

EAST AFR. PROT.

C. O.  
37054

23 NOV 12

37054

Director  
Conf  
Field 119

Date  
1912

October

Previous Paper

22420

CRIMINAL LAW AMENDMENT

After careful consideration is of opinion that the Ordinance as drafted is required to meet the needs of the Prot and recommends its introduction before the Legislative Council as it stands. Submits observations in support of his opinion.

W. Thompson  
L. G. Fuller

The fr states that at the present time there are white women in the Prot who permit relations to have occasion with them. This breaks the bottom out of my argument on (B) in my minute on fr 22820; but the fr goes on to say that it wd appear possible to deal with undesirable white women by executive action & I cannot help thinking that this is the preferable course. If this is found to be inadequate we could ~~advance~~ pass

Subsequent Paper

12586/10

Mr. B. Williams

at

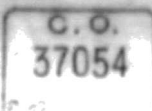
650

No. 1200. The copy of the paper is placed in the  
the land and from the first of the month of the year.

Wm. 28/4/12 etna

S. R. 2A

31st October 1912.



651

Sir,  
23 NOV 12

I have had under my consideration the draft Bill for an Ordinance to amend the Criminal Law in relation to rape and other sexual offences, and in accordance with the instructions contained in your Confidential despatch of the 27th of August I have the honour to report my views thereon.

Gov  
22920

2. I desire to state at once that after careful examination of the merits of the Bill, and after full discussion first with the Honourable Attorney General and subsequently with my Executive Council, I am of opinion that the Ordinance as drafted is required to meet the needs of the Protectorate and I recommend its introduction before the Legislative Council as it stands.

3. In support of this opinion I propose to proffer certain observations on the provisions of the Bill and on the penalties laid down therein.

4. Section 3. The maximum penalty which can at present be imposed upon a native convicted of having committed rape on a white woman is that of ten years' imprisonment. I am of opinion that such punishment

is quite insufficient.

It is true that as yet no such case has actually occurred, but there have already been instances of indecent assault by native boys on white children. In these cases the temper of the European community has been such that very special police precautions have been considered necessary to prevent an attempt on the part of the public to take the law into their own hands. In the case of rape by a native on a white woman it is practically certain that the settlers would adopt, or make a serious attempt to adopt this course of action, unless the punishment which could legally be imposed on the offender were such as they considered proper and adequate. I need not point out the disastrous results which such an incident would have on the advancement of the country.

Under the Roman-Dutch law as prevailing in South Africa rape is punishable with death, and the conditions there are not materially dissimilar to those obtaining in this Protectorate. I do not consider that the maximum penalties prescribed in Clause 3 of the Bill are in the circumstances excessive and I advise their retention. It is in any case preferable that a capital sentence should be passed by a Court of Justice after a fair and full trial rather than that the same sentence should be illegally imposed and carried into execution by an irresponsible mob.

3 (a) Section 4. The penalties prescribed for the various offences under this clause are based on

the Transvaal law, and I consider it advisable that the punishments which can legally be imposed in this Protectorate should be no less severe than those enforced in South Africa. In the first place I presume that the penalties laid down in the Transvaal Law have been decided upon as being the most suitable and proper for these classes of crime, and in the second place the adoption of a more lenient policy will undoubtedly create dissatisfaction among the European community of this Protectorate, a large proportion of which is, as you are aware, familiar with South African conditions or actually of South African extraction. East Africa is at present free from the gravest classes of sexual offences and I consider it our duty to take measures to prevent such a condition of affairs from arising here.

5 (b) I believe the provisions of this clause which declare certain acts to be offences are necessary in the existing circumstances. It is with regret that I am compelled to assert that even at the present time there are white women in the Protectorate who permit natives to have connection with them. I cannot conceive any conduct more calculated to lower the prestige of white women in the eyes of the native, or more instrumental in bringing about what, for want of a better expression, is termed the black peril. Such conduct should be treated as a serious offence, and I am sure you will agree that the punishment should be one which will effectually deter white prostitutes

prostitutes from indulging in such practices. I would however invite your attention to the fact that it would appear possible to deal with undesirable white women by executive action, and that it does not follow that the Ordinance would necessarily be brought into operation in every instance.

6. I am convinced of the propriety of enacting stringent laws to deal with the classes of offence which are the subject of this despatch. The growth of the European community in the Protectorate and the increasing numbers of detribalized natives owing to the attractions of town life are only two amongst the factors which increase the possibilities of such relations, the existence of which is a reproach to any country. The native no longer stands in awe of the European; it behoves us to see that we do not less his respect. I believe that this Bill will prove to be an effectual method of dealing with the question, and I commend it to your careful consideration.

I have the honour to be,

Sir,

Your humble, obedient servant,

*A. C. W. B. G. J. 1.*

GOVERNOR.

For Lat

REC  
12

St. 10 Dec 1850

653

I have this honor

to ask the result of  
your conf. despatch no 119  
of the 31<sup>st</sup> of October  
stating that you are  
of opinion that the Draft  
Ordinance to amend the  
Criminal Law is eligible  
to take and that Council  
opinion is required to  
send the result of the  
Parliament, and that  
you recommend its introduction

DRAFT.

A Conf  
Belphair

MINUTE.

- Mr. *H B* 2/4
- Mr. *Finlayson* 3
- Mr. *Robinson* 3
- Mr. *Keay* 4
- Sir G. Fiddes.
- Sir H. Just.
- Sir J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

658  
Consists of having

Committee take in a

That woman is not quite

insufficient. But, although

I appreciate the concern.

What you urge is possible  
I am sure,

& of your deep, <sup>personal</sup> ~~personal~~ <sup>concern</sup>

concern, I cannot

be by any means

the importance of the

that penalty in cases

of this kind. I

consider that it will

be sufficient, at any

rate for the present,

to extend the term of



improvement, as proposed  
to the best advantage  
of the land to his benefit

the Judge will of course have  
as a parent,  
the honor, & it is for the  
additional benefit of the  
land

~~to be in conformity to the  
order of the Surveyor~~

3. I shall be glad if you  
will address that  
letter to the  
land

~~to your legal address~~

Under the attention of  
his Royal Highness

recoritate <sup>some</sup> any amendment

of the Indian Billings <sup>may be</sup>  
I shall be glad if you will address  
the matter in consultation

to your legal address

As applied to the Postoffice

J. H. HARTWELL