

1931

*Kenya*

No.

17186

SUBJECT

C.O 533/411

*Bill to amend (1) Employment of Native Ordinances*

*(2) Resident Native Labourers Ordinance*

Previous

16258/30

Subsequent

- (1) 23125/31 (Native Labourers)
- (2) 23221/31 (Amendment of Ordinance)

*By the hand*

1. *See Report 219* \_\_\_\_\_ *20 April '28*  
States as to amendments made to draft bills,  
purpose to amend Employment of Natives Ordinance  
in various states and requests be informed by  
telegram if any objection to these amendments

*9/11/28 T.T. [unclear]  
[unclear] [unclear] [unclear]  
[unclear] [unclear] [unclear]  
[unclear] [unclear] [unclear]  
[unclear] [unclear] [unclear]*

Mr. Allen  
Mr. Parkinson.

We have discussed this and the following  
minute represents the conclusions reached:-

In 1928 the Governor sent home Bills to  
amend these three Ordinances. The Secretary of  
State replied making various criticisms in November  
1928. In July last the Governor sent home amended  
versions of the Bill on which the Secretary of  
State sent further comments in September.

The Governor now states for the Secretary  
of States information, that he proposes to  
introduce two of the Bills:- those to amend the  
Employment of Natives Ordinance and the Native  
Registration Ordinance; at the forthcoming  
session of Legislative Council. The Session  
starts on the 2nd June and it is usual to publish  
Bills for introduction ~~14 days beforehand~~ *14 days beforehand*

As a result of the discussions over the last three  
years, agreement has been reached as to the contents  
of the Bills, but there are certain new  
circumstances which make further consideration  
of them desirable. In order to give the Office  
a few days for this consideration, a telegram  
has been sent to the Governor asking him not  
to publish them before receipt of a further  
telegram which is promised if possible for early  
next week.

*Authorised  
The Secretary  
[unclear]*

The Office has not so far considered whether it is desirable that there should be any ~~minor~~ amendments of the main Ordinances in addition to those included in the draft Bills. It is, however, now necessary to do this, since they have not been reviewed since the publication of the memorandum on Native Policy, <sup>as are definitely discriminatory in that</sup> and they contain provisions applying only to natives and not equally to persons of other races.

#### Native Registration Ordinance.

The amendments which the proposed Bill would make are quite small and do not affect the main principle of <sup>the</sup> registration system. This system in its present form is very difficult to reconcile with the ~~main~~ principles of the White Paper, and it is one of the main grievances ~~of~~ of the native witnesses. There can be no doubt that the whole Ordinance must be remodelled. This cannot be done all in a moment, and consultation with the Governor will be inevitable. In the circumstances it would be rather a pity to introduce this minor amendment, since it would certainly give the impression that no further amendments would be made. There appears to be no urgency about this amendment, which is merely to provide ~~for the issue of~~ a "certificate of further service" ~~to~~ an employee returning to his service. ~~Instead of a certificate of discharge.~~

It

It is suggested that it should be explained to the Governor that the Secretary of State considers a comprehensive revision of the Ordinance to be necessary and that in the circumstances he considers that it would be better that the Bill should not be published.

After the telegram has gone, <sup>XRA</sup> should start a file dealing with this Ordinance, only and ~~consulting~~ consulting me as to what should go on it.

#### The Employment of Natives Ordinance.

The whole subject of Colonial labour legislation is to be considered by a new Office committee. Colonial Governments have already been asked in a circular of August last to consider whether it is not possible to abolish the penal sanction in labour ~~contracts~~ contracts and the Governor says that he is considering the subject. The Secretary of State however in his despatch of last September said that he did not wish this amending Bill to be held up pending this consideration since the Bill contains a great many provisions which are long overdue, e.g., (1) That security may be required of employers for the payment of wages, (2) that advances of wages must be limited to one month, (3) various provisions as to sanitation, housing etc. Presumably, therefore, *a fortiori*, the Bill should not be held up pending any conclusions of the Office committee. It has been carefully examined here and it contains nothing

but, instead of an endorsement of discharge, an employer may



of Native Ordinance (which  
upheld the old Native  
servants legislation)  
I agree that amendment  
has to be made  
to the proposed penalty  
that this Government make  
it clear that this is  
not final, as the whole  
of the Penal Code  
is to be considered

But even so I think that  
while the Penal Code  
continues, we must  
revert practically - &  
on the lines of what  
I proposed in X-3008431,  
the fine penalty for offence  
under § 47 will be  
fine up to 1/2 month's  
wages & in default  
one month's imprisonment.

under § 48 fine up  
to Rs. 100 or  
in default 6 months  
imprisonment  
under § 53, or up

to be added to, which  
suggests amendment  
the penalty so as to  
in default 6 months  
imprisonment

I would like to hear exactly  
what is now suggested  
I put up a copy of the  
which is of course  
entirely for comment

See Parliament  
17.5.31

I agree, as to both bills  
Wed 18.5.31

Sec of State  
(through Mr. St. John)  
Lodge  
9th 6  
18.5.31

I think the Sarkis and the Parkman  
have admirably carried out what is  
possible just now of the application  
of the smile paper. But it is important  
that further revisions should be made  
and that their coming should be anticipated  
by the Government  
18.5.31

P. 19/5  
P. 19/5

to be at 161  
17/1/11  
17/1/11

4. Sir Byrne 11/3  
to write paper to deal with labour legislation  
to a whole and before employment of natives  
bills should wait until Resident Native Labour  
and Native legislation bills are ready when  
provision would be explained to unofficial  
employers of labour in hope of arriving  
agreement.

5. Sir J. Byrne 10/3  
strongly recommends employment of natives  
bills to deal with when main principles  
established.

1. In many cases nothing can  
be done at this session of the  
Leg. Co. This is therefore  
no terrific urgency.

2. In a fortnight or so  
the Gov will get an S.C. about  
Native Registration which  
will give him something to  
think about - any legislation  
introduced as a result  
could raise a storm of  
opposition. The S.C. has

See on 17/1/11

The Committee is  
in abeyance  
during the  
Parliamentary  
 recess.  
A.G.C.P.

asked as a first step for a report. It is therefore  
most unlikely that legislation on this subject can be  
introduced before next year.

3. As regards the Colonial Labour Committee  
is continuing its labours. They are to be expedited  
as much as possible but there is no telling when they  
will be completed.

4. The Question is: Is the Governor to be  
pressed against his will to introduce the Employment  
of Natives Amendment Ordinance (some of the  
provisions of which are highly desirable and long  
overdue) as an interim measure this autumn, or is he  
to be allowed to wait till some time next year when  
the Colonial Labour Committee will have reported  
and their suggestions can be embodied in the  
legislation and when he will be able at the same  
time to introduce the bill to amend the Registration  
Ordinance?

5. One would have thought that there was not  
much point in waiting for the bill to amend the  
Native Registration Ordinance since this is bound  
to be unpopular, and to associate it with the bill  
to amend the Employment of Natives Ordinance would  
be to prejudice the chances of the latter. There is  
however more to be said for waiting for the report  
of the Colonial Labour Committee.

6. On the whole I would suggest telling the  
Governor by telegraph that the Secretary of State  
agrees that the Employment of Natives Amendment  
Bill should not be proceeded with pending receipt  
of

of a further communication in regard to penal sanctions - Reference should also be made to the despatch on the Native Registration Ordinance and the Governor might be informed that Secretary of State would not think it necessary to suspend amendment of the Employment of Natives Ordinance until action can be taken on the Registration Ordinance.

& b. up accordingly on 1st November.

C.G. Eastwood.  
13.8.31.

Sir C. Bottomley.

Mr. Allen and I have discussed, as to the Colonial Office Labour Committee, we understand that Mr. Askin proposes to suggest to Dr. Shields that the Committee should produce interim reports. If this is done, a report covering Masters and Servants legislation (including the important question of penal sanctions) may be available, say, by the end of October.

There seems a case for waiting for that - and in any event the Colonial Government cannot now get on with the amending legislation referred to until the autumn session at earliest.

The "urgency" for amendment of these three Kenya Ordinances came from the other end rather than from here, although there are certainly provisions in the Employment of Natives Ordinance which we should like to see revised.

We agree with the action proposed by Mr. Eastwood, but perhaps it would be well to add that while Secretary of State has no objection to the Governor taking into confidence the

Executive

Executive of the Convention of Associations and Employers of Labour, he will understand that the Secretary of State is satisfied that amendment of the Employment of Natives Ordinance is needed at an early date and that it is necessary at least to revise the native registration system and that he would not be disposed to vary his opinion on any of the questions of principle involved.

Recd Parliament  
14.8.31

Sr S. Gilbert

I agree. The proposition of the  
Nid Council, with an amendment  
that it is enough an interim measure,  
would not be well received and is  
better avoided.

As to Mr. Parkinson's last para:  
it is obvious that employers of  
labour can advise employer how  
to do it, provided that they  
are given no chance of doing anything  
into reasons for not doing it at all  
as proposed?

Wed. 14.8.31.

Sec of State  
(through Dr. Shields)

I agree with the action proposed  
E.H.G. 14.8.31

Jul 4 1930  
- 2/16258/30  
N<sup>o</sup>.

I agree! As this has not been able to be decided before the change of Mr. P. I am not sure whether it will be thought necessary to leave it over. As there is nothing decisive about it, however, I think it might well go thro'.

I am making arrangements for Mr. Parkin to report, re the Labour Act, to my successor, who might either provide himself or arrange for Mr. Green to provide as he has previously done - in my absence. I agree that his first business might well be to produce an interim report on decisions already taken so that they can be available in the consideration of such legislation as this.

T. D. 25.8.31.

I agree  
P 2578

There was not time to discuss <sup>part of</sup> this before Lord Pasfield gave up office. The telegram will therefore now have to go as from Mr. Thomas, and the wording will have to be adapted. I send on a draft accordingly on the assumption that it will not be desired to vary the instructions already given. In that case there would seem some positive advantage in the telegram coming from the <sup>new</sup>

Secretary

Secretary of State.

The telegram in No. 3 in this file explains the position as regards the Native Registration Ordinance, and also the latest amendments proposed in the Employment of Natives Bill. As regards earlier amendments agreement has already been arrived at with the Colonial Government.

J. H. H. C.

2/18/31

[Since dictating the above I have been a member of the Wilson Committee. He says that Mr. Thomas has told him that there is to be no change in policy. He thinks my suggestion of Mr. P. as now drafted.]  
J. H. H. C.

Secretary of State

you should see

2-18-31 I think that you need have any hesitation in authorising the draft telegram which is now being approved by Lord Pasfield, which merely has the effect of deferring legislation for the present on all these controversial matters.

2/18/31



P.S. ...  
...  
...  
with certain members

V.S.  
11/9/31  
at once

6 Tel To 270 to Governor Kenya 1/9/31

Noted 30/9/31  
Bring up at next meeting  
H.A. Allen  
2/9

In Eastwood  
Please see Mr. Allen's  
minute of 1/9/31  
about  
30/9/31

to Jackson  
Is it not the case that  
the Lagos cases & suspensions  
do not have been - but that  
the matter is not the

System of penal sanctions will be  
through.

H.A. Allen  
2/10/31

To Sir Kenneth ...  
Committee to obtain copies of Report of C.L.C.  
regarding Penal sanctions

As regards Mr. Allen's minute of the 7th  
of October, the position is that the Colonial Labour  
Committee has (at any rate for the present) abandoned  
its programme of work as envisaged by Dr. Shiels,  
and is now considering only such specific questions  
relating to Colonial labour legislation as may be  
referred to it in connection with the normal depart-  
mental work on that subject. There is no present  
intention of asking the Committee to consider any  
further questions arising out of the Employment of  
Natives (or Master and Servant) Ordinances, though  
of course if there are any points on which any  
Department would like an expression of opinion by  
the Committee, the Chairman would no doubt be pre-  
pared to convene a meeting.

In addition to its recommendations in  
regard to penal sanctions (enclosure to No. 7) the  
Committee has also made some recommendations in  
regard to recruitment (document C.L.C.16).

J.J. Baddeley  
13/1

P.T.S.

Mr. Allen

You asked me to consider what further action is required on this file now that the Colonial Office Labour Committee have reported regarding Penal Sanctions and their report has been sent out to Kenya with the Secretary of State's blessing.

The position regarding the Bill to amend the Employment of Natives Ordinance is this: that a Bill containing considerable amendments has been agreed with the Governor. The Governor is anxious not to introduce the Bill until he is able also to take action regarding the Native Registration Ordinance. The Governor's observations on the <sup>Emp. Ordinance</sup> are now being considered, but in P.O. 6 Mr. James told the Governor that he did not consider that the Employment of Natives amendment Bill need necessarily be held over until action could be taken on the Native Registration Ordinance. Further amendment to the Employment of Natives Ordinance will, however, be required if anything is to be done about Penal Sanctions.

Incidentally, the Kenya Government have never replied to the circular of 6th August, 1930, which requested information regarding labour condition generally. They promised a reply "in a few weeks" in March last, but nothing has come. Perhaps we might write as in draft herewith for consent.

See also in 80195/3A/31 kw - no. 13  
Further amendments will be necessary  
copy to various relevant Labour Comms.  
G. J. Allen  
20/32

Copy attached  
copy to be needed  
I have made considerable  
much of the  
copies that will  
be needed

I should prefer, if you have no objection, in order to avoid complications, to send the reminder in paragraph 6 of the draft in a separate despatch on 80195/3A/31, on which I have accordingly prepared a draft.

J. J. Allen

J. J. Allen  
30/1

7A

The last page has  
been drafted with  
to refer to  
the above

I put up a note in order to try & crystallise the position - & then added to this draft a reference to the amendments directed at the end of the P.O. to the Gov. in No. 3. These instructions are to a large extent obsolete now as explained at A in the note.

Mr. Allen

6/2/32

80195/32

I do not like too much efficiency of moving the T's by pointing out to the Governor priority of getting me to do, but I think this is reasonable for a round up of outstanding points. I have attached a few lines which I have written in a letter by which I have been I know of was sent to the Gov. on 2/32.

By air mail 8  
9/2/32

Letter 102

Conn

9 FEB 1932

Mr. Allen

arranged for  
delete from the list  
see with me for 80041/5/32  
Re: the Receipt for the Lab  
Order on Receipt (see 5/16)  
has not been furnished

J. J. [Signature]  
1/1/32

Mr. [Name]

Is it intended to take any  
further action on 80041/5/32

J. J. [Signature]

8/2/32

See on 80041/5/32

J. J. [Signature]  
1/1/32

17186/31.

*peg 11*

G.O.

- Mr. Eastwood
- Mr. Paslin
- Mr. Allen *Les...*
- Mr. Parkinson
- Mr. Tomlinson
- Sir C. Bolton *9/2/32 f*
- Sir J. Shuckburgh
- Perml. U.S. of S.
- Party. U.S. of S.
- Secretary of State

BY AIRMAIL OF 2nd FEBRUARY

C.D.  
R 9-FEE  
D 9

DOWNING STREET,

9 February 1932

Sir,

I have, etc., to refer to *the* correspondence ending with Mr. Thomas's telegram No. 270 of the 1st September, 1931, regarding the draft Bill to amend the Employment of Natives Ordinance

In his telegram No. 165 of the 19th May, 1931, Lord Passfield had stated that he wished to proceed with the Bill, but that he must ask that

it should be made quite clear when the Bill was introduced that this was an interim measure and that the whole question of penal sanctions for breach of labour contracts was under

review. In your despatch No. 119 of the 20<sup>th</sup> July 1931 you stated that you considered it wiser not to introduce

*for copy*  
**DRAFT**  
*(No. 6)*  
*file in 70093/7/31 Seal*

KENYA

NO. 102

Gov. Byrne

(No:3)

(No:4)

~~CAC~~  
~~...~~

an interim measure and made the proposal to which Mr Thomas agreed, that the matter should be deferred <sup>for a time</sup> until it was possible to deal with it as a whole.

3. I have now, in my despatch No. 11 of the 7th January, forwarded to you the recommendations of the Colonial Office Committee on Labour in the Colonies on the subject of Penal Sanctions. I have informed you that I

(See No. 7)

express myself in general sympathy with their recommendations, and I have asked you for your views as to their suitability for adoption as a general policy and also for your views as to the extent to which effect could be given to them forthwith.

4. ~~I~~ <sup>12</sup> that you will consider it possible to implement at least the greater part of the recommendations forthwith. <sup>will</sup> ~~In this event it would~~ be necessary to revise <sup>the</sup> ~~the~~ <sup>amend</sup>

Employment of Natives Ordinance, and this

revision will of course include reconsideration of the amendments directed at the end of Lord Passfield's

telegram No. 165 of the 29th Aug. 1931. *The*

*Authority will be left to the*  
Additional amendments will also be necessary as specified in your despatch

No. 544 of the 14th September 1931 and subsequent correspondence.

5. I also enclose, for your information, a copy of a recommendation made by the Colonial Office Committee regarding the recruitment of labourers.

I have etc.

(Sgd.) P. CUNLIFFE-LISTER

(No 3)

No. 13 on 80195/3A/31  
paras 5 and 10  
(also 21 and 30).

*LC Bolton's note to me  
This for action track  
at aft. consult. the  
taken as the measure  
has not at rest  
Official endorsement*

*11/11*

COLONIAL LABOUR COMMITTEE.

Recommendations regarding the recruiting of labourers in the more primitive territories.

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The Committee consider that the latest legislation and regulations for control of recruiting and protection of recruited labourers are satisfactory, but the older legislation should be brought up to date. They recommend however that recruitment of families rather than individuals should always be aimed at, except in cases of seasonal work or other work of short duration. No native should in any case be recruited without the family unless proper provision has been made for their maintenance during his absence. There is and should be in all cases a right to repatriation, but the question whether repatriation should be compulsory on the employee as well as the employer is one that must be settled by local circumstances.

The legislation now approved for Kenya prohibits professional recruiters. There is a difference of opinion as to the advisability of this course, which cannot we think be resolved without further experience.

In certain cases prohibitions exist against natives leaving the territory without permission. We consider that legislation of this kind should not be allowed save in most exceptional circumstances.

NOTE

7A

For convenience I attach this record of the amendments to the Employment of Natives Bill, which are still outstanding.

(1) The <sup>agreed</sup> amendments referred to in the Governor's despatch in No. 1 of 17180/31, together with the additional amendments <sup>proposed</sup> ~~referred to~~ in paragraph 11 of that despatch.

(3) The Secretary of State in his telegram of the 19th May 1931 wished the Governor to proceed with the Bill, including the amendments in paragraph 11 referred to above, subject

- (a) to later review of the whole question of penal sanctions (see (3) below), and
- (b) to a revision of the penalties generally in order to provide the option of a fine and a reduction of those under Sections 47, 48 and 53 of the Principal Ordinance (see (2) below).

(2) Sections 47, 48 and 53 relate to a variety of offences, and these penalties, together with the general penalties will now all have to be reviewed in the light of the despatch relating to penal sanctions generally. ~~As it is proposed that they should be put into two classes~~

(1) offences which will have to be removed from the Employment of Natives Ordinance and provided for in the Penal Code, and

(11) matters which are no longer to be regarded as offences subject to penalty, but to be dealt with as matters for damages.

(3) The revision of the legislation from the point of view of penal sanctions will have to be undertaken in the light of the Secretary of State's despatch No. 11



of the 7th January, 1932, a copy of which is attached  
 as (7) to this file.  
 (4) The further amendments arise out of certain  
 International Labour Conventions - see paragraphs 5  
 and 10 of No. 13 of 80195/31/31, and also the  
 Secretary of State's despatch Miscellaneous (2) of the  
 17th November, 1931, and the Governor's telegram No. 381  
 of the 16th December 1931 Nos. 21 and 30 in 80195/31/31

*J.H. Allen*  
 3/2/32

COLONIAL LABOUR COMMITTEE.

~~Draft professional recommendations regarding the recruiting of labourers in the more primitive territories.~~

The Committee consider that the latest legislation and regulations for control of recruiting and protection of recruited labourers are satisfactory, but the older legislation should be brought up to date. They recommend however that recruitment of families rather than individuals should always be aimed at, except in cases of seasonal work or other work of short duration. No native should in any case be recruited without the family unless proper provision has been made for their maintenance during his absence. There is and should be in all cases a right to repatriation, but the question whether repatriation should be compulsory on the employee as well as the employer is one that must be settled by local circumstances.

The legislation now approved for Kenya prohibits professional recruiters. There is a difference of opinion as to the advisability of this course, which cannot we think be resolved without further experience.

In certain cases prohibitions exist against natives leaving the territory without permission. We consider that legislation of this kind should not be allowed save in most exceptional circumstances.

17164 St. Joseph's Hospital, London 8064/4/31/32

KENYA  
No. 115

DOWNING STREET

7 January, 1932.

Sir,

In paragraph 4 of his Circular despatch of the 6th of August 1930 Lord Passfield expressed his general desire that any "penal sanctions" applicable to labour engagements should be eliminated or reduced to an absolute minimum, and that the relations of employer and employed should be left to be governed by the ordinary law of contract. The replies to that circular showed that, while the elimination of these penal sanctions is generally recognized as an ideal to be kept constantly in view, the Officers Administering the Governments of most of the dependencies in Tropical Africa are of the opinion that for some time to come it will be inexpedient to discard them.

2. Lord Passfield fully appreciated the force of the various practical considerations adduced in support of this view. Nevertheless he felt that it was desirable to examine the question whether the object which these penal sanctions are designed to serve could not be achieved by some other means, more in accordance with modern civilized usage. Moreover certain of these sanctions relate to offences which should be punishable by whomsoever they might be committed, and Lord Passfield felt

GOVERNOR

BRIGADIER GENERAL,

SIR JOSEPH A. DYER, K.C.M.G., K.D.E., C.B.

&c., &c., &c.

felt that their specific inclusion in Ordinances relating solely to the employment of natives of Africa was unnecessarily invidious.

3. Lord Passfield accordingly requested a Committee (which He had appointed to conduct a general review of Colonial labour legislation) to examine the question of these penal sanctions from the points of view indicated in the preceding paragraph. I now enclose a copy of the Committee's recommendations with which I find myself in general sympathy. I should be glad in due course to be furnished with your views as to their suitability for adoption as an indication of the general policy to be followed in dealing with this question as and when circumstances permit in the territory under your administration. In the event of your general agreement with these recommendations I should be glad to learn your views as to the extent to which effect can be given to them forthwith. In this connection I would invite your attention particularly to the recommendations in paragraph 10 as to the offences which might with advantage be removed from an Ordinance relating specifically to the employment of natives of Africa.

In this connection you will be interested to learn that the Legislature of the Gold Coast has now passed an Ordinance repealing provisions of Sections 43 (1), (5), 43 (1) (d), 44, 45, 46, 61, 62 and 63, of the Master and Servants Ordinance of that Colony.

5. The Governor of Sierra Leone has also submitted for my consideration a draft labour Ordinance containing the following provisions:

Complaint in case of dispute between employer and employed.

77. Whenever an employer or employed shall neglect or refuse to fulfil any contract of service, or whenever any question, difference, or dispute shall arise as to the rights or liabilities of either party, or as to any alleged misconduct, failure in duty, or ill-treatment of either party, or as to any alleged injury to the person or property of either party, under any contract of service, the party feeling himself aggrieved may lay a complaint before a Magistrate who may thereupon issue a civil summons to the party complained against, provided that the sum claimed (if any) for wages, damages or compensation does not exceed twenty pounds on balance of account.

G.C. Section 41. N. section 51, varied by inserting the important word "civil" before summons).

78. x x x x

Discretionary powers of court.

79. Upon any such complaint, as aforesaid the Magistrate may, sitting as a civil court of summary jurisdiction and in addition to any jurisdiction he might have exercised if this Ordinance had not passed, exercise all and any of the following powers; that is to say -

Mag. section 53. G.C. section 43, (varied) by inserting the word "civil" as above and omitting all powers of punishing either party by fine or imprisonment.

- (a) he may adjust and set off one against the other, all such claims on the part either of the employer or of the employed arising out of or incidental to the relation between them, as he may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and he may direct the payment of such sum as he finds due by one party to the other and may award costs;
- (b) he may direct fulfilment of the contract, and in cases where the Court might award damages for any breach of contract, he may, in place either of the whole of the damages or some part thereof, in the case of a contract of service other than a Government contract of service, direct the party committing such breach, or, in the case of a Government contract of service, direct the employed committing such breach, to give security to the satisfaction of the Court, by deposit or otherwise, for the due performance of so much of his contract as remains unperformed;

(c) he may rescind the contract upon such terms as to apportionment of wages or other sums due thereunder, and to the payment of wages or damages or other sums due, as he thinks just."

It will be observed that, to the extent that a summary civil procedure is now prescribed for dealing with these matters, the proposals in this draft Ordinance have anticipated the recommendations of the Committee.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

(Sd.) R. Lindoff

(Addressed to Kenya, Uganda, the Tanganyika Territory,  
Northern Rhodesia, Nyasaland, Nigeria, the Gambia,  
and Zanzibar, Copies are being sent to the Gold  
Coast and Sierra Leone.)

COLONIAL LABOUR COMMITTEE.

Recommendations regarding penal sanctions for the enforcement of labour contracts in the more primitive territories.

The Committee understand that the general principle which is to be aimed at is the ultimate abolition of penal sanctions for acts which are really breaches of contract and not crimes.

In the recommendations which follow we have endeavoured to suggest means by which penal sanctions may be eliminated without losing completely the safeguards they have hitherto afforded to either party. We do not however commit ourselves to the view that the whole programme outlined could immediately be adopted by all the Colonial Governments concerned. It is an ideal to be aimed at and approached by such steps as may be found practicable.

2. In favour of the retention of penal sanctions for the enforcement of labour contracts, it has been represented by the Officers administering the Governments of various dependencies that it would not be practicable to abolish those provided for the protection of the employer without abolishing those provided for the protection of the employee.

3. It has been urged that a strong argument in favour of the retention of the latter is the case with which (under the existing legislation) a native servant can bring his case before a Magistrate, by whom it is investigated



investigated with the minimum of formality. It has been represented that the effect of substituting for this simple procedure, the cumbrous and expensive process of a civil action for damages, would be to deprive the native employee of any hope of redress against his employer.

4. We recognise the force of these observations, but as they are based largely on considerations of procedure, it has seemed to us that the solution of the problem which they present is to be sought in a simplification of the elaborate procedure at present involved in an action for damages. With this in view we have examined the legislation relating to the employment of natives which is at present in operation in East Africa and the Western Pacific. We find that, in general, complaints made by either employer or employee can be laid before a magistrate or Native Commissioner and dealt with summarily. In the latest legislation the magistrate may direct payment of sums due, direct fulfilment, award damages, or rescind on terms, and may require security for fulfilment or damages, with the alternative of committal to prison in default.

5. In our opinion a simple adaptation of the procedure described above would afford a satisfactory basis for dealing on civil lines with breaches of contract by an employer or employee, and so would obviate the necessity of recourse to the more formal processes of civil law.

Even under this procedure, however, the sanctions would in effect retain their penal character unless it were provided that sentence of imprisonment in

default

default of payment or security could only be imposed when the Court was satisfied that the defaulter had means (or could obtain security) and refused to pay (or to provide security as the case may be). We recommend that this should be laid down.

6. We recognise, moreover, that, in order to secure the full benefit of the simplified civil procedure which we have recommended, it will be necessary also to devise some simple procedure to secure that an employee actually receives any damages which may be awarded to him. Amongst other measures to this end, the possibility of appointing an officer, to take all the necessary steps on behalf of natives in his district should be examined.

7. Conversely, as a measure of assurance to the employer, we should see no objection, in the special circumstances of the territories in question, to provision being made for the Court to have power to order the recovery of damages awarded against an employee by deductions from wages. Such deduction should however be subject to maxima in respect of the size of the instalments (say one third of a month's wages) and also in respect of the total amount which may be recovered by this means (say . . . months' wages). Moreover we think that this power should not be exercised in cases where the rate of wages is at the bare subsistence level.

This criterion would normally be satisfied (for example) in cases where the employee is provided with quarters and adequate rations.

8. We find that, in the Ordinances at present in operation failure to start work, absence without leave, drunkenness,

drunkenness, careless neglect, vulgar abuse, disobedience and giving false name, are as a rule dealt with as minor offences punishable usually by a small fine. Individual or collective desertion is treated as a major offence and more heavily punished. Our view is that these acts should not be treated as penal "offences" but as valid grounds for dismissal or alternatively (with the exception of "giving a false name") should render the offender liable to damages. We do not consider that the mere giving of a false name by an employee engaging himself to an employer should render him liable to anything beyond dismissal.

9. As regards desertion however, we recognise that the desertion of natives employed as personal servants guides or carriers on journeys through the bush might well endanger the lives of their employers or at any rate might involve serious loss of property. We are agreed therefore that desertion in such circumstances should remain a penal offence under the Labour Code.

10. Wilful or drunken damage or neglect, leaving before repayment of an advance of wages, and failure to account for the loss or maiming of an animal (and in some cases other property) are at present dealt with as more serious offences, often punishable by imprisonment without the option of a fine.

The objections to penal sanctions in respect of these offences (with the exception of failure to account for the loss or maiming of an animal) do not apply to the sanctions as such, but to their inclusion in Masters and Servants Ordinances, with specific application to

native

26

native employees. Our view is that these offences should be punishable whether committed by a native employee or by anyone else. In so far as these offences are not already covered by the ordinary penal law, the necessary action to include them in that law should be taken. (In the case of leaving before the repayment of an advance, the criterion should be whether there was intent to defraud. Otherwise the act should be treated as simple desertion and dealt with as suggested in paragraph 7).

We accordingly recommend that (with the exception of failure to account for the loss or maiming of an animal, etc.) these offences should be treated as ordinary criminal offences and taken out of the labour code. Unauthorised use of vehicle might well be treated in the same way. In all these cases there should be no distinction of race or status.

11. We do not think that failure to account for the loss or maiming of an animal, etc. should be treated as an offence or even as rendering the employee liable to dismissal or to damages. (The actual loss or maiming of an animal by wilful act or neglect, would come under paragraph 7 or 9 as the case might be.) On the other hand we recognise that the mere failure to report the loss or maiming of an animal might well involve the employer in a heavy loss which might otherwise have been avoided. We accordingly consider that such a failure could properly be treated as careless neglect (rendering the offender liable to dismissal or to damages).

12. Our attention has been drawn to the fact that under many of the relevant Ordinances there is a general power of fining or committing an offender to prison for undefined

undefined offences. This provision appears to have been introduced since the war and does not appear in the older legislation, e.g. in the Nyasaland Ordinance. No complaint has been made of its absence, in that territory and we consider that it should be deleted.

13. As regards the obligations of employers, we recommend, on the analogy of our recommendations in paragraph 7 above, that the employers liability to punishment for withholding of wages or property should be deleted from the Labour Code.

If the procedure for dealing with claims for damages in respect of breaches of labour contracts is simplified as recommended in paragraph 5 above, an employee will be able to take proceedings against his employer with little, if any, more formality than is at present involved in the prosecution of an employer under the Masters and Servants Ordinances. If however wages or property were withheld with intent to defraud, the offence should be dealt with as recommended in paragraph 9.

14. The liability of employers to punishment, for such matters as failing to provide proper Housing, sanitation, food, water or medicines, or failing to comply with regulations for the care or safety of their employees is analogous to the liability of employers under the Factory Acts in this country, and we consider that this liability should remain in the Labour Code.

15. As regards the liability of third persons we are agreed that improperly inducing, or engaging (by which we mean such acts as bribing a chief to bring pressure on his people, misrepresentation of the conditions of services etc), should certainly remain an offence under

the Labour Code. There is scope for difference of opinion in respect of persuasion to break a contract, and knowingly employing a native under agreement to another, but on the whole we think that these matters should remain in the Code. As regards "harbouring a deserter" however, we have recommended above that (with certain exceptions) desertion should no longer be regarded as a criminal offence but should be dealt with as a simple breach of contract. It follows that "harbouring" (with similar exceptions) should also no longer be treated as an offence.

O.O.

Mr. Chamberlain 27/8

Mr. Freaton 28/8

Mr. Allen 3/8

Mr. Tomlinson

Sir G. Bottomley

Sir J. Spacknough 31/8/51

Sir G. Grindale

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State

For conson.

DRAFT TELEGRAM

GOVERNOR,

NAIROBI,

*See further minutes*

*\* I have not referred to the  
draft as it is "loaf" - the  
Comm's public - & it's near  
to be tried via the  
1951*

*1951  
Recd: to Mr. Allen after 10 min*

*Added Part  
4-15 PM  
1/9/51  
EP*

No. 270 Your despatch

20th July, No. 413. I agree

that introduction of Employment

of Natives Amendment Bill may be

deferred <sup>for the present</sup> ~~pending receipt of pro-~~

~~posed further communication in~~

~~regard to penal sanctions, but I~~

do not consider that amendment

need necessarily be suspended

until action can be taken on the

Native Registration Ordinance. I

have no objection to your taking

into confidence employers of

labour and the Executive of the

Convention of Associations ~~but~~

~~think it desirable to let you know~~

~~that I share my predecessor's view~~

~~that amendment of Employment of~~

~~Natives Ordinance is needed~~

~~at an early date, and that it is neces-~~

C. O.

Mr. Chamberlain 27/8  
Mr. Prewton 28/8  
Mr. Allen 3/8

Mr. Tomlinson  
Sir G. Hollomley

Sir J. Shackburgh 31/8/51

Sir G. Grindle

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

For consen.

DRAFT TELEGRAM

GOVERNOR,

NAIROBI,

*See further minute*

*\* I have not referred to the  
step as it is "law" - the  
law is public - it is not  
to be tried in the Fair*

*11/11/51  
Recd: E.H. Allen after 11/11/51*

*Added sent  
4.15 PM  
1/9/51  
E.P.*

No. 270 Your despatch

20th July, No. 413. I agree

that introduction of Employment

of Natives Amendment Bill may be

deferred <sup>for the present</sup> ~~pending receipt of pro-~~

posed further communication in

regard to ~~penal sanctions~~ <sup>but</sup> I

do not consider that amendment

need necessarily be suspended

until action can be taken on the

Native Registration Ordinances. I

have no objection to your taking

into confidence employers of

labour and the Executive of the

Convention of Associations ~~but~~

~~think it desirable to let you know~~

~~that I share my predecessor's view~~

~~that amendment of Employment of~~

~~Natives Ordinance is needed at~~

~~an early date, and that it is neces-~~  
~~sary~~



at least to revise the native  
registration system. Also I  
should not be disposed to depart  
from my predecessor's views on  
of the <sup>S</sup> question of principle involved.

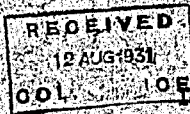
Seeger

BY OCEAN MAIL.

GOVERNMENT HOUSE

NAIROBI

KENYA



12th July, 1931.

Dear Bottomley,

No. 3  
A despatch is going to you by this mail on the subject of the Employment of Natives (Amendment) Ordinance (re Colonial Office Priority cable No. 165 of the 19th May).

I am most strongly recommending that this Ordinance should not be proceeded with alone but that it should be dealt with when the main principles have been established. As you are aware, there are two other Ordinances bearing on the same subject, viz: the Native Registration Ordinance and the Resident Native Labourers Ordinance. I foresee endless difficulties if we deal with this important problem in a piecemeal fashion. Do please do what you can to assist me in this matter.

Yours very sincerely,

*[Handwritten Signature]*

*copy*

*H*



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

KENYA.

No. 413

RECEIVED  
12 AUG 1951  
COLLIERIES

20<sup>th</sup> July, 1951.

My Lord,

No 3

I have the honour to refer to Your Lordship's telegram of the 19th May on the subject of the Employment of Natives (Amendment) Ordinance Bill.

2. It was not found practicable to introduce this Bill at the last Session of Legislative Council as I had originally hoped and now in view of Your Lordship's instruction that if it is introduced it must be as an interim measure only and in view also of the amendments which Your Lordship has requested me to embody in the Bill I would prefer with Your Lordship's consent to deal with labour legislation as a whole rather than attempt to remedy the existing situation by piecemeal measures. In coming to this opinion I am influenced by Your Lordship's decision that the Native Registration Ordinance should not be proceeded with as the whole principle of that Ordinance will need reconsideration in the light of the recent memorandum on native policy. The other labour bill which is still under consideration and which presents particular difficulties is the bill to amend the Resident Native Labourers Ordinance.

3. All these measures are bound to create considerable local controversy and as they are

-closely-

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

closely inter-related, I consider it would be wiser to deal with the question as a whole rather than to risk, by the introduction of interim measures which are admittedly only of an ephemeral character, creating in advance an atmosphere unfavourable to the other measures which are in contemplation.

4. When these bills were originally drafted employers of labour, and in particular the Executive of the Convention of Associations were freely consulted and where possible their views were embodied in the drafts. Since that time, as Your Lordship is aware, the drafts in the course of protracted correspondence have been materially altered. It would in my opinion greatly facilitate the passage of this legislation if employers of labour and the Executive of the Convention of Associations were taken into Government's confidence before the legislation is introduced, in fact in the light of the history of this legislation I think that they have a moral claim to that confidence.

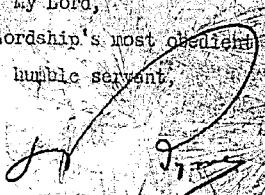
5. My proposal therefore is that the Employment of Natives Amendment Bill should wait until the Resident Native Labourers' Amendment Bill, and also the new Native Registration Amendment Bill, as to which I am awaiting Your Lordship's instructions, are ready for introduction when I propose to explain the whole situation to representatives of the unofficial employers of labour in the hope of securing as large a measure of agreement as will be possible in the circumstances.

6. If Your Lordship is unable to agree to this course of action and still presses for the introduction of the Employment of Natives Amendment Bill at as early a date as possible I will arrange for its introduction before

- the

the end of this year. In any case, it would not be practicable to introduce it during the August session which will necessarily be occupied, to the exclusion of almost all other questions, with the general economic position of the Colony and the consideration of the Estimates for 1952.

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



BRIGADIER-GENERAL,

GOVERNOR.

X 17 (18) 51 Kenya 3  
34

0.0

Recd 18.5.51

- ✓ Sir C. Bottomley 18.5
- ✓ Sir J. Shuckburgh
- ✓ Sir G. Grand
- ✓ Party U.S. of S. 18.5.51
- ✓ Party U.S. of S. 18.5.51
- ✓ Secretary of State 19/5/51

Hand to H  
18/5/51

20M  
1121

DRAFT Order Telegram

Handwritten notes and scribbles, including the word "Draft" and various illegible markings.

No. 165 Your despatch  
of 20 April No. 2190  
I have decided that  
the bill to amend National  
Registration Ordinance  
should not be proceeded  
with, whole  
purpose of the Ordinance  
will need reconsideration  
in light of National  
Policy Memorandum  
It is discriminatory  
and there is the  
strongest possible  
doubt for the present  
system in the part  
of the Ordinance as  
shown by the  
evidence before  
Parliament on 20 April  
in representations

Further action  
of X 18 - see X  
18/5/51

... I will communicate  
with you by separate  
letter and I shall of course  
be obliged to your explanation  
to the Government, which the  
proposed bill has been laid  
back to

[New para] I wish you to proceed  
with the bill to amend  
Employment of Maturity Ordinances  
including amendment in  
para 11 of your separate  
but I must ask that it may  
be made quite clear when  
the bill is introduced that  
this is an interim measure  
in that the whole question  
of penal sanctions for  
breach of labour contracts  
is under review. And on  
further consideration of the bill and  
in the light of legislation  
proposed by Government  
of Company etc. I must  
also ask that the bill

[Bristol]

C O  
Mr.  
Mr.  
Mr.  
Mr. Tomlinson  
Sir C. Boumley  
Sir J. Shackburgh  
Sir C. Grindle  
Permt. U.S. of S  
Party U.S. of S  
Secretary of State

DRAFT

be further revised so as to  
to ensure, not only that  
wherever penalty is now  
provided there shall be  
the option of a fine  
but also that the ~~fine~~  
penalties shall be  
reduced (A) for offences  
under section 47 to  
fine not exceeding  
half a month's wages  
or one month's  
imprisonment in  
default (B) for  
offences under sections  
48 and 53 fine  
not exceeding £5  
or 6 months imprisonment  
in default

Summary of the Provisions of the  
Bill to amend the Employment  
Notice Ordinance

100

Note all the amendments down to X on page 4  
have been agreed with the Gov.

Clause 2. The definitions are necessitated by changes in the Bill, and call for no comment.

Clause 3. Employers may be required to give security for the payment of wages.

Desirable, and I think, non-controversial.

Clause 4. Unimportant.

Clause 5. All servants other than unskilled labourers shall in the absence of any agreement to the contrary be deemed to be under a month to month contract terminable by a month's notice or wages.

This is to prevent servants in special employment leaving their work without giving reasonable opportunity to the employer to replace them. It also prevents the employer sacking such an employee without notice or wages. Possibly controversial.

Clause 6. Limits to one month the length of time for which contracts expiring during a journey may be prolonged.

Clause 7. Increases the penalty imposed on an employer who decoys the servant of another employer, from £5 to £150.

Clauses 8 & 9. Unimportant.

Clauses 10, 29 & 30. Repeal the existing legislation regarding recruitment. The professional labour recruiter is abolished and <sup>only</sup> private recruiters and labour forwarding agents are to be allowed. Private recruiters are persons who by themselves



or by servants in their regular permanent and exclusive employ engage labourers for their own service. Labour forwarding agents, who are to be specially licensed by a Senior Commissioner, are persons allowed to act for employers in respect of the engagement, etc., of natives voluntarily offering themselves. They will not themselves be allowed to undertake ~~any~~ recruiting.

These proposals are in accordance with the wishes of unofficals in Kenya and they have also been welcomed here. The alteration is an important one. ~~\_\_\_\_\_~~

*648  
see below for 14/10/22  
amendment to sentence  
imprisonment possible  
if a default  
provision of a fine*

Clause 11. A fine may be imposed up to £7.10/- or imprisonment up to six months on a servant "if he shall be guilty of desertion", i.e., absence from service without lawful excuse for more than 7 consecutive days. This replaces provision for similar penalties: - "If he shall without lawful cause depart from his employer's service with intent not to return thereto". Departure from the existing law is thus only a small one. ~~\_\_\_\_\_~~

Clauses 12 & 13. Minor amendments of a desirable nature.  
Clauses 14 to 17. Minor amendments to give Government Labour Inspectors and Medical Officers greater power.  
Clearly good and non-controversial.

Clauses 18/22

30

Clauses 18 to 20 & 22. Consequential on the repeal of legislation regarding recruitment.

Clause 21. Gives the Governor wider powers as to <sup>rules</sup> removals. Clearly good and non-controversial.

Clause 23. Regularises task work. Probably non-controversial.

Clause 24. Limits the working day to eight hours. Good but may possibly be opposed by employers.

Clauses 25 to 28. Regulates the employment of juveniles. Unless employed by the day only or accompanied by an adult relative the permission of the parent or guardian and a certificate from an Administrative Officer are required. Administrative Officers are given special powers as to cancellation of the contracts of juveniles.

The above provisions are not to be applied to contracts of apprenticeship.

Clauses 29 & 30. See under Chapter 10 above.

Clause 31. Regulates the granting of leave and makes it an offence for an employer to permit a servant to be absent on leave for more than a specified number of days during his contract.

The reason for this is that the demand for labour in Kenya is to a large extent seasonal. In order to be sure of workers during the time of greatest demand some employers engage natives during the slack season, making an endorsement of engagement upon their registration certificates

and

and then giving them indefinite leave on the understanding that they will come up for labour when sent for.

This is regarded as most undesirable and the Convention of Associations has therefore asked for this clause. It is ~~unobjectionable~~ grotesque but ~~unobjectionable~~ unobjectionable.

Clause 32. Permits a Magistrate under certain safeguards to issue on receipt of a written complaint by an employer, a warrant for the arrest of an alleged deserter.

This is designed to make it possible for an employer to lay information against a native without having to leave his farm and travel many miles to a Magistrate and back. If the penal sanction is to continue this provision is perhaps in the special circumstances of Kenya not objectionable. It seems, however, rather pointless to introduce a new section like this if the whole question of the penal sanction is to be reviewed very shortly.

Clause 33. Advances of wages are to be limited to one month.

Clearly good.

---

Additional amendments are to be made as follows:-

Section 5. ~~is~~ to be altered to make it possible for Administrative Officers authorized by Provincial Commissioners to issue foreign contracts of service.



service. At present such contracts can only be issued by a Provincial Commissioner after obtaining the assent of the Governor. This has proved to be administratively very <sup>for</sup> convenient. The point seems to be ~~clearly~~ <sup>mainly</sup> one of Administration.

Section 47. At present reads "Any servant may be punished with rigorous imprisonment for a term which may extend to one month, or with a fine not exceeding £5, or with both such imprisonment and fine at the discretion of the Magistrate for certain offences.

It is now proposed to alter this to read as follows:-

"Any servant may be fined any sum not exceeding £5 and in default of payment may be sentenced to imprisonment of either description for any period not exceeding one month if he shall be convicted of any of the following acts" etc.

This alteration is made as the result of a request by the Secretary of State. It would also seem desirable that there should be some <sup>amendment</sup> ~~section~~ ~~to~~ 48, which also contains an objectionable provision namely that at the discretion of the Magistrate imprisonment may be imposed without the option of a fine. It would seem desirable to suggest the omission of the words in Section 48:- "Or may at the discretion of the Magistrate without the infliction of a fine be sentenced to imprisonment of either description for any period not exceeding six months"

Similarly, Section 53 provides that servants decamping before they have worked off an advance

of wages shall be liable to imprisonment up to three months without option.

It would seem desirable to insert here also provision for a fine and in default of payment imprisonment.

Section 65. The maximum penalty for failure to pay wages is <sup>to be raised from</sup> £10 to £50. *(2. Maximum fine to be raised)*

Section 66. The maximum penalty for giving money to Chiefs for procuring labour is to be raised from £15 to £25.

Section 71. The maximum penalty for obstructing a labour inspector or Doctor is to be raised from £10 to £25.

These figures compare with the maximum penalty of £150 under Clause 7 of the Bill for decoying the servant of another employer. The penalties seem rather disproportionate, *(but not insignificant)*

KENYA

No. 219



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
9 MAY 1931  
COL. OFFICE

20<sup>th</sup> April, 1931.

My Lord,

No. 2 in 16258/30

I have the honour to refer to Your Lordship's despatch No. 750 of the 26th September, 1930, on the subject of the three draft Bills which have been prepared to amend the legislation regulating the relations between employers and native servants in Kenya, and to inform Your Lordship that it is proposed to introduce the Bills to amend the Employment of Natives Ordinance and the Native Registration Ordinance at the forthcoming session of Legislative Council.

19/5/31

2. The Bill to amend the Resident Native Labourers Ordinance is still receiving consideration by my advisers in connection with sundry points raised by Your Lordship and representations that have from time to time been made by unofficial bodies in this Colony and will not be ready for introduction at this session. I will address Your Lordship at a later date in a further despatch on the subject of this Bill.

3. The Employment of Natives Amendment Bill has been further amended to meet Your Lordship's wishes as expressed in the despatch under reference. The question of the applicability of penal sanctions to labour engagements ...

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

engagements and in particular whether contracts other than those in writing attested before a Government Officer should be enforceable, is receiving my consideration, but in view of Your Lordship's statement that you would not press the suggestion that amendments of existing legislation in this direction should be introduced if their inclusion would unduly delay progress of the Bills I have decided not to introduce any such amendments at the present time but to treat this as a separate issue and to inform Your Lordship of my views on the general question at a later date.

4. In the meantime section 47 of the Employment of Natives Ordinance has been amended in the draft Bill to meet Your Lordship's expressed wish to read as follows:-

"Any servant may be fined any sum not exceeding 25 and in default of payment may be sentenced to imprisonment of either description for any period not exceeding one month if he shall be convicted of any of the following acts" etc.

5. I am in complete agreement with Your Lordship's view that a fine of ten pounds under Section 55, Chapter 139, for failure to pay wages due to a servant, detention of a servant's property or failure to supply food etc., stipulated for in any written contract is inadequate, and the Bill has now been amended to provide for a maximum fine of fifty pounds under this section.

6. Similarly, I agree that fifteen pounds and ten pounds are perhaps inadequate as maxima respectively under sections 65 and 71 of the Ordinance, though I do not consider that offences under these sections are of so grave a nature as those under section 45, and am

of opinion that twenty five pounds will be an adequate maximum in each case. The draft Bill has therefore been amended accordingly.

7. I also concur with Your Lordship's suggestion that clause 32 of the draft Bill should be amended to include provision for payment by the complainant of a sum to be assessed by the Court as compensation to the servant for arrest and trial in cases in which the Court is satisfied that the facts stated in the complaint in consequence of which the servant was arrested were materially untrue, and sub-section of that clause has therefore been amended by the insertion of the following words after "servant" in line 7 - "together with such an amount as may be assessed by the Court in compensation to such servant for his arrest and trial".

8. It has recently become apparent that section 5 of the Employment of Natives Ordinance, Chapter 139, requires amendment by reason of the practical difficulties in complying with that section as it stands. Under that section a Foreign Contract of Service may not be approved until it has first obtained the assent of the Chief Native Commissioner to whom the Governor delegated this power under Government Notice No. 183 of 1919. Further, a Foreign Contract of Service may be attested only by a Provincial Commissioner. It will be at once obvious that a great deal of unnecessary delay must inevitably occur in completing these contracts if either the Chief Native Commissioner or the Provincial Commissioner concerned is absent from his station on tour; but even if both are present in their offices the procedure is cumbersome: one illustration will suffice. A visitor

arrives ... ..



arrives at Nairobi and wishes to leave at once for Tanganyika. All arrangements for his "safari" are made but he must obtain foreign contracts before he can take porters out of the country. As the law stands he must fill up the forms specified in a schedule to the Ordinance and forward them to the Provincial Commissioner of the Kikuyu Province who lives at Nyeri, 100 miles away. The application must be considered personally by the Provincial Commissioner and the forms with his recommendations must be forwarded to the Chief Native Commissioner in Nairobi who must then personally consider the case before giving or withholding his assent. If he assents the forms must then be returned to the Provincial Commissioner at Nyeri for his approval and then sent to the employer. According to the present mail arrangements this procedure would take not less than a fortnight. Similar delays though not ordinarily quite so serious must occur in dealing with applications from Mombasa and Kisumu. Applications from Kisumu are now very numerous in consequence of contracts issued by the Kenya and Uganda Railways and Harbours for work to be done in Uganda, which work is commonly performed by natives from the Nyanza Province of this Colony.

9. I am advised that in practice the cumbersome procedure indicated above is not observed and that frequently contracts are attested by a District Commissioner in the absence of the Provincial Commissioner, and assented to by the Principal Assistant to the Chief Native Commissioner in the absence of the latter. These irregularities render the contracts invalid as contracts and valueless except as records.

10. But even apart from these irregularities there seems no longer any necessity for these contracts to be dealt ... ..

dealt with in Nairobi, and I am satisfied that native interests will be in no way prejudiced by giving to Provincial Commissioners and to officers authorized in writing by them full discretion to approve and to attest such contracts.

11. It is therefore proposed that the following additional amendments be inserted in the draft amending Bill:-

- "Section 5 of the Principal Ordinance is hereby deleted and the following substituted therefor:-
- "5. (1) Every foreign contract of service shall be approved and attested by a Provincial Commissioner or by a District Officer authorized in writing by a Provincial Commissioner to approve and attest such contracts.
- "(2) Every contract of foreign service shall be in the form in the schedule hereto or to the like effect."

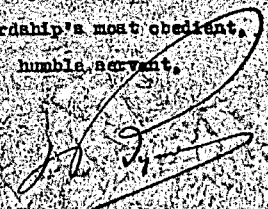
12. In order to allow of the Bill to be considered at the forthcoming session of Legislative Council, I have incorporated the above amendment in the draft in anticipation of Your Lordship's consent.

13. I am sending this despatch by air mail and if Your Lordship has any objection to the amendment I should be grateful if I may be informed accordingly by cable so that the amendment may be withdrawn before the publication of the Bill.

I have the honour to be,

My Lord,

Your Lordship's most obedient,  
humble servant,



**BREMERIDGE GENERAL  
GOVERNOR.**