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DESP. NO.	DATE	SUBJECT
1102.	3rd Sep	Pedigree filter bleed.
1106.	5th	Mr. Simon Abdulla. Naturalization
1107.		Mr. Algor Rostallum. do
1108.		Mr. W. V. Hoskins. do
1109.		Mr. John Riffin. do
1110.		Mr. Alf Khan. Pension
1111.		W. D. House Allowances 1924 Estimates
1128.	9th	Personal file for the Boundary Commission
1130.	10th	Machungu, District in South Dept. gratuity
1132.	17th	Police Dept. Promotions
1133.	14th	Statistics of Immigration & Emigration from Kenya
1152.	15th	Native Schools
1153.		Mr. Dambani's Fall of Nyanza Province
1154.		Fall of Rakaya Province
1162.		Removal of Mr. James Kagadi Soda Co.
1164.	16th	Well-Boring in Northern Frontier Province
1181.	18th	Prisons Amendment Ordinance, No 9 of 1925
1185.	17th	Concession of Transportation System
1185.	19th	Vacancy for Agricultural Assistant
1196.	22nd	Kenya - Uganda Boundary
1196.		Voi Hwatati Concession
1196.		1926 Dept Estimates
1211.	24th	Assaults by Natives on White women & children
1211.	25th	Uganda Railway, Sotchi Branch
1213.		Jelalaba, Native, gratuity
1220.	29th	Mr. A. J. Santiago. Pension
1221.		Strengthening of Nakuru District, Uga. Rly.
1221.		English Navigation Co.
1221.	9th	Detention Camps Bill, 1925
1231.	30th	Mugish Ali Ahmed. gratuity
1231.		Mohamed bin Ali bin Said. Gratuity

DESP. NO.	DATE	SUBJECT
1233.	30th Sep	Hugh Bate Kajanta, gratuity
1234.		Sheikh Hassan bin Abdullah. gratuity
1235.		Ahman bin Jaffer. gratuity
1236.		Hamisi bin Labiriki. gratuity
1237.		Bankruptcy Ordinance, 1925
1237.		Lands Alienation from Native Reserves

1925

KENYA

40060
2 SEP 25

DATE

DENHAM.

953

1st August 1925.

OF CIRCULATION

Mr. *Richard*
Mr. *Stapp*
Mr. *...*
Asst. U.S. of S. 14

- (1) AMENDMENT OF INDIAN PENAL CODE.
- (2) AMENDMENT OF CRIMINAL PROCEDURE ORDINANCE.

Fwds memo by Attorney General submitting, with regard to (1), a "Penal Code Bill, 1925" and with regard to (2), forwarding excerpts (adapted) from the Ceylon Criminal Procedure Code to bring the Ordinance into line with English procedure. Requests tel reply. Hopes to communicate shortly regarding Model Penal and Criminal Codes.

Perm. U.S. of S. - 16.9
Part U.S. of S. - 17.9
Secretary of State

Previous Paper

(1) Gov. 8615/24
(2) Gov. 46139 (order)
Gov. 710376/25

MINUTES

For car obs's, please.

JCR

7/3/25

(As regards 48998/24 flagged in bundle below
I hope it that must continue to wait)
The Honble,

In view of my connection with the proposed new codes, I am, perhaps, not quite unprejudiced as to the points raised by this despatch.

I may mention that I have now finished the first rough draft of the Penal Code & if the original intention is maintained, may have the code ready in a month or so.

My experience of the Indian Code presents me with the opinion that it is an improvement or a simplification of English Criminal Law.

Subsequent Paper

11 8043957
11 8043957
11 8043957

Recd. tel. 15 Sept 25

...that administrative officers will find it easier
to interpret & apply a code which follows
the same & principles with which we are familiar
in England than one in which these terms &
principles have been discarded for those of doubtful
import.

But I recognize that there are considerable difficulties
to be met in imposing a new code on places in which
the Indian Penal Code has so long prevailed - especially
if the alteration is made against the wishes & advice
of the judges & local administrators. If it should be desirable
to proceed by way of amending the Indian Code, the
British Code which they are found unsatisfactory rather
than to bring them & substitute these, which will be
read & criticized & possibly misunderstood -
content to be relieved of my mind.

...to the Hon. Secy. relating to the proposed
Canadian Act which doubtless will be
Canada. But I enclose a copy of
of the sections dealing with this
propose to insert in my code, as a
help in coming to a decision.

...to the subject of the Bill for the purpose to
...the provisions which are in my opinion, the
provisions in which the existing codes can be simplified

W.S.
8/7

W.S. Gurdle
~~to the Hon. Secy.~~
~~to the Hon. Secy.~~

The enclosed minute is signed by the Attorney-
General, but the sentiments, I think, are those of the
Chief Justice. If they are really those of Mr. Grant
I can only say that he has executed a complete change
about since he discussed the matter with me. I have
always known that the Chief Justice would oppose the
alteration of the Law, and I have never hesitated to
say so (see my minutes, for example, on 21478/24 and
12487/25) and the fact that we should encounter
opposition was fully present to our minds when the
decision on the matter was taken. The proposal
to proceed by way of amendment of the existing Code
is quite unsatisfactory, and, as a matter of fact, of
course, is only an indirect method of obstructing
the whole policy involved. I know of no reason why
the decision that a Code on English lines should be
introduced need be reversed. In that case nothing is
to be gained; that I can see in tinkering temporarily
with the existing Code (and in any case I much prefer
Mr. Ehrhardt's draft to the Attorney-General's), and
I think things had better remain as they are until the
new Code is enacted.

H.B. Gurdle

...attach a note showing the history of
the matter. Although it did not originate
in it was brought to a head by the
Abraham case (see flagged note & the
Gurdle in 55212/23) which shows the
absolute necessity of an amendment of the

auditing law.

2 nos 5 telegraph

• Can Dept 1 Aug 783 I should not be
satisfied with amendt of existing codes
and ~~rather~~ adhere to decision that new
Codes should be introduced based on English
law. Preparation of model drafts
already in hand and in the circles
no useful purpose was to be served by
proceeding with legislation submitted

Mr. Allen

in the despatch

(It is plain to the

Mr. Allen

note of the Parliament when

was in (taken)

14/9/25

I agree 3.9.16.5.25

Mr. Arnold Jones

I agree, you will I think
be interested to see this file.

B.H.6.

16.9.25

as proposed at a/c. It will be
necessary to discuss this matter with the
Genl. Secy before he goes out. (with)

17.9.25

Tal. & Co.

18. Sep 1925

Memorandum

In the Confidential despatch of the 20th of
December 1923, the Secretary of State wrote as
follows:-

"As you are aware it has been the settled
policy for some years past to replace the
Indian Codes in force in the Colony by local
Ordinances. This course has already been
followed in the case of the Indian Criminal
Procedure Code, and I am strongly of opinion
that immediate steps should be taken to
substitute a local Ordinance based on English
Criminal Law for the Indian Criminal Code. I
should accordingly be glad to learn by telegram
that you agree to the extension of the leave of
the Chief Justice and Attorney-General in
order to enable them to prepare a preliminary
draft."

In the telegram of the 21st February, 1924,
the Governor reported that he could not agree to the
extensions of leave suggested, and asked for model
legislation. This was sent to him in the despatch of
the 4th June, 1924, on 8615/24. In the same despatch
the Secretary of State said that the Kenya Criminal
Procedure Ordinance should be revised at the same
time, since it was based on the Indian Code.

Later the Colonial Government reported that
shortage of staff had interfered with the work of
drafting

KENYA.

No. 953.

AS.



40060
GOVERNMENT HOUSE,
NAIROBI.

7

KENYA.
1st August, 1925.

Sir,

Apr. 10376/25 With reference to your telegram of the 2nd of June, and subsequent despatch No. 520 of the 6th June, I have the honour to forward herewith a Memorandum by the Attorney General together with the enclosures to which he refers therein, and shall be glad if, in the event of your approving the introduction of the legislation proposed by him, I may be informed by telegram, in order that the Bills may be submitted to Executive and Legislative Councils at an early date.

Apr. 10376/25

2. As regards the preparation of Model Penal and Criminal Procedure Codes it will be observed that the Attorney General proposes to put forward more detailed suggestions in regard to procedure and it is hoped that these will be ready for communication to you shortly. Further, the Chief Justice draws attention to the fact that the Criminal Law, both substantive and adjective, is administered very largely by laymen, and states as his opinion that the Indian Penal Code and the Local Criminal Procedure Ordinance, which is based on the Indian Criminal Penal Code, are admirably suited for administration by lay magistrates, inasmuch as they contain the elements of English Criminal Law and

-procedure-

Memorandum and Enclosures.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

M 1064 125.

16th July, 1925.

The Hon'ble Ag. Colonial Secretary,

H A I P O D I.

RE: PREPARATION OF CRIMINAL PROCEDURE AND
PENAL CODES.

Ref. Your No. C/C/10146/7/21 of the 16th ultimo.

I note that the Secretary of State has decided to prepare at home a model Penal and Criminal Procedure Code. On reference to your file I find that the despatch to which the cable refers, urged early revision of the Criminal Procedure Ordinance and replacement of the Indian Code.

2. It is regretted that it has not been possible as yet to make so much progress with the work as I should have desired. The matter has however had my careful consideration and I have recently discussed the question in detail with His Honour the Chief Justice, who is in general agreement with the proposals outlined in this letter.

3. I shall be glad if the following considerations could be put before the Secretary of State:-

(a) The whole system of our laws is interwoven with ideas and phraseology derived from the Indian Codes. Emancipation from these Codes unless gradual will give a serious shock to the general administration of the laws.

(b) The only specific objection which so

far

far as I know has been raised by the Secretary of State to our criminal law and procedure is to the sections of the Penal Code dealing with culpable homicide.

(c) In any case the preparation of a comprehensive criminal law and procedure Code will occupy a considerable time and its final acceptance by the local Legislature cannot be anticipated at an early date.

4. In these circumstances I venture to propose as immediate remedial measures and without prejudice to further action

(a) that an Ordinance be introduced into Council repealing Sections 299, 300, 301, 302, 303, 304, 304A and 307 of the Indian Penal Code and substituting provisions more in accordance with English law;

(b) that the Criminal Procedure Ordinance be amended so as to bring it more into line with English procedure by following so far as local circumstances permit the amendments introduced into Indian procedure by the Ceylon Criminal Code.

The chief difficulty I have found in practice in connection with the Criminal Procedure Ordinance arises from the fact that the powers of the Attorney General are under it extremely restricted. The Ceylon Code restores to him the powers possessed by the Attorney General in England and gives to the Crown the control which it should exercise in criminal proceedings.

I propose to put before you later more detailed suggestions in regard to procedure but in order to avoid

avoid delay I merely enclose at present a list of relevant sections of the Ceylon Code which I suggest should be considered as the basis on which an amending Criminal Procedure Ordinance should be drafted.

C. I suggest that by introducing these Ordinances as amending Ordinances it will be possible later to enact consolidating legislation with less disturbance to existing conditions.

I request that this letter with its enclosures be sent to the Secretary of State as soon as possible.


ATTORNEY GENERAL.

A B I L L
INTITLED
AN ORDINANCE TO AMEND THE INDIAN PENAL CODE,
1860, AS APPLIED TO THE COLONY.

ENACTED by the Governor of the Colony of Kenya
with the advice and consent of the Legislative
Council thereof:

Short Title.

1. This Ordinance may be cited as "The Penal Code Ordinance, 1925," and shall be read as one with the Indian Penal Code as applied to the Colony.

Definition of "Homicide".

2. Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

Causing death.

3 (1). If a person intentionally or negligently causes any involuntary agent to cause a death, that person shall be deemed to have caused the death.

(2) "Involuntary agent" means any animal or other thing and also any person who is exempt from liability to punishment by reason of infancy, insanity or otherwise.

person outside the Colony causing death in the Colony.

4. If a person beyond the jurisdiction of the Courts causes any involuntary agent to cause death within the jurisdiction he shall be deemed to have caused that death within the jurisdiction.

When a child becomes a human being.

5 (1). A child becomes a human being within the meaning of this Ordinance when it has completely proceeded in a living state from the body of its mother.

(2) It is not necessary either that a circulation of blood, independent of the mother's circulation, should have commenced in the child, or that the child should have breathed, or that it should have been detached from the mother by severance of the umbilical cord.

homicide.

6 (1). Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person either by an unlawful act or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence, or by deception to do an act which causes that person's death, or by wilfully frightening a child or old person.

(3) Culpable homicide is either murder or manslaughter.

(4) Homicide which is not culpable is not an offence.

within a year and a day.

7 (1). No one is criminally responsible for the killing of another unless the death takes place within a year and a day of the cause of death.

(2) The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

(3) When the cause of death is an omission to fulfil a legal duty the period shall be reckoned inclusive of the day on which such omission ceased.

(4) When death is in part caused by an unlawful act and in part by an omission of a legal duty, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased whichever ever happened last.

acceleration of death.

8. Every one who, by an act or omission, causes the death of another, kills that person, although the effect of the injury caused to such other person be merely to accelerate his death while labouring under some disorder disease or defect arising from some other cause.

...lling by act or omission.

...with due to proper but ...na fide ...entant of an lawful injury.

...order.

9. Every one who by any act or omission, causes the death of another, kills that person, although death from that cause might have been prevented by resorting to proper means.

10. Every one who causes a bodily injury, which is of itself of a dangerous nature to any person, from which death results, kills that person although the immediate cause of death be treatment proper or improper applied in good faith.

11. Culpable homicide is murder:-

(a) if the offender means to cause the death of the person killed;

(b) if the offender means to cause to the person killed any bodily injury which is known or ought to be known to the offender to be likely to cause death;

(c) if the offender means to cause death, or means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(d) if the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone.

12. In case of treason, offences against Chapter VI of the Indian Penal Code, piracy and escape or rescue from prison or lawful custody resisting lawful apprehension, murder, rape, unnatural offense or abduction.

...omicide is also ...rder in certain ...ses.

abduction, robbery, housebreaking or mischief by fire culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue:-

- (a) if he means to inflict hurt for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or
- (b) if he administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects thereof; or
- (c) if he by any means wilfully stops the breath of any person for any of the purposes aforesaid and death ensues from such stopping of the breath.

provocation.

15 (1). Culpable homicide, which would otherwise be murder, may be reduced to manslaughter of the person who causes death does so in the heat of passion caused by sudden provocation.

(2) any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it immediately upon receiving such provocation, and before there has been time for his passion to cool.

(3) Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control

control by the provocation which he received, shall be questions of fact: Provided that no one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing hurt to any person.

(4) The illegality of an arrest shall not necessarily reduce an offence of culpable homicide from murder to manslaughter, but if the illegality is to the offender it may be evidence of provocation.

14. Culpable homicide not amounting to murder is manslaughter.

15. Every one who commits murder shall on conviction be sentenced to death. Provided that no sentence of death shall be pronounced or recorded against a young person who in the opinion of the Court was under the age of 16 years at the time when the murder was committed, but in lieu thereof the Court shall sentence such young person to be detained during His Majesty's pleasure and shall report the sentence to the Governor and if so sentenced the young person shall be liable to be detained in such place and under such conditions as the Governor may direct and whilst so detained shall be deemed to be in lawful custody.

16. Every one is liable to suffer imprisonment of either description for life, ^{or any other term} who, with intent to

commit murder

(a) administers any poison or other destructive thing to any person, or causes any person or destructive thing to be so administered or taken, or attempts to administer it, or

or attempts to cause it to be so administered or taken; or

(c) shoots at any person, or, by drawing a trigger or in any other manner attempts to discharge at any person any kind of loaded firearms, or throws at any person a spear or other dangerous weapon; or

(d) attempts to drown suffocate or strangle any person; or

(e) destroys or damages any building ship or vessel or any part thereof by fire or by the explosion of any explosive substance;

(f) casts away or destroys any vessel.

(g) By any other means attempts to commit murder.

17. Every person who does any act with the harbouring or intention of assisting the escape of any person whom he has reason to believe to have committed culpable homicide shall on conviction be liable to suffer imprisonment of either description for a term which may extend to 10 years.

penalty for
manslaughter.

18. Whoever commits manslaughter shall be liable on conviction to suffer imprisonment of either description for life or any other period.

Repeal.

19. (1) The following sections of the Indian Penal Code as applied to the Colony are hereby repealed:

Sections 299, 300, 301, 302, 303, 304, 304A and 307.

(2) The Penal Code Ordinance, 1900, and the Penal Code Amendment Ordinance, 1910, are hereby repealed.

THE PENAL CODE BILL.Comparative Table of Sections.

Section.	Remarks.
1.	Short Title.
2.	Canada Revised Statutes, 1906. Section 250.
3.	Adopted from St. Lucia Criminal Code Section 54.
4.	Adopted from St. Lucia Criminal Code Section 55.
5.	Canada Section 251. St. Lucia Section 165.
6.	Canada Section 252.
7.	Canada Section 254.
8.	Canada Section 255.
9.	Canada Section 257.
10.	Canada Section 258.
11.	Canada Section 259. The last 3 words of Section 259. (b) omitted.
12.	Canada Section 260.
13.	Canada Section 261.
14.	Canada Section 262.
15.	Canada Section 263. Combining Section 103 of the Childrens Act, 1908, which was incorporated in the Penal Code Ordinance, 1909.

Section.	Remarks.
16.	Canada Section 264.
17.	Of Canada Section 267. There is no necessity after the fact under the Indian Penal Code.
18.	Canada Section 268.
19 (1).	Repeal.
19 (2).	Repeal. The substance of these Ordinances is incorporated in Section 16.

EXCERPTS (ADAPTED)
FROM
THE CEYLON CRIMINAL PROCEDURE CODE.

5. Nothing in this Ordinance shall be construed as derogating from the powers or jurisdiction of the Supreme Court or of the Judges thereof or of the Attorney-General.

6. As regards matters of Criminal Procedure for which no special provision may have been made by this Ordinance or by any other law for the time being in force in the Colony, the law relating to Criminal Procedure for the time being in force in England shall be applied, so far as the same shall not conflict or be inconsistent with this Ordinance and can be made auxiliary thereto.

Subpoena to Produce.

67 (2). If any such document is in the opinion of the Attorney-General wanted for the purpose of any proceedings under this Ordinance he may require a search to be made for and to detain such document pending the orders of the Supreme Court.

145. Whenever any doubt is entertained by a Magistrate as to the Court where any such offence should be inquired into, such Magistrate may embody the ascertained facts in the form of a case and transmit the same to the Attorney-General for his opinion, and the Attorney-General shall thereupon decide in which Court the offence shall be inquired into and such Court shall thereupon have jurisdiction ^{to inquire} into such offences.

147 (1). No Court shall take cognizance:-

(a) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except with the previous sanction of the Attorney-General or on the complaint of the public servant concerned or of some public servant to whom he is subordinate.

(b) of any offence punishable under Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228 of the same Code when such offence is committed in or in relation to any proceeding in any Court except with the previous sanction of the Attorney General or on the complaint of such Court.

(c) of any offence described in section 463 or punishable under Sections 471, 475 or 476 of the same Code when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding except with the previous sanction of the Attorney-General or on the complaint of such Court.

(d) of any offence punishable under Chapter VI ^{Section 127} of the Penal Code except Section 127 or punishable under Section 109A or Section 153 or Section 294A or Section 505 of the ^{same Code} Code unless upon complaint made by the Attorney-General or other person with the previous sanction of the Attorney-General.

(e) of any offences falling under Chapter XII or Chapter XXI of the Penal Code unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such offence or by some other person with the like sanction.

(f) of any offence punishable under Sections 493 to 496 (both inclusive) unless upon complaint made with the previous sanction of the Attorney-General by some person aggrieved by such offence or by some other person with the like sanction.

148 (1). Proceedings in a Magistrate's Court shall be instituted in one of the following ways:

(a) upon a warrant under the hand of the Attorney-General requiring a Magistrate to hold an inquiry in respect of an offence which such Court has jurisdiction to inquire into; or

(2) The warrant of the Attorney-General under head (a)

may be forwarded by post or by messenger to the Court or delivered by hand to a Magistrate of such Court and shall form part of the proceedings.

157 (1). When the inquiry has been concluded the Magistrate shall (a) if he finds that there are not sufficient grounds for committing the accused for trial discharge him, or (b) if he finds that there are sufficient grounds for committing the accused for trial forward the record to the Attorney-General remanding the accused to custody or admitting him to bail as he thinks proper.

158 (1). As soon as the record has been received back from the Attorney-General then (a) if the Attorney-General directs that the accused be discharged he shall be forthwith discharged; (b) if the Attorney-General directs that the accused be committed for trial the Magistrate shall commit the accused for trial to the Supreme Court but (c) if the Attorney-General directs that further evidence be taken the Magistrate shall obey such directions and then return the record to the Attorney-General.

(2) Where a committal is directed by the Attorney-General the indictment is settled and approved by the Attorney-General shall be read and explained to the accused and a copy thereof served on him.

161 (4). The Attorney-General may add the names of any witnesses examined under this section to the list of witnesses in the indictment, and if any document or things are produced may add them to the list of exhibits. A copy of the lists as amended shall be served on the accused.

196 (1). All indictments upon which persons are tried before the Supreme Court shall be brought in the name of the Attorney-General and be in accordance with the prescribed form and shall be signed by the Attorney-General or the Solicitor-General or a Crown Counsel or by some advocate generally or specially

pecially authorized by the Attorney-General in that behalf, and in the latter case the words "By authority of His Majesty's Attorney-General" shall be prefixed to the signature.

(2) Every indictment shall contain a list of the witnesses which the prosecution intends to call at the trial and another list of all documents and things intended to be produced at the trial, and which documents and things are herein called "Exhibits".

(3) The proceedings shall not abate or determine by reason of the death or removal from office of the Attorney-General.

198 (1) If the Magistrate after taking the evidence adduced for the prosecution and the defence is of opinion that the accused is guilty of an offence which cannot be adequately punished by a Magistrate he shall not convict the accused but shall forward the record to the Attorney-General, remanding the accused to custody or admitting him to bail, as he thinks proper.

(2) The Attorney-General may on receipt of the record exercise any of the powers vested in him by Section 148 (1) or may send the record back to the court with directions to the Magistrate to proceed with the trial, and the case shall thereafter be dealt with accordingly.

196. In any case instituted under this chapter otherwise than upon a complaint under Section 148 (1), heads (a), (c) and (d), the Magistrate may with the previous sanction of the Attorney-General, for reasons to be recorded by the Magistrate stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon discharge the accused.

199. The Attorney-General, the Solicitor General, a Crown Counsel, or an advocate generally or specially authorized

authorized by the Attorney-General shall be entitled to appear and conduct the prosecution in any case tried under this Chapter, but in the absence of the Attorney-General, the Solicitor-General, a Crown Counsel, and any such advocate as aforesaid the complainant or any officer of any Government department or any officer of any Municipality or Local Board may appear in person or by advocates to prosecute in any case in which such complainant or Government department or Municipality or Local Board is interested.

216 (2). In every trial, before the Supreme Court the prosecution shall be conducted by the Attorney-General, or the Solicitor-General or a Crown Counsel or by some advocate or officer of the administration not being an officer of Police below the rank of Inspector of Police generally or specially authorized by the Attorney-General in that behalf.

217 (1). At any stage of a trial before the Supreme Court under this Code before the return of the verdict the Attorney-General may, if he thinks fit, inform the Court on behalf of His Majesty that he will not further prosecute the accused upon the indictment or any charge therein, and thereupon all proceedings on such indictment or charge as the case may be against the accused shall be stayed and he shall be discharged of and from the same.

(2) The information under this section may either be oral or in writing under the hand of the Attorney-General.

218 (1). If the case comes before the Court on the committal of a Magistrate the accused shall be arraigned on the indictment served upon him as provided by section 158.

(2) If the case comes before the Court either by virtue of an order of the Supreme Court of transfer from another Court the indictment shall be framed upon the facts disclosed in the complaint or information and the evidence taken

taken in the case and a copy of such indictment shall be served on the accused.

283 (1). In the case of any offence triable exclusively by the Supreme Court the Magistrate inquiring into the offence may after having obtained the Attorney-General's authority so to do, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence and to every other person concerned whether as principal or abettor in the commission thereof.

(2) Every person accepting a tender under this section shall be examined as a witness in the case.

(3) Such person if not on bail shall be detained in custody until the termination of the trial.

284. The Attorney-General at any time after conviction but before judgment is pronounced may with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to any such offence, tender or authorise the Magistrate to tender a pardon on the same condition to such person.

285 (2) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the Attorney-General.

290 (2). The offence described in Part B of this table may with the consent of the Attorney-General be compounded by the person to whom the hurt or the loss or damage was caused.

329. The Governor may without the consent of the person sentenced, commute any one of the following sentences for any of the commuted sentences indicated:

Death

Sentences.	Commuted sentences.
Death	Rigorous or simple imprisonment for life, or for any other term.
Rigorous imprisonment.	Any lesser term or rigorous imprisonment, or any term of simple imprisonment not exceeding the term to which such person might have been sentenced, or fine.
Simple imprisonment.	Any lesser term of imprisonment or fine.

336. Instead of this it is proposed to provide for a case stated. See Criminal Procedure (Amendment) Ordinance, (No. 2), 1924.

Proceedings by the Attorney-General.

335. The Attorney-General may exhibit to the Supreme Court information for all purposes for which His Majesty's Attorney-General for England may exhibit information on behalf of the Crown in the High Court of Judicature but no such information shall be exhibited for any offence punishable by death or by rigorous imprisonment for three years or upwards. Such proceedings may be taken upon every such information as may lawfully be taken in cases of similar information filed by His Majesty's Attorney-General in England so far as the circumstances of the case and the course and practice of proceedings in the said Supreme Court respectively will admit.

336. The Attorney General may at any stage of an inquiry by a Magistrate if he is of opinion that no further proceedings should be taken in the case against any accused make an order in writing directing such accused to be discharged from the matter of the complaint, information, or charge and if such accused is in custody from further detention and he shall transmit such order to the Magistrate's Court before which such case is pending or by which the accused was committed or held to bail as the case may be, and thereupon such Court shall cause the accused to be brought before it and discharged and shall record such order and the discharge made thereon upon the proceedings.

389. If the Attorney-General is of opinion that a criminal offence is disclosed by the proceedings against the accused but that the evidence already taken by reason of being in any particular or respect defective is not sufficient to afford a foundation for a full and proper trial, then he may make in writing an order requiring the Magistrate to take such further evidence as may be specified or indicated in the order either in the way of examining a new witness who have already given their testimony or otherwise to continue the inquiry, and upon making such order the Attorney-General shall return to the Magistrate the proceedings together with his order for the purpose of ^{the} latter being carried into effect.

390. (1) A Magistrate shall whenever required in writing by the Attorney-General forthwith transmit to the Attorney-General the proceedings in any case in which an inquiry or trial has been or is being held before him, and thereupon such inquiry or trial shall be suspended in the same and the like manner as upon an adjournment thereof.

(2) It shall be competent for the Attorney-General upon the proceedings in any case being transmitted to him under the provisions of this section to give such instructions with regard to the inquiry to which such proceedings relate as he may consider requisite; and thereupon it shall be the duty of the Magistrate to carry into effect subject to the provisions of this Code the instructions of the Attorney-General and to conduct and conclude such inquiry in accordance with the terms of such instructions.

391. Whenever a Magistrate shall have discharged an accused under the provisions of section 157 and the Attorney-General shall be of opinion that such accused shall not have been discharged the Attorney-General may forward to him an indictment and direct him to commit such accused to the

supreme Court or order the Magistrate of such Court to re-open the inquiry and may give such instructions with regard thereto as to him shall appear requisite and thereupon it shall be the duty of such Magistrate to carry into effect such instructions.

32 (1). No person other than the Attorney-General, the Solicitor-General, Crown Counsel, or an advocate generally or specially authorized by the Attorney-General shall conduct the prosecutions in any case into which the Magistrate may be inquiring.

(2). In the absence of the Attorney-General, the Solicitor-General, Crown Counsel, and an advocate generally or specially appointed by the Attorney-General the Magistrate shall conduct the prosecution, but nothing in this section shall preclude the Magistrate from availing himself if he considers it so desirable, of the assistance of any advocate or public officer in the conduct of any inquiry.

395. The Solicitor-General and Crown Counsel may be, at the direction either generally or specially of the Attorney-General exercising all or any of the powers except the powers of entering a nolle prosequi and of pardoning an accomplice; conferred and performs all or any of the duties imposed upon the Attorney-General by this Code.

395 (3). No person charged under Sections 121, 194, 301, 302 or 304 of the Penal Code shall be admitted to bail except by the authority of the Attorney-General.

Handwritten initials/signature

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*Code reviewed
11.55 am
14.9.58*

- Mr. Strachey
- Sir J. Shuckburgh
- Sir O. Davis
- Sir G. Grindle
- Sir J. Masterton Smith
- Mr. Ormsby
- Mr. Amery

Minutes for authority

DRAFT

FNOR
NATROBI

Sir

18 September Your despatch 1st August 1953 should not be satisfied with amendment of existing codes and adhere to decision that new codes should be introduced based on English law. Preparation of model drafts already in hand and in the circumstances no useful purpose would be served by proceeding with legislation submitted in your despatch

SEGER