, new tribunals being established by warrant.

In the Masai Province the native tribunals have not been reorganised as to date they continue to work satisfactorily and are easily able to cope with the small amount of litigation.

In the Nandi and West Pokot Districts of the Azolia Province there has been little work done by the tribunals; in the former District the tribunals have been ...

been reorganised and appear to be working satisfactorily while in the latter district the old tribunals have a warrant under the new Ordinance.

The Provincial Commissioner, Rift Valley Province, reports that three new Native Tribunals have recently been formed in the Sukuru, Maivasha and Laikipia Districts, all of which are Kikuyu. It is too early yet to report on them but the Provincial Commissioner anticipates that they will prove successful. In the Searge District of this Province the Warrants establishing tribunals, one each for the Suk, Kjemps and Kamasia, have been completed. The tribunals in the district are still very inexperienced - they have ~~1/2~~ work to do.

The West Suk Native Tribunal of the Turkana Province was gazetted in December 1929 and when the new Ordinance came into force a few months later reorganisation was practically unnecessary. It is working very satisfactorily.

al/

3. Several difficulties, however, have been encountered. A Bill to amend sub-section (4) of Section 34. of the Principle Ordinance was passed by Legislative Council last month. This sub-section has been amended in order to allow a litigant in a civil action, when the sum involved is not more than 250, to take the case to the Supreme Court. As the law now stands a litigant who has been successful in the District Commissioner's Court in obtaining a judgment for more than 250 cannot, if there is an appeal to the Provincial Commissioner in which he is unsuccessful ...

unsuccessful, carry the case to the Supreme Court, noting that the law provides that a case can be carried to the Supreme Court only if the aggrieved party has been ordered to pay a sum more than £50. It is admitted that this was a restriction which might undoubtedly work hardship and it was therefore decided to extend the right to carry a case from the Provincial Commissioners to the Supreme Court by providing that a case may be so carried when the sum involved is more than £50.

No 1  
18010/32

4. Experience has shown that the original rules as laid down by the rules enclosed with my Despatch no. 695 of 7th December 1931, were in no way inadequate for the payment of sitting fees and other costs of the tribunals; as a result Section 4 (a) of the Schedule attached to the Fees and Fines Rules 1931, was altered from 10 per centum to 20 per centum, the actual amount to be left to the discretion of the Provincial Commissioners, while Section 4 (c) of the same Schedule dealing with fees in land disputes, was altered from Shs. 10/- to Shs. 100/-. Copies of these rules, which are cited as the Native Tribunals (Fees and Fines) (Amendment) Rules 1932, are attached.

In spite of this, however, it has been found that the fees of most of the Native tribunals in the African Province are insufficient to pay for the salaries of the Tribunal Elders and in one or two cases the local Native Council have voted a certain sum of money by way of Supplementary Estimates to make up the deficit. This situation was discussed by Provincial Commissioners at a recent Meeting at which the question arose as to whether the pay of tribunal elders should be reduced or whether their numbers should be reduced or alternatively, the

costs increased. It was generally conceded that it would be a bad principle to increase the costs and at the same time it was agreed that a reduction in the number of elders was taking place and that this would help matters to a certain extent. It was not contemplated originally at the time these Rules were promulgated that there might be a deficit in the Fees and Costs accounts as you will note that Rule 6. enjoins that "the District Commissioner after payment of the sitting fees to the President, if any, and the members of the tribunal and any other authorized costs of the tribunal shall pay the balance into the Local Native Council Fund..." Provincial Commissioners have therefore recommended as a temporary measure only that Local Native Councils should meet the deficit by passing Supplementary Estimates. The situation is being investigated and when the question of the future of this Ordinance arises during 1933, in view of Section 44. of the Ordinance, I hope to be in a position to report more fully on the accounting side of the management of these Tribunals.

b. The real cause of the delay has arisen from the difficulty of deciding what jurisdiction should be granted to the Native Tribunals under Section 13. of the Ordinance. By Section 13. of the Ordinance, jurisdiction of native tribunals is limited to cases under (a) Native Law and Custom, (b) Native Authority Ordinance (Chapter 129, Revised Laws of Kenya), (c) Any Ordinance which authorises native tribunals to administer it, and (d) Any law which tribunals may be authorised by the Governor to administer under Section 14. In practice it has been found desirable for certain tribunals to try cases other than those under

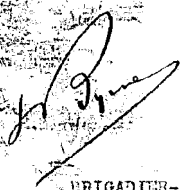


(a), (b) and (c) above and applications are now being made by the Provincial administration for the necessary authority. The method of procedure which it is proposed to adopt for such authority is to publish in the Gazette an order signed by the Governor specifying the Ordinances and Sections of Ordinances under which Native Tribunals may try cases provided that they are authorised to do so by their warrants.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL,  
GOVERNOR.

GOVERNMENT NOTICE NO. 106.

THE NATIVE TRIBUNALS (ORDINANCE), 1930.

HSU L E S.

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

1. These Rules may be cited as "the Native Tribunals (Fees and Fines) (Amendment) Rules, 1931" and shall be read as one with the Native Tribunals (Fees and Fines) Rules, 1931, hereinafter referred to as "the Principal Rules".

2. The Principal Rules are hereby amended by the deletion of the Schedule and the substitution in its stead of the Schedule annexed hereto.

3. The Native Tribunals (Fees and Fines) (Amendment) Rules, 1931, are hereby revoked.

BY Command of His Excellency the Governor in Council.

Nairobi,

SD: JAMES BARTON.  
CLERK TO THE EXECUTIVE COUNCIL.

This End on 21 February 1931.

## SCHEDULE \*

FEES LEVIABLE IN NATIVE TRIBUNALS.

1. In criminal cases other than cases brought by private prosecutors ... No fee.
2. In criminal cases brought by private prosecutors ... Sh.5.
3. witness summons ... Sh.1.  
 Provided that if the summons is served outside the jurisdiction of Native Tribunal issuing the summons, the ordinary court fees for service shall operate.
4. (a) In civil suits or matters where the subject matter is capable of being estimated at a money value ... Such fee, if any, as the Provincial Commissioner shall order, not exceeding twenty per centum of the amount involved.
- (b) In civil suits or matters where the subject matter is not capable of being estimated at a money value (except land disputes) ... Sh.0.
- (c) In land disputes ... Sh.100.
- (d) Generalisation ... 5 per centum of the amount decreed with a minimum fee of Sh.1.
5. On appeal in civil suits and matters ... Such fee, if any, as the Provincial Commissioner shall order, not exceeding twice the amount of the fee leviable in the first instance.  
 Provided that if in the opinion of the Provincial Commissioner any appeal which is brought is of a frivolous or vexatious nature, he may order the payment of such fee not exceeding ten times the amount of the fee leviable in the tribunal of the first instance as he may think fit, and such amount of such fee which shall exceed twice the amount of the fee leviable in the tribunal of the first instance shall, notwithstanding anything contained in Rule 6, be paid into the general revenue of the Colony.

KENYA



GOVERNMENT HOUSE  
NAIROBI

No 17

RECEIVED  
- 4 FEB 1933  
COL. OFFICE

KENYA  
January 1933.

*W/ Legal Report to Gov Uya (2 on 35 u/s/33 Reg)*

*Amud (3)*

Sir,

I have the honour to forward herewith two authenticated and 12 printed copies of an Ordinance intituled "The Native Tribunals (Amendment) Ordinance, 1932" which duly passed its third reading in the Legislative Council on the 17th December 1932, and to which I assented in His Majesty's name on the 30th December 1932, together with a copy of the Legal Report by the Attorney General.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL.

G O V E R N O R .

THE RIGHT HONOURABLE

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

## LEGAL REPORT.

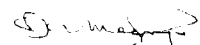
THE NATIVE TRIBUNALS (AMENDMENT) BILL, 1932.  
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In civil cases, under the Native Tribunals Ordinance, 1930, the right of appeal to the Supreme Court by way of a case stated is confined to an aggrieved person who has been ordered to pay a sum of more than £50.

2. This provision limits the appeal of an unsuccessful plaintiff, in a case in which more than £50 is involved, to a Provincial Commissioner.

3. The Bill amends the law so that an appeal to the Supreme Court by way of a case stated is open to either party to a suit in which the amount involved is more than £50.

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

  
ATTORNEY GENERAL.

Nairobi,

19th December, 1932.

## LEGAL REPORT

## THE NATIVE TRIBUNALS (AMENDMENT) BILL, 1932.

In civil cases, under the Native Tribunals Ordinance, 1930, the right of appeal to the Supreme Court by way of a case stated is confined to an aggrieved person who has been ordered to pay a sum of more than £50.

2. This provision limits the appeal of an unsuccessful plaintiff, in a case in which more than £50 is involved, to a Provincial Commissioner.

3. The Bill amends the law so that an appeal to the Supreme Court by way of a case stated is open to either party to a suit in which the amount involved is more than £50.

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

(sgd) A. D. A. MacGregor.

ATTORNEY GENERAL.

Nairobi,

19th December, 1932.



Colony and Protectorate of Kenya

IN THE TWENTY-THIRD YEAR OF THE REIGN OF  
HIS MAJESTY KING GEORGE V.  
JOSEPH ALOYSIUS BYRNE, K.O.M.G., K.B.E., C.B.,  
Governor.

Assented to in His Majesty's  
name this 30 day of December, 1932.

J. BYRNE

Governor.

AN ORDINANCE TO AMEND THE NATIVE  
TRIBUNALS ORDINANCE, 1930

10

THE NATIVE TRIBUNALS (AMENDMENT) BILL, 1932

In civil cases under the native tribunals  
ordinance, 1930, the right of appeal to the  
court by way of a case stated is confined to an aggrieved  
person who has been ordered to pay a sum of more than  
500.

3. This provision limits the appeal of an  
amalgamated district in a case in which no more than  
500 is involved, to a Provincial Court case.  
4. The Bill amends the law so that an appeal to

the Supreme Court by way of a case stated is open to  
either party to a suit in which the amount involved is  
more than 500.

In its operation, the Bill amends the Governor  
may properly amend to this Bill in the name and on  
behalf of His Majesty.

(Sd/-) A. D. A. [Signature]  
ATTORNEY GENERAL



36  
END

No. XXXV of 1932

An Ordinance to Amend the Native Tribunals Ordinance, 1930.

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 Native Tribunals (Amendment) Ordinance, 1932," and shall be read as one with the Native Tribunals Ordinance, 1930, hereinafter No. 59 of 1930, called "the Principal Ordinance."

2. Sub-section (4) of section 34 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

(4) Any person aggrieved by any order or decision of the Provincial Commissioner, made or given upon appeal from a District Commissioner, whereby such person is sentenced to a term of imprisonment of four months or more, or to pay a fine exceeding fifteen pounds, or, in civil proceedings other than cases in connexion with marriage or inheritance or relating to immovable property, where the sum involved is more than fifty pounds, excluding costs, may within thirty days from the date of such order apply to the Provincial Commissioner to state in case for the consideration of the Supreme Court, and the Provincial Commissioner shall thereupon state and sign such case and transmit it to the Registrar of the Supreme Court."

Passed in the Legislative Council the seventeenth day of December, in the year of Our Lord one thousand nine hundred and thirty-two.

This printed impression has been carefully compared 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.

Acting Clerk of the Legislative Council

36  
END

No. XXXV of 1932

An Ordinance to Amend the Native Tribunals Ordinance, 1930.

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 Native Tribunals (Amendment) Ordinance, 1932," and shall be read as one with the Native Tribunals Ordinance, 1930, hereinafter called "the Principal Ordinance."

Short title:  
No. 39 of 1930.

2. Sub-section (4) of section 34 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Amendment of section 34 (4) of the Principal Ordinance.

(4) Any person aggrieved by any order or decision of the Provincial Commissioner made or given upon appeal from a District Commissioner, whereby such person is sentenced to a term of imprisonment of four months or more, or to pay a fine exceeding fifteen pounds, or, in civil proceedings other than cases in connexion with marriage or inheritance or relating to immovable property, where the sum involved is more than fifty pounds, excluding costs, may within thirty days from the date of such order apply to the Provincial Commissioner to state a case for the consideration of the Supreme Court, and the Provincial Commissioner shall thereupon state and sign such case and transmit it to the Registrar of the Supreme Court."

Passed in the Legislative Council the seventeenth day of December, in the year of Our Lord one thousand nine hundred and thirty-two.

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

Acting Clerk of the Legislative Council