

EAST AFR. PROT.

8245

1911

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P. Africa Order in Council. 1911

to be a application of English law & Indian legislation)  
to be a Enquire whether the  
to be a London Gazette

Send the no. of number of copies to E.A.P. with  
and referring to 2014 <sup>and</sup> explaining that the  
amendments proposed by Mr. Lankford in paras 2 & 4 of his  
report have been adopted & that proposed in para 3  
is carried out in a different manner, and that the  
London Gazette in para 4 of Mr. Hamilton's memo  
has been set by inserting at the beginning of the  
new article the opening words of article 11(4)  
of the 1907 Order to which he refers

MA 15b

at once

4/2/11

15/11/11

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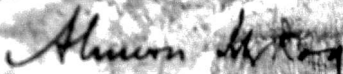
Council Office,

Whitehall,

11<sup>th</sup> March, 1911.C. O.  
8245

I am directed by the Lord President of the Council to transmit to you  
 the accompanying Order of His Majesty in Council of the *seventh*  
*instant* entitled "The East Africa Order  
 in Council 1911";

and I am to request that you will lay the same before the Secretary of State  
 for the Colonies

I am,  
 Your obedient Servant,


The Under-Secretary of State,

Colonial Office

AT THE COURT AT BUCKINGHAM PALACE,

The 7th day of March, 1911.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

SIR WILLIAM CARINGTON

LORD ANGLIS

SIR ARTHUR BIGGE.

**W**HEREAS the territories of Africa situate within the limits of this Order are under the protection of His Majesty the King, and are known as the East Africa Protectorate:

And whereas by treaty, grant, usage, sufferance, and other lawful means His Majesty has power and jurisdiction within the said territories:

And whereas by an Order of His late Majesty King Edward the Seventh in Council bearing date the 11th day of August, 1902, and entitled "The East Africa Order in Council, 1902," provision was made for the exercise of His Majesty's jurisdiction within the said Protectorate:

And whereas by Article 15 of the said East Africa Order in Council, 1902, it was ordered that there should be a Court of Record in the Protectorate with full jurisdiction, civil and criminal, over all persons and over all matters in the Protectorate, and that such civil and criminal jurisdiction should, so far as circumstances

admitted, be exercised in conformity with the Civil Procedure, Criminal Procedure, and Penal Codes of India, and the other Indian Acts which were in force in East Africa at the commencement of that Order, except so far as might be otherwise provided by law:

And whereas before the commencement of the said East Africa Order in Council, 1902, it was [amongst other things] provided by Article 11 of the East Africa Order in Council, 1897, that, subject to the other provisions of that Order, so far as the enactments, procedure and practice of India therein specified were inapplicable, Her Majesty Queen Victoria's criminal and civil jurisdiction in the Protectorate should be exercised under and in accordance with the common and statute law of England in force at the commencement of that Order.

And whereas the said Order commenced and had effect on the 12th day of August, 1897.

And whereas by Article 28 of the said East Africa Order in Council, 1902, it was ordered that on the commencement of that Order the said East Africa Order in Council, 1897, should be repealed, provided that, where other provision was not made by Ordinance, any law, practice, or procedure established by or under the said repealed Order should remain in force until such other provision was made.

And whereas doubts have arisen respecting the extent to which the law of England is in force in the East Africa Protectorate under the above-recited provisions, and it is expedient to remove such doubts and to amend Article 15 of the said East Africa Order in Council, 1902:

NOW, THEREFORE, His Majesty, by virtue and exercise of the powers on that behalf by the Foreign Jurisdiction Act, 1890, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order; and it is hereby ordered, as follows:—

1. This Order may be cited as the East Africa Order in Council, 1911.

2. Sub-Article (2) of Article 15 of the East Africa Order in Council, 1902, is hereby revoked without prejudice to anything lawfully done thereunder and in place of the said Sub-Article the following shall be substituted:—

(2) Subject to the other provisions of this Order, such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the Civil Procedure, Criminal Procedure and Penal Codes of India and the other Indian Acts which are in force in East Africa at the date of the commencement of this Order and subject thereto and so far as the same shall not extend or apply shall be exercised in conformity with the substance of the common law the doctrines of equity and the statutes of general application in force in England on the 12th day of August, 1897 and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and Justices of the Peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said Civil Procedure Criminal Procedure and Penal Codes of India and the other Indian Acts in force as aforesaid and the said common law doctrines of equity and statutes of general application and the said powers procedure and practice may at any time before the commencement of this Order have been, or hereafter may be, modified amended or replaced by other provision in lieu thereof, by or under the authority of any Order of His Majesty in Council, or by any Ordinance or Ordinances passed in and for the Protectorate. Provided always that the said common law doctrines of equity and statutes of general application shall be in force in the Protectorate so far only as the circumstances of the Protectorate and its inhabitants and the limits of His Majesty's jurisdiction permit, and subject to such qualifications as local circumstances render necessary.

3. This Order shall be published in the Official Gazette of the East Africa Protectorate and shall thereupon commence and come into operation.

And the Right Honourable Lewis Harcourt, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.,

ALMERIC FITZROY



Observe that the amendment  
 proposed by the Council  
 in paras 205 of the  
 memo enclosed to the Judicial  
 Dept has been adopted,  
 that the amendment proposed  
 in para 3 has been carried  
 out, though in a different  
 manner to that proposed  
 by the Council, and that the  
 objection raised in para 4  
 of the Hamilton memo.  
 has been met by inserting  
 at the beginning of the  
 new sub-article the  
 opening words of article  
 101 of the 1897 Order

[The proposed amendment requires  
 that the Council shall have the  
 right to vary the law in  
 relation to the Council's  
 power in the publication of  
 the Gazette - but only in  
 the Gazette.  
 Possibly the Council can vary  
 the law in relation to the  
 publication of the  
 Gazette - but only in  
 the Gazette. (1897 Order)

in Council to which he

expressed I am advised that the

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substance of his words subject to  
 the other provisions of this Order  
 will have the same effect as  
 the 1897 Order as now amended  
 as they stand in the 1897 Order.

as to former conditions in the  
 - 1897 Order.

Right of making local legislation  
 to be done with the same law and  
 Indian applied Act the main  
 body of the Prohibitive Law, and  
 that under the new sub-article  
 the law will only apply  
 to the Prohibitive Law and  
 the law is not to be applied  
 as the former law and Indian  
 applied Act an inapplicable