

1936

38004

CO 533/462
KENYA

38004

PENAL CODE LEGISLATION

Previous

1935

Subsequent

~~1936~~

1937

R. 297	30/12/36
R. 309	1/1
No Sale	30
in the book	30
303	5/2
299	1/2
298	15/2
1899	17/2
297	19/2
Livani (Lena)	19/2
R. 297	
Rel. 297	

Gov., Kenya 6444 2-12-36
The, with comments, Ordinance 31 of 1936 Penal Code (Amend)
Ordinance 1936 together with legal report thereon and state
that it passed its third reading in Leg C on 29.10.36 and
was assented to on 19.11.36

It is annoying that the
red ink marked copy of the Bill
prepared by the A.G. for
transmission to the Leg. C has
not been sent. The
Amendments ^{however} are clearly described
in the legal report and do not
appear to call for comment from
E.A. Dept.

Subject to legal obsns

? likely wa. disallowance
G.S

(A. Ross) 17/1/37

No legal obsns

No objection

This comes on the Council Chamber - satisfactory
as far as I can see

(W.S.)

30

copy recd.
1036/1(19)

Yes. A copy of the Ord. should be
placed on 1036/15/36 hand. for record.
In view of content. in that file. E.A. Dept
may

may and consider sending a copy
for info to the G.A.C.B.

W.H. Jackson
20/1/37

J.P. Casari
7/2

Notes
Chill
Hubbard
1/1/37

To Kenya - 114 - (1 area) \$3 - 6/1/37

To G.A. Learning Ad (age 10 to 15) etc.

15 FEB 1937



KENYA.

No 644



GOVERNMENT HOUSE

NAIROBI,

KENYA.

2 December, 1936.

RECEIVED
12.12.36

Sir,

6 on 38007/36
in view of
let copy of
marked
2
22/11

General - 2
copy sent to
11/12/36

I have the honour to refer to your Despatch No. 572 of 30th July, 1936, on the subject of the difference in the Law of Kenya and the English Law in cases involving a charge of murder, and in connection therewith, to forward two authenticated and twelve printed copies of Ordinance No. XXXI of 1936, entitled "An Ordinance to Amend the Penal Code", together with a legal report thereon by the Attorney General.

2. This Ordinance passed its third reading in the Legislative Council on the 29th day of October, 1936, and I assented to it in His Majesty's name on the 19th day of November, 1936.

3. Provisions have been incorporated in the above Ordinance to make the legislation in Kenya conformable with the rules contained in the International Convention for the Suppression of Counterfeiting Currency; in which I have to refer you to your Despatch No. 878 of the 31st October.

1036/13/36
GENERAL

I have the honour to be,
Sir,
Your most obedient, humble servant,

BRIGADIER GENERAL
GOVERNOR



Colony and Protectorate of Kenya.

IN THE FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING EDWARD VIII.

JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.,
Governor.

Assented to in His Majesty's
name this *14th* day of *November*
1936.

J. BYRNE

Governor.

AN ORDINANCE TO AMEND THE PENAL CODE

ORDINANCE No. XXXI of 1936

An Ordinance to Amend the Penal Code.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1936, and shall be read as one with the Penal Code, hereinafter referred to as the Principal Ordinance. Short title.
No. 10 of 1936.
2. The Principal Ordinance is hereby amended by inserting therein, immediately after section 33 thereof, the following new section as section 33A :— Amendment of
the Principal
Ordinance.

"33A. The provisions of sections 126, 127, 129 and 327 of the Criminal Procedure Code shall apply *mutatis mutandis* to recognisances taken under section 32 or section 33 of this Code."
3. Sub-section (1) of section 130 of the Principal Ordinance is hereby amended by inserting therein, between the word "any" and the word "person" which occur in the fifth line thereof, the word "other". Amendment of
section 130 (1)
of the
Principal
Ordinance.
4. Section 190 of the Principal Ordinance is hereby repealed. Repeal of
section 190 of
the Principal
Ordinance.
5. Section 331 of the Principal Ordinance is hereby amended by inserting between the word "him" and the word "purchasers" which occur in the second line thereof, the words "imports into the Colony, or". Amendment of
section 331 of
the Principal
Ordinance.
6. The Principal Ordinance is hereby amended by inserting therein, immediately after section 338 thereof, the following new section as section 338A :— Amendment of
the Principal
Ordinance.

Making or having in possession paper or implements for forgery.

338A. Any person who, without lawful authority or excuse, the proof of which lies on him—

- (a) makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any bank note or currency note;
- (b) makes, uses, or knowingly has in his custody or possession, any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to and used in or on any such paper;
- (c) engraves or in anywise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines, or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines, or devices peculiar to and used in or on any bank note or currency note;
- (d) uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines or devices have been engraved or in anywise made as aforesaid;
- (e) uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid.

is guilty of a felony and is liable to imprisonment for seven years."

Amendment of section 342 of the Principal Ordinance.

7. Section 342 of the Principal Ordinance is hereby amended by deleting therefrom sub-section (3) thereof, and substituting therefor the following—

"(3) receives, obtains, or has in his possession any counterfeit coin, knowing it to be counterfeit, with intent to utter it."

Amendment of section 345 of the Principal Ordinance.

8. Section 345 of the Principal Ordinance is hereby amended by substituting the word "shall" for the word "may" which occurs in the second line thereof.

Passed in the Legislative Council the twenty-ninth day of October, in the year of our Lord one thousand nine hundred and thirty-six.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

R. W. BAKER-BEALL

Acting Clerk of the Legislative Council.

LEGAL REPORT

THE PENAL CODE (AMENDMENT) BILL
1936

Clause 2 - Under sections 32 and 33 of the Penal Code a person (inter alia) convicted of an offence not punishable with death may be ordered to enter into his own recognisance, with or without sureties, in such amount as the Court thinks fit, conditioned as the case may be, that he shall keep the peace and be of good behaviour for a time to be fixed by the Court or that he shall appear to receive judgment at some future sitting of the Court or when called upon.

No provision exists enabling a Court -

- (a) to take proceedings in the event of a failure on the part of the offender to observe the conditions of his recognisance;
- (b) to discharge sureties;
- (c) in case of the death of a surety, to require the offender to find a new surety; or
- (d) to forfeit a recognisance.

The object of this Clause is to provide for such matters.

Clause 3 is designed to remedy an obvious typographical omission.

Clause 4 - Section 190 of the Penal Code establishes the presumption that killing is murder. The repeal of this section, together with an amendment to the Indian Evidence Act, is necessary in order to make the law of murder in this Colony consistent with the decision of the House of Lords in the case of Woolmington versus the Director of Public Prosecutions.

The remaining Clauses of the Bill are designed to bring the law of the Colony into line with that of the United Kingdom and in conformity with the Rules contained in an International Convention for the Suppression of Counterfeiting Currency signed at Geneva in 1929.

No Comparative Table accompanies the Bill since the amendments contained therein are not modelled on any Ordinance or Imperial Act, but a copy of the Bill showing the sections of the Principal Ordinance which are proposed to be amended or replaced is enclosed for transmission to the Secretary of State.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

29th October, 1936.

W. H. ...
ATTORNEY GENERAL