

EAST AFR. PROT
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Date
1912
28 June
at previous Paper
20103

Criminal Law Amendment

Submit draft bill dealing with rape
& other similar offences.

~~Mr. Thompson~~
Mr. Pirley

H. J. R.
23/VI

- This draft falls into three divisions
- A. The punishment of rape, attempted rape, assault with intent to defame, and obscene display. S. 3
 - B. The punishment of indecent exposure to women while working in a factory. S. 4
 - C. Punishment of indecent exposure to men with a high woman under 16 years old.

As to C this does not raise particularly important questions. There is

Subsequent Paper
4054

to find the fact that only white
 women are mentioned, but then
 at any rate partially accounted for
 the different sex at which black
 women arrive at puberty (at least
 I believe this is so) - should
 there not be wear, like a similar
 provision with a different age limit
 for black women? The section only
 deals with white men, natives
 being already liable to a heavier
 punishment under s. 4.
 In this connexion it may be stated
 that the contract between a sentence
 of 5 years for a native having
 intercourse with a white prostitute
 & two years for a white seducing
 girl under 16 is rather unequal
 black women are introduced
 into s. 5 primarily native men
 ought also to be introduced, but
 perhaps unnecessary to provide
 for the case of a native seducing
 a native girl under the legal
 age of 15 is taken from s. 5
 The Criminal Law Amend^t Act
 1855, 40 & 41, Vic. c. 69, s. 1 (note H. 1
 t. omits the proviso concerning
 the punishment)

Doubt that
 the proposed
 change is

2, 1855 short
 have the
 page 9

(- The new s. 376 of the Code
with regard to (A) Rape &c

The new punishments for the
full offence are

702

- (i) Death or
- (ii) Imprisonment
of 14 years
- (iii) Fine.

The death heavily attracts in
Natal - see 22 1898

While in s. 240 (A) (with intent)
rape are punishable with death

None of these laws
make any distinction as to
status.

The new s. 354 of the
allows a punishment of
years imprisonment or
a fine for assault or
use of criminal force in the
attempt to commit rape.

While the new s. 354 A
allows 7 years or a fine
for assault or use of
criminal force, applied to
an outrage or indignity
made by -

Other cases dealing with

with this part of the subject
are as follows

Natal 2219d allows
10 years with or without
the wife (40 lashes) for
attempted rape
2 years with or without
whipping (25 lashes) for
indecent assault (22/04)

I have been unable to
but my hand in the relevant
laws of the S. African
provision in this country
the penalty for indecent
assault under 145 the c. 100
s. 52. 6 2 years

The penalty under
the new s. 354 A may be
rather excessive

I should add that

~~but that which~~ the
binding of these sections
is taken from the old section
of the Indian Penal Code
s. 354. as to attempted
rape under Penal Code
see report in cl 15 of
this draft.

As to (B)

Penalty for illicit intercourse
between natives & white
women. These penalties under
the draft are (B. 1)

- (1) For woman shown as usual
- (2) For woman shown as usual
- (3) Native attempting to seduce
in circumstances not amounting
to rape
- (4) Person procuring a white woman
for such intercourse
10 years
- (5) Person occupying a house
known to be such a house
5 years

Natives in this country
subject to the law of the
land of the Republic of South Africa
including that of South Africa (1912)
to be known as the draft

Other S. African laws on
this subject are as follows

Natal 31/03. s. 16. unaltered
 illicit sexual intercourse between
 white woman & coloured person
 (defined so as not to include
 person of Asiatic origin other
 than (Asians) illegal
 penalty for either party 2 years
 in case of man, 25 lashes
 s. 17 punishes the
 procurer of this intercourse
 with 5 years & 40 lashes,
 25 lashes.

s. 18 punishes the
 keeper of a brothel in which such
 intercourse is proved to have
 taken place with 5 years & 40
 lashes, 25 lashes.

Rhodesia 9/03. Proves the
 woman & man the man
 5 years & 25 lashes
 5 years & 25 lashes
 This does not mention soliciting &c.

Trinidad 46/03 amended by
 10/08

19 (1) White woman permitting
 or soliciting such intercourse
 gets 5 years

14) Native having or attempting
 to have or soliciting such
 intercourse or soliciting to

704
 a white woman to the
 commission of an immoral
 or indecent act - with
 her 5 years & 25 lashes

(3) Procures 10 years & 40
 lashes

(4) ... 5 years

White man = any person manifest
 belonging to any of the nations
 or coloured races of Africa, Asia,
 America & St Helena

Cape 36/02

s. 34 punishes a woman
 voluntarily having illicit
 intercourse with any aboriginal
 Native with 2 years imp
 ...

35. Procures 5 years & 40
 lashes, 25 lashes

36. Keeper of a brothel
 with 5 years & 40 lashes
 25 lashes (40 in
 Natal 11/03)

O.S.C. 11/03 14 15 16
 taken that day & Natal
 31/03

It will be seen from the above analysis that the DfJ follows the Traumont law (Nebel, etc, DR. & S. Rhodora being all law ~~but on another model~~) but.

- 1. reduces the penalty for woman seducing to 2 years
- 2. Does not extend seducing of the nation & reduces its penalty to 5 years

With regard to Shipping this is not expressly mentioned in the act, but some view of doubtless placed in the London Shipping act of 1854 which has been applied to the Post.

I note however that that act only enables ships to be equipped for an expedition for assembling or using criminal force with intent to outrage modesty (Sec 3) & for rape (Sec 4) - ~~as referred in S. 354 of the~~

It would therefore appear that there could not be a seizure of shipping or conversion under the new ^{act} ~~provision~~ in the attempt to commit rape in furtherance of this alteration.

No case, which would be dealt with
under this section, has been brought to
our notice. This is the case of the
Swedish woman referred to in ¹⁹⁰⁷ 111 755
but this would not have been
the case of the proposed ord^{ce} as she is
supposed to be living with her
husband who are not deprived of natural rights. If
anything is to be done, it had better
be done in accordance with the suggestion
made in our Conf. dec. of the 27
June 1907 (1907) which the Court
has now approved.

(C) Section 5 which is designed to bring
the S.A.P. law into line with the laws
of the country, is all right, except
that, if S. 4 is omitted, "other than
a return" in S. 5 ought to come out
& the penalty ought to be increased
so as to bring into line with the
penalties prescribed by S. 3.

I have just seen Mr. Holford & I
understand that both Mr. J. Anderson & I
doubt the advisability of proceeding
further.

No case which would be dealt with
under this section, has been brought to
our notice. This is the case of the
Swedish woman referred to in Section 11 of the
1907 Act. But this would not come under
Section 4 of the proposed Ord. as she is
supposed to be living with Indians
who are not defined as natives. If
anything is to be done, it had better
be done in accordance with the suggestion
made in our Conf. draft of the 27
June 1907 (see Section 11) which the Council
has now approved.

(C) Section 5 shall be amended to bring
the S.A.P. law into line with the laws
of the country, in all respects, except
that, if S. 4 is omitted, "other than
a detainee" in S. 5 ought to come out
& the penalty ought to be increased
so as to bring it into line with the
penalties prescribed by S. 3.

I have put some to Mr. Hildfeldt & I
understand that both he & I are in the
direct the advisability of proceeding
further.

further with the D.P.C.

H. J. R.

16th VIII

This being so, I refrain from recommending I think Mr. Belford will be a far better person to advise after he has had time to consider the position on the spot.

I think it is only the best of us who hope taking the D.P.C. into consideration will be best for him. He has had time to consider the matter after his arrival & before he leaves

W 19

I agree

6.21.8

I agree

I had some talk with Mr. Belford on this matter and we had better await his advice.

H 24.8.12

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE

CONFIDENTIAL No. 62

28th June 1912.

Sir,

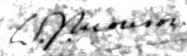
In confirmation of my telegram No. 113 of to-day's date I have the honour to transmit herewith a draft Bill for an Ordinance to amend the law relating to the punishment for rape and other similar offences, and to make unlawful carnal connection between natives and white women an offence punishable with imprisonment.

2. An explanatory table by the Attorney General is attached to the draft Bill.

I have the honour to be,

Sir,

Your humble, obedient servant,



In the absence of the
ACTING GOVERNOR.

THE RIGHT HONOURABLE
LEWIS HARCOURT, F.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWLING STREET, LONDON, S.W.

Mr. Palford has talked to the Legislature about them & it has been decided that the jury question shall stand over until Mr. Palford can look into the question in the apt. but that these papers shall go in the ordinary way.

I think that the proposed legislation goes further than the course of the case warrant. Taking the 3 divisions of the Legislature into account.

(A) The law relating to rape certainly requires strengthening, but I do not think that we have reached the state where the death penalty is required for rape. So far as I know the recent case is the only one which has been brought officially to our attention provided has referred a conversation on 3 other cases, but they do not appear to have come into court but we do not know all the cases in any case I much doubt whether public opinion in this country would tolerate the imposition of a death penalty on the present facts. I suggest therefore that "with death, or" be omitted from the new Section 376.

(B) I think that the whole of this should be omitted. No

It will be that both of the bills are made to take the penalty

6.8
RECEIVED JUL 12

A. B. P. L.

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INCLOSURE

AN ORDINANCE TO AMEND THE CRIMINAL LAW
IN RELATIVE TO UNLAWFUL OTHER
SEXUAL OFFENCES.

Title.

1. This Ordinance may be cited as "The
Criminal Law Amendment Ordinance, 1912."

Interpretation.

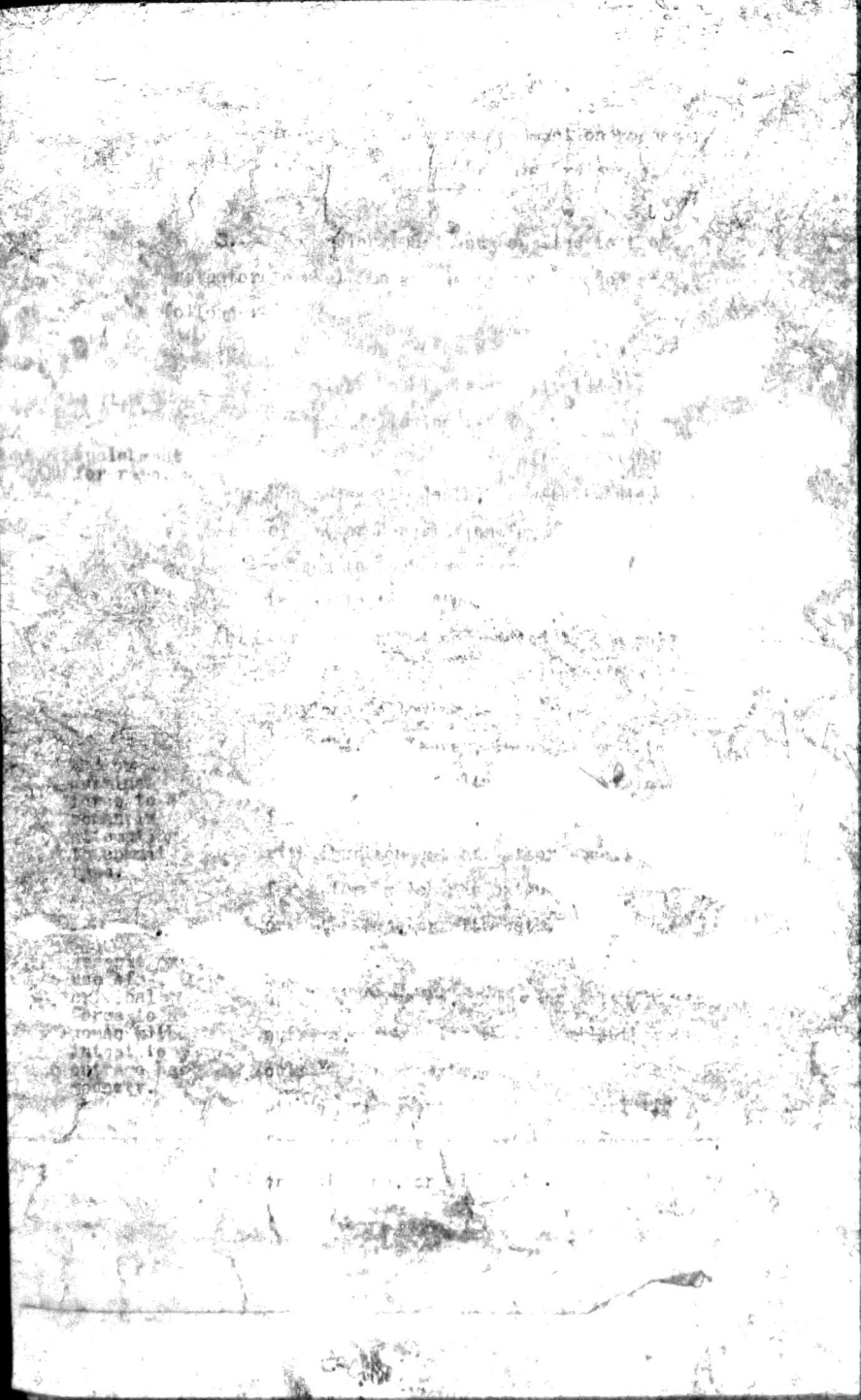
2. In this Ordinance, unless inconsistent
with the context :-

"Native" means any Native of Africa not being
of European or Asiatic origin or descent
and includes an Arab and a Somali.

"Woman" denotes a female of any age.

"White woman" means a woman of European origin
or descent. Provided that in any proceed-
ings under this Ordinance any woman appear-
ing in the Court or Jury before whom the
proceedings are held to be of European
origin or descent shall be deemed to be a
white woman.

"Lawful carnal connection" means sexual
connection otherwise than between husband
and wife. Illustration is sufficient.



Page
of 16.

... or ... five ...
... or ...
... of ...
... or ...
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... of all ...
... provided that it shall be ...
... or charge ...
... per to the Court ...
... shall be brought ...
... reasonable cause to believe ...
... have the care of ...

Page
of 16

... 6. ...
... (Article 190) ...
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in Clause provided that a offence of
shall not be punished with death or with
imprisonment of life or description of it and
extend to fourteen years.

(b) No express provision is made for the case
for the offence of attempt to commit a crime,
that offence is punishable under section 111
of the Code. If a person is convicted
convicted of an attempt to commit a crime
punishment to imprisonment of either description
for a term which shall not be less than
considered that when it is proved that a person
has assaulted a wife or woman, it shall be
considered that such punishment is justified in
the case of section 304 for a trial provision is
made under this clause allows of imprisonment
extending to ten years to be imposed when an
assault is committed in an attempt to commit
murder.

(c) Under section 304 of the Indian Penal Code
the maximum punishment for an indecent assault
is two years imprisonment or description of it.
This again is considered to be a sufficient
punishment in the case of an indecent assault
by a native on a white woman.

The new section provides for
imprisonment extending to seven years being
placed in special cases.

Section 19 of the Criminal Ordinance...

(a) Sub-section (1) is now and shall it remain... punishable with the same... solicit or induce a native to have conversation with her.

(b) It is provided that... imprisonment from 6 to 5 years... no sufficient ground for imposing a sentence of imprisonment on a native...

There is no provision in the... the law is that...

Under the law... capable of being... at the... Without it may be... to apply the provisions... of the... and natives... considerable reason... provisions in the... applicable only to... part of a...

Natives of... punishable by... increase in the... provided...

Native of... punishable by... increase in the... provided...

(4)

915

attempt to rape, should be tried only by the High Court when the circumstances are such that the maximum punishment may be imposed.

This clause provides that offences of this nature committed by natives on non-native women shall be committed for trial by the High Court.

17 AUG 1894

orig. / 22520

ms. no. 24054

116

DRAFT.

Est. Conf.

orig.

27 August 1912.

Sir,

MINUTE.

- Mr. Acl. 26/8
- Mr. Reed 26/8
- Sir G. Fielder
- Sir H. Judd
- Sir J. Anderson
- Lord Emmott
- Mr. Harcourt

I have the honor to acknowledge the receipt of your confidential copy of the 28th of June transmitting a draft Bill for an Ordinance to amend the Criminal Law in relation to rape & other sexual offences. I wish to inform you that I propose to defer taking the draft into consideration until

PUBLIC RECORD OFFICE

CO/533/104

END

TOTAL EXPOSURES →

PUBLIC RECORD OFFICE

CO/533/104

END

TOTAL EXPOSURES →

PUBLIC RECORD OFFICE

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ORDER NO. ⇒162
CAMERA NO. ⇒23
OPERATOR. ⇒OS
REDUCTION. ⇒12
EMULSION NO. ⇒281091
DATE. ⇒30/7/70

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TIGHTLY BOUND FOR ALL WORDS TO BE
REPRODUCED IN ENTIRETY

DESP. NO.	DATE	SUBJECT
456	3 July	Subsidiary Estimates 1911-12
457	3	Theatre for Ministers
458	3	R. Bowker
459	4	Rly. Compensation
460	4	Stocks, Disasters & Vet. Staff
461	5	Audit of Zanzibar Acct.
462	6	H. H. Phippscome
463	6	Loan of £ 250,000
464	8	Penalty Agency
465	8	Account of the Magazine Works 1911-12
466	9	Int. Business in Lake Steamer Service
467	9	Proposals for Rain Rain
468	9	Carriage & Motor Vehicle Services
469	9	Commodity
470	10	International Opium Convention
471	10	Suspension of S. R. S. Mander
472	10	Law returns 1911-12
473	10	Abolition of on shores of Lake Rudolf
474	10	Vacancy for Asst. Supt. of Police, Uganda
475	11	P. W. Extraordinary Sub. Heads, 1911-12
476	11	Salaries of Post Office Staff
477	12	Order 11
478	15	Forest Policy
479	15	Illicit Trade in ivory
480	16	Resignation of U. E. Fisher
481	16	Order 11
482	17	Resignation of Sir P. Girouard
483	20	J. Stone Anderson
484	20	Emergency
485	20	Appt. of Mrs. Belfield
486	22	Kariti Plains

DESP. NO.	DATE	SUBJECT
575	21 July	Housing accommodation
576	25	Gratuity to Abdullah bin Chams
577	26	Supt. Wharves for Kairobi Lunatic Asylum
578	28	House of Hospital of Nyamira Province
579	28	Survey Staff
600f	28	Duty pay for heago water
	28	Land scheme
	26	Dutiables for July payments
576	20	Case of R. Bowker v. The
578	27	Mr. Toste claim
575	7	Local Transfers of Govt. Funds
576	29	Lighthouse at Kisumu
577	30	Mr. Deed
578	31	Return of land grants 1/2 year 31 Dec. 1911
579	7 Aug	Customs duty
580	5	Gratuity for Mr. W. W. Wainwright
581	5	City Capital Works
600f	5	Manobo patrol
	6	Appt. of Mr. Selfield
575	7	Case of R. Bowker
577	8	Deaths of Foreign Seaways
578	8	Lighting of the beach carriages
579	8	Female Lunatics
600f	8	Manobo move
580	8	Vacancy in District
581	8	Police Officers
582	8	Handbook
583	8	Relief of the
584	8	Missive of (and de) Mombasa - Kikuyu
585	8	Missive of (and de) Mombasa - Kikuyu
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DESP. NO.	DATE	SUBJECT
600f	12 Aug	Abyssinian raiding party on 2. Rudolf
573	15	betinalls 1912-13
573	20	Railway expenditure 1911-12
600f	20	Grain Selo
574	21	Kenia Forest concession
577	21	J. H. Thomas
578	22	Vaccination Office
579	22	Customs duties - transport
600f	23	Business
573	26	Manobo move
574	26	Secretary to Central Studies Board
574	27	Vacancy for bonds Lake Steamer
577	27	Lubricating Barge
578	27	Mr. Tynford's land
602	27	Lighthouse at Kisumu
574	29	Design for new steamer
	30	Vacancies for Vet. Officers
	31	Kenia Forest concession

DESP. NO.	DATE	SUBJECT
456	3 July	Suppl. Estimates 1911-12
457	3	Theatre for Travellers
458	3	R. Bowker
459	4	Rly Expenditure
460	4	Stocks, Diseases & Vet. Staff
461	5	Credit of Gambia Coast
462	6	H. L. Apperance
463	6	Loan of £ 250,000
464	8	Bombay Agency
465	8	Report for Magasin Works 1911-12
466	9	Ind. Business in Lake Steamer Service
467	9	Contract for Ram Kasain
468	9	Agent: J. M. & Co. Surveyors
469	9	Currency
470	10	International Opium Convention
471	10	Suspension of J. R. Mandet
472	10	Salaries 1911-12
473	10	Abeycinians on shores of Lake Rudolf
474	10	Vacancy for Asst. Supt. of Police, Uganda
475	11	P. W. Extraordinary Sub. Heads, 1911-12
476	11	Salaries of Post Office Staff
477	12	Order 11
478	15	Forest Policy
479	15	Illicit Trade in ivory
480	16	Resignation of A. E. Fisher
481	16	Order 11
482	17	Resignation of Sir P. Girouard
483	20	J. J. Anderson
484	20	Currency
485	20	Appt. of W. B. Relfield
486	22	Kabiti Plans

DESP. NO.	DATE	SUBJECT
518	1st July	Housing accommodation
520	25	Gratuities to Abdullah bin Khairi
522	25	Inst. station for Nairobi Lunatic Asylum
528	25	name of hospital of Nyanga Province
530	25	Survey staff
531	25	daily pay for head water
532	25	Land scheme
536	26	Dutiables for huly payments
526	27	case of R. Bowker's clothes
538	27	Mr. Foster's claim
528	27	Local transport of Govt. School
540	29	Lighthouse at Kisumu
541	30	Mr. Seed
533	31	Return of land grants 72 years 31 Dec. 1911
520	1 Aug	Customs duty
540	1	Gratuities for Mr. W. W. W. W. W.
541	1	City Capital Works
541	1	March patrol
541	6	Appt. of H. B. Selfield
5248	7	Case of R. Bowker
537	8	Deaths of foreign seamen
532	8	Lighting of the above carriages
532	8	Female inmates
541	8	Marine move
541	8	Vacancy in the above
541	8	Police & streets
541	8	Handbook
541	8	Regulation of the above
541	8	Business of land in Mombasa - Administration
541	8	Business of the above
541	8	Business of the above

DESP. NO.	DATE	SUBJECT
501	14 Aug	Abyssinian raiding party in a Rudolf
543	15	betinalle 1913-14
543	20	Railway expenditure 1911-12
501	20	Grain bill
541	21	Kenia Forest concessions
547	21	J. H. Thomas
588	22	Vaccination notice
589	22	Customs duties - Disrupt
501	23	Business
593	26	Marine move
541	26	Secretary to Central Tender Board
541	27	Vacancy for bonds Lake steamer
597	27	Lubricating bonage
578	27	Mr. W. W. W. W. W.
502	27	Lighthouse at Kisumu
541	29	Design for new steamer
541	30	Vacancies for Vet. Officers
541	31	Kenia Forest concession