

38201

1938

38201

CO 533/496  
KENYA

Native Liquor Legislation

Previous

1936

Subsequent

1941

294

14/11

300

1/12

Mr Pascoe

8/12

Mr Dale

12

Mr Pascoe

16

303

16

209

17/12

297

20/12

Litany Jagaj

22/12

R 297

L. J.  
Native

1. Governor 642

11/11/38

Two two authenticated and twelve printed copies of Native Liquor Amendment Ordinance 1938, with legal Report and copy of Bill showing differences from Model. (Spares to Library)

Para (c) of the <sup>new</sup> definition of "native intoxicating liquor" covers all liquors, other than those mentioned in other paras of the same definition, prepared by natives containing more than 1% of alcohol. The previous para (b) covers all intoxicating liquors prepared by natives from cereals. "Intoxicating liquors" are, however, not defined in the ordinance; so it seems that para (b) is <sup>strictly speaking</sup> merely a particular <sup>instance</sup> ~~case~~ of the native intoxicating liquors defined in para (c). No doubt however it has been included because it is obvious in many cases that a liquor made from cereals is intoxicating, & there is no need to go to the trouble of proving that it has more than 1% of alcohol.

? subject to legal obscur, signify  
non-disallowance L.F.

Clouston while

To me lay mind it is not clear  
that the difficulties mentioned in  
the A.S.'s report will not arise under  
para. (b) of the new text, but  
I need to comment.

J.J. Pasconi  
8/2/11

I agree this is not a conspicuously clear  
definition. Presumably they are relying on  
para. (a) and are going to specify the important  
regions. I don't think we need comment

W.D. Jones

12.12.

Item 93.

J.J. Pasconi  
14/11

as above

12/10/11: Kenya 767. 1. Approved 2/3. 17. 13. 38

Noted  
G.S. Smith  
Library  
12.12.38

They lead to note

~~12/10/11~~

KENYA  
No. 642



GOVERNMENT HOUSE  
NAIROBI  
KENYA

R  
1938 // November, 1938.  
C. O. REGD

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. XXIX of 1938, entitled "An Ordinance to Amend the Native Liquor Ordinance, 1930", together with a Legal Report thereon by the Attorney General, and a copy of the Bill showing the Section of the Principal Ordinance which is affected by the Amending Bill and also showing in red ink how it differs from the model.

2. This Ordinance passed its third reading in the Legislative Council on the 31st October, and assented to it in His Majesty's name on the 7th November, 1938.

*Amended. (2)*

I have the honour to be,

Sir,

Your most obedient, humble servant,

*W. Brooks-Pollard*

AIR CHIEF MARSHAL.

G O V E R N O R.

THE RIGHT HONOURABLE  
MALCOLM MACDONALD, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S. W. 1.



Colony and Protectorate of Kenya

IN THE SECOND YEAR OF THE REIGN OF  
HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM  
G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C. *Governor*

Assented to in His Majesty's  
name this                      day of  
1938.     7     November

R. BROOKE-POPHAM

*Governor*

AN ORDINANCE TO AMEND THE NATIVE  
LIQUOR ORDINANCE, 1930

**ORDINANCE No. XXIX of 1938**

**An Ordinance to Amend the Native Liquor Ordinance, 1930**

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 Native Liquor (Amendment) Ordinance, 1938, and shall be read as one with the Native Liquor Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.  
No. 36 of 1938

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "Native intoxicating liquor" and by substituting therefor the following definition:

Amendment of section 2 of the Principal Ordinance.

"Native intoxicating liquor" means—

- (a) palm wine (other than tembo tamu), pombe, fermented asali, Nubian gin, and native beer;
- (b) all intoxicating liquors such as are prepared by natives from cereals;
- (c) all liquors (other than those mentioned in paragraphs (a), (b) and (d) of this definition) such as are prepared by natives and which contain more than one per centum by weight of absolute alcohol; and
- (d) such other liquor as the Governor may from time to time by notice in the Gazette declare to be native intoxicating liquor for the purposes of this Ordinance;"

LEGAL REPORT

2

No. XXIX

Native Liquor

1938

Passed in the Legislative Council on the thirty-first day of October in the year of Our Lord one thousand nine hundred and thirty-eight.

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 to the Legislative Council.

It has been held by the Court of Appeal for Eastern Africa that, having regard to the definition of "native intoxicating liquor" in section 2 of the Native Liquor Ordinance, 1950, in prosecutions for offences against that Ordinance it is necessary to prove that the liquor in respect of which the case is brought, unless the liquor is one specifically named in the definition, contains more than one per centum by weight of absolute alcohol. In view of the large number of prosecutions brought under the Ordinance and the difficulty of submitting analytical proof in every case, it is considered desirable to replace the definition. The proposed definition is based on the Zanzibar Decree No. 18 of 1936

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It is regretted that no copy of the Zanzibar Decree is available to be forwarded to the Secretary of State. A copy of the Bill, however, showing the section of the Principal Ordinance which is affected by the amending Bill and showing in red ink how it differs from the model 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,

31st October, 1938

*W. H. N. N.*  
ATTORNEY GENERAL

COPY  
OF

THE NATIVE LIQUOR (AMENDMENT) BILL, 1938  
SHOWING THE SECTION OF THE PRINCIPAL  
ORDINANCE WHICH IS AFFECTED BY THE  
AMENDING BILL AND ALSO SHOWING IN  
RED INK HOW IT DIFFERS FROM THE  
MODEL



COLONY AND PROTECTORATE OF KENYA



A BILL TO AMEND THE NATIVE LIQUOR  
ORDINANCE, 1930

## A Bill to Amend the Native Liquor Ordinance, 1930

BE IT 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 Native Liquor (Amendment) Ordinance, 1938, and shall be read as one with the Native Liquor Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 36 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "Native intoxicating liquor" and by substituting therefor the following definition:—

Amendment of section 2 of the Principal Ordinance.

"Native intoxicating liquor" means—

- (a) palm wine (other than tembo tamu), pombe, fermented asali, Nubian gin, and native beer;
- (b) all intoxicating liquors such as are prepared by natives from cereals;
- (c) all liquors (other than those mentioned in paragraphs (a), (b) and (d) of this definition) such as are prepared by natives and which contain more than one per centum by weight of absolute alcohol; and
- (d) such other liquor as the Governor may from time to time by notice in the Gazette declare to be native intoxicating liquor for the purposes of this Ordinance."

### OBJECTS AND REASONS

It has been held by the Court of Appeal for Eastern Africa that, having regard to the definition of "native intoxicating liquor" in section 2 of the Native Liquor Ordinance, 1930, in prosecutions for offences against that Ordinance it is necessary to prove that the liquor in respect of which the

case is brought, unless the liquor is one specifically named in the definition, contains more than one per centum by weight of absolute alcohol. In view of the large number of prosecutions brought under the Ordinance and the difficulty of submitting analytical proof in every case, it is considered desirable to replace the definition. The proposed definition is based on one contained in the Zanzibar law.

No expenditure of public moneys will be involved if the provisions of this Bill become law.