

Mr. Burke

Sir H. Lambert

I think that the necessity for strengthening
 the staff & improving their prospects is established. ?
 is proposed, but we need not say anything about me
 the post being more or less temporary -
 You (Mr. Burke) should see the remainder of para 3
 about drafting a new Criminal Code to replace the
 Indian one. It is satisfactory that the Acting Governor
 doubts that the desirability of such a code is unquestionable
 but I doubt if Mr. Burke will agree that its preparation
 will be such an elaborate affair -

CS

I do not, because the work has already
 been admirably done in the office of the G.C.

I sincerely hope that he may also not
 hesitate to produce a new Criminal Code of
 its own.

3/11

has shewn from it that in view of the work
 already done in Neg & G.C. that the work
 of drafting the new Criminal Code will be
 less laborious than Mr. Denham supposed.
 In regard to strengthening the staff
 I do think that with a population like that
 of Kenya there is a strong case for a good
 legal dept - the want of it may easily

15442

575

KENYA

No. 24.

CONFIDENTIAL.



RE 3
R. 3
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

26th February, 1925.

Copy of Particulars.
Fr: Attorney General.
With enclos.

Handwritten:
55883
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Sir,

I have the honour to address you on the urgent need for increasing the establishment of Crown Counsel in the Attorney General's Department.

2. After further discussion with the Attorney General and General Manager, Uganda Railway, I am prepared, in present circumstances, to modify the views expressed in Kenya despatch, Confidential, No. 534 of 11th October, 1923, and to recommend the allocation of a Crown Counsel for work in the Railway Offices. I am now satisfied that the rapid expansion of Railways in this Colony and the increase in legal questions appertaining to Railway work justifies a special appointment of this nature. There is a further important factor that the Kenya and Uganda Railways and kindred services in the near future will be constituted as a separate Administration, when the need for a legal adviser especially expert in Railway matters may be even more urgent. Although this Crown Counsel will perform his duties in the Railway Offices, he will remain of necessity, for the reasons previously submitted, a member of the Attorney General's Department, and be available to assist with general legal work.

3.

RIGHT HONOURABLE
LIEUTENANT COLONEL L. G. M. S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

3. The Attorney General has further represented, with full reason in my opinion, the pressing need for an additional Crown Counsel in his own Office where the staff has not been adequate to keep pace with the increase of work which continues to accrue as the result of ^{K.} general development of the Colony. Experience has proved it impracticable to detail an Officer for special work such as the drafting of a Criminal Code to replace the Indian Penal Code as suggested in Colonial Office despatch, Confidential, of the 20th December. The desirability of drafting such a code is unquestionable, but I am informed that the nature of the work would involve the undivided attention of one Officer for at least a year and under present conditions it can only be undertaken spasmodically in the intervals of preparing urgent legislation, writing opinions and conducting Court cases. This argument applies with equal force to the substitution of local enactments for the other applied Indian Acts to which reference was made in Colonial Office despatch No. 1421 of the 28th September, 1920. It is also the case that the reading of the proofs of the Revised Laws has been delayed on the same grounds and is in fact now being undertaken by Crown Counsel after usual Office hours.

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4. I would emphasize the fact that the situation in Kenya is not comparable with that found in many other Colonies. There is in this Colony not only a large and increasing European population of an energetic and critical character but there are further complications appertenant to a community containing a large admixture of races. The growing activities of the various Departments of Government involve more frequent calls

for legal advice, and the conditions in a new Colony necessarily produce problems for which there are no governing precedents. In 1921 the Judiciary was strengthened by the appointment of an additional Puisne Judge, and it is unusual at present for less than four Courts to be sitting throughout the term besides Resident Magistrates. In Nairobi there is an European Bar 30 to 40 strong, Mombasa has also a strong local Bar, and the tendency is for the various townships to attract an increasing number of legal practitioners. As matters stand at present Crown Counsel are not even able to perform all the Court work for which they are properly responsible, e.g. in Circuit and at Mombasa, and their non-attendance at these Courts has formed the subject of complaints by the Supreme Court.

5. The Attorney General represented the inadequacy of his staff at the time the draft Estimates for 1925 were under consideration, though ^{when} these were definitely submitted owing to the Attorney General having just returned from leave, no special provision had been applied for, and the financial circumstances of the Colony at that time militated against increases in expenditure, many of which were recognized as necessary. Prospects are now brighter and I recommend that supplementary provision be made available to relieve the present strain on the legal staff, which, I am satisfied, is seriously hampering the introduction of necessary legislation in this country.

6. I trust that the representations submitted in this despatch will enable you to give your sanction to the selection of two additional Crown Counsel to deal with current and outstanding work. The position is

such

such that I have felt compelled to authorize the Attorney General to endeavour to obtain the temporary assistance of some qualified local candidate. Owing, however, to the fact that practically all the local practitioners are in receipt of considerable professional incomes, it is unlikely that a suitable candidate can be obtained. The additional expenditure now involved, calculated on the present scale of salaries will amount to approximately £1,000 for salaries, £180 for local allowance, and £260 for passages per annum, or £750 for salary, £135 for local allowance, and £260 for passages for the nine months of 1925. The Railway Department contributes £1,000 per annum for legal services, and I do not therefore consider that any further assistance from this Department can be expected.

7. I enclose statement of particulars of the appointments to be filled, and request that the earliest steps may be taken to select suitable candidates, if you agree as to the necessity for these posts, and on your hearing from me that the necessary provision has been voted by the Legislative Council to whom I will put these proposals on receipt of your approval.

8. The Attorney General, as you are aware from Sir Robert Coryndon's despatch No. 942 of July 14th, 1924, has made strong representations as to the necessity of increasing the pay of Crown Counsel. I agree that it is of the first importance that the Colony should obtain the services of thoroughly competent and experienced officers, and I shall be glad if you will inform me, in replying to this despatch, whether it is in your opinion necessary to provide for higher salaries than those ^{fixed} ~~presented~~ in the forms annexed - which are the present rates - in order to secure recruitment of

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the

the type of men required. If the holder of the new appointment of Crown Counsel in the Attorney General's office is to start on a higher rate of pay - as regards the Crown Counsel for the Railway, as he will probably have special qualifications the comparison will not hold to the same extent - than is at present drawn by Crown Counsel there will undoubtedly be strong grounds for increasing the pay of the present Crown Counsel. The Attorney General and unofficial members of Council have urged on Government this necessity. In 1922 Government approved of higher pay for Crown Counsel but this was disallowed by your predecessor. In this connection I would refer you to the enclosed memorandum by the Attorney General which deals fully with the position, and the attached letter of Mr. McElwaine, Crown Counsel. The difficulty is not so much to secure suitable Crown Counsel at the scales of salary now in force, but to retain these officers when they become acquainted with local conditions. In England the conditions of these appointments may not seem unattractive. The position appears different in the Colony, when the qualifications demanded of these officers and the responsibilities involved in their work are considered in relation to local conditions, the remuneration of other officers and the earnings of local advocates.

I am therefore prepared to agree that the rates offered to the two additional Crown Counsel should not be less than the scale of £600 to £750 by increments of £50. If, in your opinion, it is necessary to increase the pay to this scale, in order to secure the type of men required, and on the understanding that such increase ^{will no doubt necessitate increase of} in pay of the Crown Counsel ^{now} met in the Colony, I shall be glad if

you

you will sanction by cable the appointment of the two additional officers asked for, and also inform me of the scale of pay approved. The Legislative Council will then be asked to make the necessary provision for the increased expenditure involved in a supplementary Estimate.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A handwritten signature in cursive script, appearing to read "J. M. Jenham". The signature is written in dark ink and is positioned above the typed name of the signatory.

ACTING GOVERNOR.

NOTE.PARAGRAPH 2 - SALARY OF OFFICE.

Please see Paragraph 8 of covering despatch
No.24 Confidential, of 26th February, 1925.

Government is prepared, if necessary, to pay on
the scale of £400 to £750 by increments of £50.

EAST AFRICA PROTECTORATE.

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Particulars of the Office of Crown Counsel vacant
in the Kenya Colony.

<p>1. Duties of Office and qualifications required for their performance.</p>	<p>Legal Adviser in Attorney General's Office. Duties as directed by Attorney General. Duties may include drafting legislation; conduct of Crown cases, civil and criminal, and general legal work.</p> <p>Barrister.</p>
<p>2. Salary of Office.</p>	<p>£500 to £600 by £25 a year.</p>
<p>3. Allowance, quarters, and other circumstances affecting the value of the Office.</p>	<p>Local allowance (at present 290 p.a.) House or House Allowance £75 p.a.</p>
<p>4. Nature, number and account of securities required.</p>	<p>Nil.</p>
<p>5. Whether free passage is provided for persons selected and his family.</p>	<p>Free passage and Half passage for wife.</p>
<p>6. General particulars regarding accommodation, furniture, &c., for information of candidate.</p>	<p>Furniture on scale for see Sections 198 - 206 of Code of Regulations for Officers in Government Service.</p>

23rd FEBRUARY, 1925.

Nairobi.

Head of Department.

ATTORNEY GENERAL'S OFFICE,
NAIROBI.

8th November, 1924.

Sir,

re: SALARIES OF CROWN COUNSEL.

I have the honour to forward an application from Mr. P. A. McElwaine for favourable consideration.

I forward also a memorandum on the subject of Crown Counsel's pay.

2. In his despatch ^{Kenya} No. 942 of 14th July, 1924, His Excellency stated to the Secretary of State that he was prepared to consider a revision of the scale of pay of these officers. No reply on this point has I understand been received. The matter as will be seen from the memorandum is now urgent and I would request that the memorandum and a copy of Mr. McElwaine's letter may be forwarded to the Secretary of State. I trust His Excellency will support the rate I have inserted in the memorandum as after very careful consideration I have come to the conclusion that no lower rate of salary will meet the case.

I have the honour to be,

Sir,

Your obedient servant,

R. W. G. G. G.

ATTORNEY-GENERAL.

NAIROBI.

The Hon'ble Colonial Secretary,

22/11/24

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40726
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MEMORANDUM
ON
PAY OF CROWN COUNSEL IN KENYA.

In view of the difficulty of retaining Crown Counsel at the present rate of pay (£500-25-500) I submit the following memorandum for the consideration of the Secretary of State.

2. Increase of the present rate of pay was sanctioned by the local Legislature in 1922 but in view of financial stringency was not approved by the Secretary of State.

So recently as last July His Excellency the Governor again drew the attention of the Secretary of State to the fact that he was prepared to consider a revision of salaries.

Nothing has however been done in the matter, and no provision for an increase of pay has been made in the Estimates for 1923.

3. The average age on joining the Department of Crown Counsel presently serving is 37.7 and the average number of years since call to the Bar 11.7. All have had actual practice at the Bar, and all are married men with families. At the average age of 41.7 after 18.7 years at the Bar they reach the maximum of £600 and remain there.

If they receive no promotion they will retire at age 50 on an average pension of about £202.10.

In regard to acting allowances the senior Crown Counsel alone acts ordinarily as Solicitor

General

General for about a year in each tour of service. This will increase his average emoluments by £60 or £70 a year. Other Crown Counsel have ordinarily no opportunity of increasing emoluments.

The prospects of promotion in the Department are equally remote. There are two senior posts. If the position of Solicitor General were to fall vacant the senior Crown Counsel would no doubt be considered but as the promotion involves a jump from £600 to £1,000 it is by no means certain that the post would not be offered to some officer outside the Department drawing pay intermediate between the two scales. Actually there has never been any promotion in the Department. Magistrates have frequently acted as Judges (two are at present so acting) and two of our present Judges received direct promotion from the Magistracy. The present Solicitor General has held the post since 1917.

When I have attempted to tell Crown Counsel that if they are content to stay on in the Department their work will reap its reward in legal promotion I have been met by a recital of these facts.

Crown Counsel are convinced that the present low rate of pay is not only an injustice in itself but also acts as a barrier to promotion.

Before the readjustment of pay in 1920 Crown Counsel were on the rate £400-600. The same rate as District Commissioners, Resident Magistrates, Medical Officers, Executive Engineers of the Public Works Department and Veterinary Officers.

District Commissioners now get £600-700 and it is proposed to increase this to £700-800.

Magistrates

Magistrates get £500-700 and £700-800.

Medical Officers get £600-900

Executive Engineers get £700-800

Veterinary Officers get £600-700.

Crown Counsel are now placed on the same level as the following officers who before 1960 drew £250-400

Senior Assistant Treasurers

Collector of Customs

Assistant Engineers

and their maximum pay is the same as that of Assistant District Commissioners and Assistant Conservators of Forests who were previously on the £250-400 basis.

5. Is there any reason for this differentiation against Crown Counsel?

In other Colonies we find that the opposite process has taken place. In Nigeria Crown Counsel receive a salary of £950 + £95 duty allowance, as against £500-40-950 + £72 duty allowance paid to the most senior class of Magistrates. On the Gold Coast Crown Counsel get £720-40-950 + £72 duty allowance as against Magistrates at £500-30-720-40-950 + seniority allowance of £72 at £720. Similar examples could be taken from the Eastern Colonies.

The same comparison holds in regard to other posts. I select at random Medical Officers in Nigeria and find they receive £650-30-720-40-950 + £72 duty allowance at £720.

6. So far from there being any reason for Crown Counsel in Kenya being thus relegated to an inferior position I submit that there is every reason why they should be treated as senior officers worthy

of the position to which their age and professional experience entitles them. Their work in advising, in conducting Court cases and in drafting in a Colony of this sort, with a strong Bar, a large, restless and critical European population and with a host of varied interests to consider calls for ability, industry and experience. For an adequate discharge of the duties a twofold experience is desirable if not essential viz. experience gained at the Bar at home and local experience which can only be acquired gradually.

This Department can never rise to its full possibilities of efficiency unless it can retain its men for a number of years. Unless Crown Counsel's pay is increased it cannot do this. Of the Crown Counsel who have served in the Department since Crown Counsel were first appointed in 1918 not one has completed a second tour in the Department.

Possibly the most difficult sphere of legal work in a Colony of such diversified interests as this is the drafting of important legislation. It requires both an extensive knowledge of the subject matter of the legislation and a considerable knowledge of similar legislation elsewhere. Really satisfactory preparation of legislation can only take place if an experienced man can be detached for that special kind of work. Constant changes in the Department add to the difficulties created by pressure of other work in making arrangements for this.

Magistrates on the other hand stay and are promoted to be Judges.

The Hon'ble Colonial Secretary.

Through The Hon'ble Attorney General,

N a i r o b i .

I would invite attention to the salaries paid to Crown Counsel in this Colony and respectfully suggest that they are inadequate.

The salary is £800 by £55 to £600.

The Colonial Office Circular relating to legal appointments in the Colonies requires that candidates should be of at least four years standing in their profession. I was upwards of twelve years standing when I got my first appointment and was practicing my profession for all that time except for about 4 years when I was on military service, and during the latter period I had considerable experience of Court martial work as Court Martial Officer, prosecutor or prisoner's friend. The experience acquired by a lawyer in private practice adds greatly to his efficiency and usefulness when he enters Government service.

I am now over 40 years of age and at the present rate of pay will be 42½ before I attain £600. I have a wife and a child for whose education I must make provision. In all human probability I shall be on pension when the substantial expense of that education commences and at my present rate of pay that pension will be insufficient for my own support being about £130 per annum - a sum which is less than my widow would draw from the Widows and Orphans Fund. Even

by

by being more parsimonious than is becoming in my position it is difficult to save money, and to save money is essential.

Crown Counsel are usually University men; (I hold an honours degree besides my professional qualifications) yet we compare very unfavourably in salary with other officials in this Colony. Our work is responsible. Practically all the Court work civil and criminal in which the Government is interested is necessarily in our hands, and much of the drafting of legislation and advising of Departments falls to our lot.

The following table shows the present standards of pay of officials who in 1919 drew equal rates of pay:-

Office.	Pay July, 1919.	Pay July, 1924.	Increase	Remarks.
Chief Magistrate	£400-£500	£600-£700 Proposed £700- £800	£200, Proposed £300	
Deputy Magistrate	£400-£500	£500-£600	£100	
Commissioner of Police	£400-£500	£500-£700	£100	
Deputy Commissioner	£400-£500	£500-£600	£100	and Private Practice.
Executive Engineer	£400-£500	£700-£800	£300	
Deputy Commissioner	£400-£500	£600-£700	£200	and Private Practice.
Crown Counsel	£400-£500	£500-£600	£100	

Officials at present drawing £500-£600 in 1919 drew as follows:-

Cont.

Office.	Pay July, 1919.	Pay July, 1924.	Increase.	Remarks.
1st. District Commissioner	£250-£400	£400-£600		
Senior Assistant Treasurer	£250-£400	£500-£600		
Collector of Customs	£250-£400	£500-£600		
Sanitary Inspector	£200-£250	£450-£500		
1st. Engineer	£300-£400	£500-£600		
1st. Conservator of Forest	£250-£400	£400-£600		

From the first of these tables it will appear that Crown Counsel's increase in pay is £100 a year less than the lowest increase in the pay of any of the other appointments and is only $\frac{1}{2}$ of the increase granted to their fellow professional men in the Medical Department while Magistrates who may never have held a brief can aspire to £200 a year above our maximum.

I was myself a Magistrate doing the same kind of work as the Resident Magistrates in Kenya before I was promoted to my present post.

In at least one matter my jurisdiction far exceeded that of any Magistrate in this Colony.

If it is said that I accepted the post at £500-£600 it may be remarked that the fact that other officials accepted their positions at specified salaries

has not prevented those salaries from being increased.

I like Kenya and enjoy my work here, and would be glad to remain in this Colony if inducement offered.

I am compelled, however, to look for a better paid appointment and am desirous of attaining a better position than that of Crown Counsel.

The difference in pay between Crown Counsel and Solicitor General is so great that should the latter office fall vacant it is probable that the appointment would be filled from outside. There is therefore no reasonable prospect of promotion for Crown Counsel in this Colony. To look for promotion outside the East African group of Colonies has the disadvantage that if it were obtained one's pension is seriously prejudiced.

The Crown Counsel has completed two tours in the Colony. I suggest with all modesty that it would be to the advantage of the Colony to make the prospects of Crown Counsel sufficiently attractive to induce them to remain in the service of the Colony in which they have acquired experience.

If Crown Counsel are fit for better paid posts elsewhere they should be fit for better salaries in this Colony which has good claims to be regarded among the premier Crown Colonies.

Crown Counsel are generally older than other officials on first appointment. They have therefore a shorter term of service to which they can look forward with consequent smaller proportion of pension.

Medical man of 33 years of age just qualified, commences at £500 while I shall be over 42 before attaining that sum, and can rise to no higher salary in that position.

This, it will be conceded is not equitable.

I would ask that the question of increasing the salaries of Crown Counsel should receive the

sympathetic

sympathetic consideration of Government and that the approval of Government to such increase be forwarded for the sanction of the Secretary of State so that provision may be made accordingly in the 1925 Estimates.

(Sd.) P. A. McELWAIN

ORDEN QUORUM.

... on promotion to a colony outside the
... involve serious loss in
... to the fact that services could not

O. A. G.

15462/15

534

Feb. 16. 4.

9 effs 16/4

Ind

Bottomley 16/4 at once

15462

Mr. Strachey.

Sir J. Shuckburgh.

Sir C. Davis.

Sir H. Grindle.

J. Masteron Smith.

Ormsby-Gore.

Amery.

Telegraph Section

TO [unclear]

O. A. G.
R 17 APR
D [unclear]

Could be sent
JC 11-55 a.m.
17/4/24

Amey
25669/2

DRAFT. Tel CW:

17th April 1924

Amey
Handwritten

Gen.

Enc. your despatch 26th Feb.

copy 24 + approve
addition of ^{two} ~~two~~ Crown

Consent \odot I do not
~~feel~~ feel able to agree to
~~consider~~ desirable salary
£600 to £750 for Crown
subject to your view
~~Consent~~ but I am prepared
to approve scale £500 by
25 to £700 and also
~~creation of ad on the~~
conversion of one post into

for Prop. as G
amount of ^{increase} ~~increase~~
Fund cost
A. R. Kemp
7/1/24

analogy of ~~some~~ ~~unpublished~~
appointments of Senior Crown
Council with salary £2000 by
£25 to £800 ~~do~~ ~~to~~ ~~you~~ ~~are~~
~~please~~ ~~take~~ ~~and~~ ~~recommen~~
~~on~~ ~~senior~~ ~~post~~ ~~of~~ ~~disputes~~
~~follows~~ ~~as~~ ~~to~~

Mr. SWELL 2/4/30
Mr. Allen
Mr. Bottomley 25-25/30
Mr. Strachey
Sir J. Shuckburgh
Sir G. Davis
Sir G. Orindis
Mr. J. Masteron Smith
Mr. Ormsby Gore
Mr. [unclear]

Kenya
595

DRAFT

5 MAY 1925

Kenya
Laf (2)
O/S

5 MAY 1925
Hydra (copy) = 5 MAY 1925
copy

I have to refer the receipt
of the copy of the 24th
& Feb & to confirm my letter to the
17th Feb regarding the establishment
of a Comm Council in the Attorney
General's Dept.

I note the remarks in
para 3 of your despatch regarding
the preparation of a ^{in draft} ~~copy~~ to
replace the Indian Penal Code
but I am of opinion that nothing
should be allowed to stand in
the way of the work ~~being~~ ~~done~~

of the revision of
the Criminal Procedure
Code (see my predecessor's
letter of the 5th
March 1921) which I

Laf.

that in both cases the work

I am advised / should be substantially
simplified by reference to the Nigerian
& East Indies codes, with the
Nigeria Codes, were enclosed in
my predecessor's despatch of 27th April 1924
4 June 1925

I consider that the new
codes should also be adopted in Uganda,
in the Kenyan & the Somaliland territories,
accordingly sending a copy of the despatch
to the O.S. A.S. of those territories
informing them that they will
be consulted when I have received the drafts of
the Kenya ^{codes} ~~drafts~~ ^{which have been} considered
by my legal advisers. I trust that

it will be possible to furnish me
with the drafts of the ^{codes} ~~drafts~~ at an
early convenient date.

Shanty
(Signed) L. S. AMERY

- Mr. JEWELL 27/4
- Mr. Allen 4/5
- Mr. Bottomley 2.5.25
- Mr. W. Green 4/5
- Mr. Stacey
- Sir J. Shackburgh
- Sir C. Davis
- Sir G. Grindle
- Sir J. Maiterton Smith
- Mr. Omsby-Croft
- Mr. Amery

Kenya



5 MAY 1925 102

DRAFT

Sir

Uganda }
F. T. }
Chief

I have to inform you that

in accordance with instructions given
by my predecessor, ^{the} ~~the~~ ^{Order} ~~is~~
being prepared in the Attorney-General's
Dept of Kenya to replace the
Indian Penal ~~Code~~ ^{Code} ~~and~~ ^{the} ~~the~~ ^{Kenya} ~~provisional~~ ^{provisional}
also give notice that the Kenya ^{provisional} ~~provisional~~ ^{Code} ~~is~~ ^{is}
to be replaced by the Indian Criminal Procedure Code
I consider that ^{similar} ~~similar~~ ^{legislation} ~~legislation~~

5 MAY 1925
Chief

should also be adopted in
Uganda & I enclose a copy of a
(2) the F. T.
in the despatch which I have sent

2/5

to the O.A.S. & Kenya from which
You will see that it is my intention
to Communicate with you again when
I am in receipt of ^{Kenya} drafts of
the Orders the Kenya ^{Ordinances} ~~Orders~~.

3. A similar despatch

has been addressed to the

J.F.V.
O.A.S. 6 (1) the T.T.
(2) Uganda

Thames

(Signed) L. S. AMERY