

KENYA

215

X-9081
30 JUL 1936

1199

Conf 107 Date 30th June 1936.

SEDITIONOUS PROPAGANDA AMONG NATIVES.

States as to desirability of introducing legislation on lines indicated for dealing with offenders.

Paper

| | |
|---------------|------|
| RA | 54 |
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| Mr. Roberts | 27/2 |
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| Mr. Bush | 71 |
| Mr. Bottomley | 74 |
| Room 29 | |

D-1

378

W. S. Stanley
W. S. Stanley

Paragraphs 2 and 3: Arrest without Warrant.

The Governor does not explain why he has had occasion to consider this question, and, so far as we know, there has not been any case of sedition since those of Harry Thuku and others who were imprisoned in 1922 - see 2465/25 and previous papers. The Governor explains that the police cannot arrest without a warrant, nor can a magistrate issue a warrant for arrest without the authority of the Governor-in-Council. I do not know whether here the police have any power to arrest without a warrant for seditious offences (where no immediate breach of the peace is threatened): but if there is objection to any such power being given it might be suggested in the alternative that as a first step they should remove the disability of the magistrates being unable to issue a warrant without the authority of the Governor-in-Council while retaining the requirement that the police can only arrest on a warrant. This would surely considerably minimise the difficulties to which the Governor refers.

24 of C.P. Order

Was the draft broadly formally will be necessary

It must be clear that the draft is not a proposal for a law but a proposal for a change in the law

Paragraphs 4 and 5: Further legislation.

As the proposal to legislate on Trinidad lines is made without any reference to the present deportation legislation in Kenya and the draft Ordinance sent to the Governor on 6015/24, I attach a note dealing with both points. It seems very curious that the Governor should put forward this suggestion for the adoption of Trinidad legislation without any reference to the previous correspondence relating to the ~~present~~ ^{Kenya} ~~legislation~~ ^{legislation}, and as it appears from paragraph 5 that the question is merely academic at the moment, I

would

drastic a step was necessary. I feel sure that autocratic and extrajudicial proceedings for deportation are things to be avoided if it is conceivably possible, and I should have thought that such a procedure was particularly ill-suited to Kenya. I think that before resorting to it, it ought to be shown that either the existing system or the system which we suggested to Kenya, and which, I gather, has never been adopted, has broken down with untoward results.

HPB
7/1

Draft for comment on the basis of Mr. Bunker's minutes, except that I would substitute that the S. of A. could have given heretofore before speaking into the restoration of the power of extrajudicial deportation, which was definitely given up in 1923.

Mr. Stansby-Jones should see the draft, and he will no doubt wish to refer to the head the memo: flagged in green in 6015/24 Kenya.

WA

W.S.B. Stansby
7.6.28 atre

21
DOWNING STREET,

September, 1926.

Y A
CONFIDENTIAL
SIR,

I have the honour to acknowledge the receipt of your Confidential despatch of the 30th of June No. 107 as to the desirability of extending the powers of Government in regard to the spread of seditious propaganda among the natives of the Colony.

2. You do not explain in your despatch why you have had occasion to consider this question; and as regards the existing restrictions under Section 155 of the Criminal Procedure Ordinance 1913, I would point out that when the model Criminal Procedure Code enclosed in my despatch No. 517 of 3rd June last is enacted it will no longer be necessary to obtain the authority of the Government Council before a warrant for arrest could be issued by a magistrate. I assume that, in that case, the difficulties to which you refer would be substantially lessened; but if the removal of this particular disability is not in your opinion adequate, and you consider it essential also to give the police power to arrest without a warrant, -- "in certain specified special circumstances and cases" I should raise no objection to the introduction of the necessary amending legislation.

3.

W. COLONEL

W. A. GRIGG, K.C.V.O., C.A., M.C.,
etc., etc., etc.

As regards your enquiry whether, in the
 essential cases, I should be prepared to arrange for
 the enactment of legislation on the lines of the
 Ordinance of Unnatural Deaths of British, I
 would draw attention to the correspondence which
 with my predecessor's despatch No. 102 of the 12th
 May, 1904, regarding the Unnatural Deaths Ordinance,
 to that despatch my predecessor forwarded the text
 of an Ordinance to replace the Ordinance of 1858,
 and requested that, unless it was desired to make
 any representations on my part, steps should be
 taken for its enactment. As no reply has been
 received to that despatch, I should be glad to be
 informed of the present position of the matter,
 since, before I should be prepared to agree to the
 enactment of legislation on the lines of that in-
 force in Trinidad, I should have to be satisfied
 that the existing legislation in Kenya has after
 trial proved inadequate and that the further
 legislation contemplated but not yet adopted is
 also considered unsatisfactory for the purpose. I
 may say that the Ordinance in Trinidad and the
 similar Ordinances in force in Guyana and Guine-
 Louis were allowed to remain in operation with
 considerable hesitation, mainly in view of the
 special difficulties of the early post-war period,
 and that instructions were given that the power of
 expulsion in so far as it applies to British
 subjects should not be exercised without prior

reference

reference to the Secretary of State in the case of persons who had been resident in the County for more than three months.

I have the honor to be,

Sir,

Your most obedient,

Wm. S. Amesby

(Signed) L. S. AMESBY

Murphy 8. 9.26.

Allen 13.9
Bishop 14.15
Bolton 14.9

and

O. N.
A. T. 8350
D. 172

Downing Street,

17 September, 1926.

and
8378

as amended
at once
15.7.26

Sir,

I have the honor to acknowledge the receipt of your Conf. despatch of the 30th. June No.107 as to the desirability of extending the powers of Government in regard to the spread of seditious propaganda among the natives of the Colony.

2. You do not explain in your despatch why you have had occasion to consider this question; and as regards the existing restrictions under Section 158 of the Criminal Procedure Ordinance 1913, I would

point out that under ~~Section 158~~ of the Model Criminal Procedure Code referred

to in my despatch No. 4 of 31st Oct 1926
was ~~will~~ by
it is no longer necessary to obtain

the

AFT. conson.

Ev. Grigg.

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was regarded as
staff does not
the Model Code
11770

is enacted

Deportation Ordinance, 1923. In that despatch my predecessor forwarded the draft of an Ordinance to replace the Ordinance of 1923, and requested that, unless ^{it was desired} you ~~planned~~ to make any representations on any point, steps should be taken for its enactment.

As no reply has been received to that despatch, I should be glad to be informed of the present position in the matter, since, before I should be prepared to agree to ~~so drastic~~ a change as would be involved by the enactment of legislation on the lines of that in force in Trinidad, I should have to be satisfied that the

existing legislation in Kenya ~~or the~~ ~~further legislation contemplated but~~ ^{after trial} ~~not yet adopted,~~ has proved inadequate. I may say that the Ordinance in

Trinidad and the similar Ordinances

*at the further
contemplated
and it should be noted
in the circumstances
perhaps*

that it is a clear case for more drastic measures

Deportation Ordinance, 1925. In that despatch my predecessor forwarded the draft of an Ordinance to replace the Ordinance of 1923, and requested that, unless you ^{had desired} wished to make any representations on any point, steps should be taken for its enactment.

As no reply has been received to that despatch, I should be glad to be informed of the present position in the matter; since, before I should be prepared to agree to ~~an drastic~~ a change as would be involved by the enactment of legislation on the lines of that in force in Trinidad, I should have to be satisfied that the

existing legislation in Kenya, ~~or the further legislation contemplated but not yet adopted,~~ ^{after trial} has proved inadequate.

I may say that the Ordinance in Trinidad and the similar Ordinances

*not the further
in a suitable
...
...
purpose.*

~~that is a clear case for more drastic legislation~~

MEMORANDUM.

In the attached note Mr. Seal has made a comparison of the provisions of the Trinidad Ordinance and the draft Deportation Ordinance sent to the Governor on 6015/24. It will be seen that:

(a) the Trinidad procedure is entirely extra legal - in Kenya application to a Judge in Chambers is required;

(b) the Trinidad Ordinance provides for exclusion without reference to destination; the draft Kenya Ordinance limits deportation to British Dominions or protected territory;

(c) ^{in Trinidad} action against a British subject resident more than three months in the Colony is not to be taken without reference to the Secretary of State; in Kenya no proceedings under the draft Ordinance may be instituted except by, or with the previous sanction of, ^{the} ~~the~~ ^{Minister} Secretary of State.

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Considerable exception was taken to the Trinidad Ordinance at the time (60101/22) on the ground that it permitted the expulsion of British subjects, except those domiciled in the Colony, or those who throughout the preceding two years had been resident in the Colony. It was felt that the period of two years should be reduced to three months, and the Governor of Trinidad was informed that the Ordinance should be amended accordingly, and in the meantime the power conferred by the Ordinance should not be exercised without prior reference to the Secretary of State in the case of persons who had been residing in the Colony for ^{more} ~~less~~ than

been three months. Ultimately on 22854/23
British Guiana - the Governor was informed that he
need not proceed with the amendment but that the
instruction requiring reference to the Secretary of
State in cases where the period had been resident
for more than three months should stand. Similar
arrangements had been placed in St. Lucia and St. Vincent
and the Windward Islands was given

30/12/22 Trinidad was circulated to Departments
and a suggestion in the minutes that Governments
should be legislated on this subject should
be submitted. The Secretary of State could not agree
to any legislation in the Colony which would give
power to the Governor to deport any British subject
for more than three months. As
W. J. H. H. H.
it was ~~assumed~~ that the point should
be referred to the Governor but as circulation
of the draft was to cause misapprehension the
draft seems to have stopped

The draft of the Deportation Ordinance in 1923
dated 1923, and a question was taken to its
text and a draft of an Ordinance to be substituted
was sent to the Governor on the 14th May, 1924, on
15/5/24 and the Governor was requested, unless
he wished to make representations on any point, to
return the department of the draft as an
acknowledgement for that of 1923. The
draft of the Ordinance however never been enacted,
and to date no reply has ever been
received in the reply of the Secretary of State's despatch.

H. Allen
26/8/26

deportable he may order deportation
either for a limited or unlimited time
The Govt must refer every order
to the S. G. S. (There is no appeal from the Govt Order)

No proceedings under the
Ordinance may be instituted
concurrent with or within the previous
session of the S. G. S.

The limited Ordinance provided
that if it appears to the Governor
that it is expedient in the interests of good order
and discipline that any person should be
deported from the colony, he may make
an order accordingly. ~~British~~ ^{British} subjects
are not liable for the preceding
provisions in the Colony are
subject to the Ordinance.

The Governor may if he thinks
it expedient require the person
to leave the colony and his arrest
and detention in such a manner
as may be directed for expulsion
from the colony made in contemplation
of the Ordinance in undeviable person
for the purpose of the Ordinance
the person's detention

KENYA

No 107

CONFIDENTIAL



X. 6031

30 JUL 1926

221
GOVERNMENT HOUSE,

NAIROBI,

KENYA

30 June, 1926.

Sir,

I have the honour to inform you that I have recently had occasion to consider the desirability of extending the powers of Government in regard to the spread of seditious propaganda among the natives of the Colony.

2. Under Section 158 of the Criminal Procedure Ordinance, 1913, a Magistrate may not issue a warrant for the arrest of any person engaged in seditious practices without the order or authority of the Governor in Council, nor may the Police arrest such an offender without a warrant. Owing to the size of this Colony and the inadequacy of its means of communication, the inevitable delay involved in proceeding against an offender under either of these enactments constitutes a real danger that offences of a seditious character committed in the Native Reserves may not be dealt with sufficiently promptly.

3. In order to ensure that persons committing such offences may be apprehended and tried with as little delay as possible, I have been considering the question of introducing amending legislation giving the Police power in such cases to arrest without warrant and also making it unnecessary for Courts to obtain the authority of the Governor in Council before dealing with the offenders.

4. I feel, however, that, apart from any such amendment of the law, it may be desirable for Government to take powers to deal with propagandists and other evilly-disposed persons without recourse to the Courts, and my attention has been drawn

to/

RIGHT HONOURABLE

LIEUT. COL. L. C. M. S. AMERY, P. C., M. P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.

to the Expulsion of Undesirables Ordinance of Trinidad (Chapter 247 of the Revised Edition, 1925) the provisions of which would appear to meet the contingencies I have in mind.

6. I do not wish to introduce any such legislation at the present time, but I shall be glad if you will inform me whether, if the occasion arose, you would be prepared to approve of the enactment of legislation on the lines indicated in paragraphs 3 and 4 of this despatch.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Edward Gigg

G O V E R N O R .