



# THE OFFICIAL GAZETTE

## OF THE COLONY AND PROTECTORATE OF KENYA

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The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

**A BILL ENTITLED  
AN ORDINANCE TO AMEND THE PROMISSORY  
OATHS ORDINANCE**

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

Short title

Cap 62

Amendment of  
Second Schedule  
to the principal  
Ordinance

1. This Ordinance may be cited as the Promissory Oaths (Amendment) Ordinance, 1951, and shall be read and construed as one with the Promissory Oaths Ordinance, hereinafter referred to as the principal Ordinance

2. There shall be substituted for the Second Schedule to the principal Ordinance the following Schedule—

5

**SECOND SCHEDULE**

(Section 3)

<i>Nature of Oath</i>	<i>Persons to take Oath</i>	<i>Persons to tender Oath</i>
Oath of Allegiance and Official Oath	The Chief Secretary and Member for Deve'opment The Attorney General and Member for Law and Order The Financial Secretary and Member for Finance The Chief Native Commissioner and Member for African Affairs The Member for Agriculture and Natural Resources The Deputy Chief Secretary and Member for Labour The Member for Education, Health and Local Government Such other Executive Officers as may from time to time be designated by the Governor	The Governor the Governor's Deputy, a Judge of the Supreme Court, a Provincial Commissioner, or such other person as the Governor may appoint
Oath of Allegiance and Judicial Oath	The President and Vice-President of the Court of Appeal for Eastern Africa The Chief Justice The Justices of Appeal of the Court of Appeal for Eastern Africa Puisne Judges Magistrates Administrative Officers exercising judicial functions Justices of the Peace	The Governor or the Governor's Deputy
Oath of an Executive Council or Oath of the Clerk to Executive Council	Executive Council'ors The Clerk to Executive Council	The Governor or the Governor's Deputy The Governor or the Governor's Deputy

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill will amend the Second Schedule to the Promissory Oaths Ordinance (Chapter 62) so as to bring it up to date

It was last amended in 1935 and the titles of certain executive officers are now incorrectly stated There are also a number of omissions, for instance, the Deputy Chief Secretary and the Member for Agriculture and Natural Resources

Opportunity has also been taken to add to the Schedule the President, Vice-President and the Justices of the new permanent Court of Appeal for Eastern Africa

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

Nairobi,  
15th January, 1951.

K K O'CONNOR,  
*Attorney General,*

## GOVERNMENT NOTICE No 72

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

## ARRANGEMENT OF SECTIONS

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PART I—SHORT TITLE INTERPRETATION  
APPOINTMENT OF OFFICERS, ESTABLISHMENT AND CONSTITUTION OF NATIVE COURTS

- 1—Short title
- 2—Interpretation
- 3—Appointment and duties of Native Courts Officer and provincial native courts officers
- 4—Establishment of a Court of Review
- 5—Establishment of native courts
- 6—Constitution of native courts
- 7—Dismissal and suspension of members of native courts
- 8—Operation of warrants, etc., issued by a Provincial Commissioner and subject to approval of the Governor
- 9—Sittings of native courts

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## A BILL ENTITLED

**AN ORDINANCE TO MAKE BETTER PROVISION FOR THE ADMINISTRATION OF JUSTICE IN NATIVE COURTS AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH**

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

**PART I—SHORT TITLE, INTERPRETATION, APPOINTMENT OF OFFICERS, ESTABLISHMENT AND CONSTITUTION OF NATIVE COURTS**

1. This Ordinance may be cited as the Native Courts Ordinance 1951, and shall come into operation on such date as the Governor may, by notice published in the Gazette, appoint Short title

5 2. In this Ordinance unless the context otherwise requires— Interpretation

“Court of Review” means the Court of Review established under section 4 of this Ordinance,

Cap 80

"detention camp" has the same meaning as in the Detention Camps Ordinance,

"native court" means a native court established or deemed to be established under section 5 of this Ordinance, and includes a native court of appeal, 5

"Native Courts Officer" means the Native Courts Officer appointed under section 3 of this Ordinance,

"provincial native courts officer" means a provincial native courts officer appointed under section 3 of this Ordinance 10

Appointment  
and duties  
of Native  
Courts Officer  
and provincial  
native courts  
officers

3. (1) The Governor may, for the purposes of this Ordinance, appoint a Native Courts Officer and such number of provincial native courts officers as he may consider necessary

(2) The Native Courts Officer and every provincial native courts officer shall exercise and perform such powers and duties as are by this Ordinance conferred upon them and shall have a general supervision over the exercise by native courts of their jurisdiction and powers and shall advise such courts upon matters connected therewith 15

(3) A provincial native courts officer may be appointed to have jurisdiction over more than one province 20

Establishment  
of a Court of  
Review

4. (1) There is hereby established a Court of Review which shall exercise such powers as are conferred by this Ordinance

(2) The Court of Review shall consist of— 25

(a) a Chairman who shall be appointed by the Governor on the advice of the Chief Justice and who shall be a person who has held high judicial office

(b) the Chief Native Commissioner, and

(c) the Native Courts Officer 30

Provided that if for any reason any member of the Court of Review is unable to act the Governor may appoint some suitably qualified person in his place

Establishment  
of native  
courts

5. (1) A Provincial Commissioner may, with the approval of the Governor, by warrant under his hand, establish within his province such native courts as he may think fit, which shall, subject to the provisions of this Ordinance, exercise jurisdiction within the limits defined by such warrant 35

(2) A Provincial Commissioner may, with the approval of the Governor by the warrant establishing any native court or by any subsequent warrant, confer upon a native court such appellate jurisdiction as may be specified in such warrant and where any native court sits to exercise any such appellate jurisdiction it shall be known as a native court of appeal 40

(3) A Provincial Commissioner may, with the approval of the Governor, at any time revoke, suspend or vary any warrant establishing a native court or defining the limits of the jurisdiction of any such court 45

No 39 of 1930

(4) Every native tribunal established or deemed to have been established under the Native Tribunals Ordinance, 1930 (now repealed) shall be deemed to be established, and to have all the powers of a native court established, under this Ordinance and may continue to exercise, so far as is not inconsistent with this Ordinance, the jurisdiction and powers hitherto exercisable by such native tribunal by virtue of the warrant establishing such tribunal 50 55

Constitution of  
native courts

6. (1) A Provincial Commissioner may, by the warrant establishing a native court or by any subsequent warrant prescribe the constitution of such court, the order of precedence

of the members thereof, the limits of its jurisdiction, the method of arriving at a decision if the members of the court disagree, the number of members which shall constitute a quorum, the powers of the court to sit with assessors, and the mode of trial with assessors

(2) If any of the matters specified in sub-section (1) of this section or any other matter is not prescribed by the Provincial Commissioner by the warrant establishing a native court such matter shall be regulated by native law

(3) Until the contrary is proved, every native court established or deemed to have been established under this Ordinance shall be deemed to be lawfully constituted

(4) The Provincial Commissioner shall cause a copy of all warrants given by him under this section to be transmitted to the Native Courts Officer

7. (1) A district officer or a provincial native courts officer may suspend and a Provincial Commissioner may dismiss or suspend any president or member of a native court if it appears to him that such president or member has abused his powers or is incapable of exercising such powers justly or is unworthy to be a member of a native court or for any other good and sufficient reason

Dismissal and suspension of members of native courts

(2) Upon such dismissal or suspension such person shall cease to exercise any of the powers of a member of a native court—

(a) in the case of dismissal, from the date of such dismissal,

(b) in the case of suspension, from the date and for the period of such suspension

8. All warrants, appointments and orders issued or made by a Provincial Commissioner under this Ordinance and which are subject to the approval of the Governor shall, whether or not such approval has been given, have effect from the date thereof

Operation of warrants, etc issued by a Provincial Commissioner and subject to approval of the Governor

Provided, however, that if such approval is refused any such warrant, appointment, or order so issued or made shall without prejudice to anything previously done under it, cease to have effect from the date of such refusal.

9 A native court shall sit at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court

Sittings of native courts

Provided, however, that the Provincial Commissioner may direct that a native court shall sit at any specified time or place

## PART II—JURISDICTION OF NATIVE COURTS

10. Subject to the provisions of this Ordinance every native court shall, to the extent defined in the warrant establishing such court, have jurisdiction over causes and matters in which the parties are Africans resident or being within the area of the jurisdiction of the court

Jurisdiction of native courts

Provided that where the accused in a criminal case or a party to a civil case is an Arab or a Somali it shall be lawful for a native court with the consent of such accused or party, as the case may be, to exercise jurisdiction

11. Subject to the provisions of this Ordinance, the criminal jurisdiction of a native court shall extend to the trial of all criminal matters in which any African is charged with

Criminal jurisdiction

having committed, or with being an accessory to the commission of, any offence either wholly or partly within the area of the jurisdiction of the native court

Civil jurisdiction

**12.** (1) Subject to the provisions of this Ordinance, the civil jurisdiction of a native court shall extend to the trial of all civil suits and matters in which the cause of action arose or the defendant is ordinarily resident within the area of the jurisdiction of the native court

Provided that any civil proceedings relating to immovable property shall, unless a district officer otherwise directs, be taken in the native court within the area of the jurisdiction of which the property is situate

(2) Notwithstanding anything to the contrary in any law for the time being in force in the Colony no civil proceedings in respect of—

(a) native customary marriage or inheritance, and

(b) immovable property situate within the native lands as defined in the Native Lands Trust Ordinance

Cap 100

shall, unless a district officer otherwise directs, be commenced by any African in any court of the Colony other than a native court having jurisdiction

Cap 284

(3) Notwithstanding the provisions of the Partnership Ordinance, proceedings in respect of partnership in which the sum involved does not exceed two thousand shillings and the parties are Africans may be commenced in a native court.

Cases excluded from ordinary jurisdiction of a native court

**13.** Subject to any express provisions to the contrary in any law, no native court shall have jurisdiction to try—

(a) any case in which a person is charged with an offence in consequence of which death is alleged to have occurred or which is punishable under any law with death or with imprisonment in excess of seven years,

(b) any case in connexion with marriage, other than a marriage contracted in accordance with native law, except where the claim is one for bride price or adultery only and is founded on native law,

(c) any other case or class of cases which the Governor may, by notice published in the Gazette, declare not to be within the jurisdiction of a native court

Jurisdiction may be conferred by order

**14.** The Governor may, by order published in the Gazette, confer upon native courts generally or upon any specified native court jurisdiction under the provisions of any Ordinance specified in such order subject to any restrictions and limitations imposed by such order

Governor may exclude Africans from jurisdiction of native courts

**15.** The Governor may direct that any African or any specified class of African shall not be subject to the jurisdiction of a native court except with the consent—

(a) of such an African, or

(b) of the Provincial Commissioner

Power to direct that native court to be constituted wholly or partly of Somalis

**16.** Notwithstanding any other provision of this Ordinance the Governor may, by notice published in the Gazette, direct that in any area specified in such notice any native court therein established shall be constituted in whole or in part of Somalis and in any area so specified a native court so constituted shall have jurisdiction over Somalis to the same extent as over Africans

### PART III—LAW AND PROCEDURE

Laws to be administered by native court

**17.** Subject to the provisions of this Ordinance, a native court shall administer—

(a) the native law prevailing in the area of the jurisdiction of the court so far as it is not repugnant to justice or

morality or inconsistent with the provisions of any Order of His Majesty in Council or with any Ordinance in force in the Colony,

5 (b) all orders made under sections 9, 10 and 11 of the Native Authority Ordinance and in force in the area of the jurisdiction of the native court, Cap 97

(c) the provisions of any by-laws made under the African District Councils Ordinance, 1950 No 12 of 1950

10 (d) the provisions of any Ordinance which a native court is by such Ordinance authorized to administer, and

(e) the provisions of any Ordinance which a native court is by any order under section 14 of this Ordinance empowered to administer

15 18. (1) Subject to the provisions of this Ordinance and any Ordinance providing for the punishment of any offence and subject to any limitation imposed on a native court by its warrant, a native court may, in any criminal case order— Power to award punishments

(a) the imposition of a fine,

(b) the imposition of a term of imprisonment or detention,

20 and may make any other order (including an order for payment of compensation or costs) which the justice of the case may require

25 Provided, however, that every order made shall be reasonable having regard to the nature and circumstances of the case.

(2) A native court may make any combination of the orders mentioned in sub-section (1) of this section

30 (3) Where a native court imposes any fine it may direct that in default of payment of the fine the offender shall be imprisoned or detained in a detention camp for such period as the court may think fit

35 Provided that, subject to the express provisions of this or any other law, in no case shall any imprisonment or detention imposed in default of the payment of any pecuniary penalty exceed the maximum period specified in the following scale—

	<i>Amount of pecuniary penalty</i>	<i>Maximum period</i>
	Not exceeding ten shillings	Fourteen days
40	Exceeding ten shillings but not exceeding twenty shillings	One month
	Exceeding twenty shillings but not exceeding one hundred shillings	Three months
45	Exceeding one hundred shillings but not exceeding four hundred shillings	Four months
	Exceeding four hundred shillings	Six months

50 (4) Any costs or compensation awarded under this section shall, unless such costs or compensation are ordered to be paid out of any fine pursuant to section 22 of this Ordinance, be recovered in the same manner as if such costs or compensation had been awarded in a civil suit

55 19. (1) Every person arrested in execution of any powers of a native court or remanded in custody by a native court shall be detained in any place authorized by a Provincial Commissioner as a native court lock-up Places of imprisonment

(2) Every person sentenced by a native court to a term of imprisonment or detention shall be imprisoned or detained, as the case may be, in a prison or detention camp established under any Ordinance in force in the Colony



Recovery  
of fines

20 (1) A native court may order that any fine imposed by it shall be paid at such time or times or by such instalments and either in kind or otherwise as it thinks fit, and in default of payment of any such fine or any instalment thereof when due, the court may order that the amount of the fine or of any 5 instalment thereof, as the case may be, shall be recovered by levy upon and sale of any property belonging to the offender and that the offender shall in default of payment, be imprisoned for such period as the court may, subject to the provisions of sub-section (3) of section 18 of this Ordinance, impose 10

(2) A term of imprisonment which is imposed by a court in default of the payment of a fine shall terminate forthwith upon such fine being either paid or levied

(3) A term of imprisonment which is imposed by a court in default of the payment of a fine shall upon payment or levy 15 of a part of such fine, be proportionately reduced

Restitution of  
property stolen  
or dishonestly  
obtained

21. When any person is convicted by a native court of having stolen or having dishonestly or otherwise unlawfully obtained any property, the native court convicting such person may order that the property so stolen, or dishonestly or 20 wrongfully obtained shall be restored to the person appearing to the court to be the owner or entitled to the possession thereof

Compensation  
to injured or  
aggrieved  
persons

22. Where a native court imposes a fine it may order that such fine or any part thereof shall be paid by way of com- 25 pensation to any person injured or aggrieved by the act or omission which constituted the offence in respect of which such fine was imposed

Orders in  
civil cases

23. (1) A native court, in any civil case, shall have power to make any of the following orders— 30

- (a) an order for the payment of compensation or costs or both, \*
- (b) an order for the restitution of property,
- (c) an order for the specific performance of a contract, and
- (d) any other order which the justice of the case may 35 require

(2) Any order for the payment of compensation or costs under this section may direct payment thereof at such time or times or by such instalments and in kind or otherwise as the court thinks fit and in default of payment of any such com- 40 pensation or costs or any instalment thereof when due a court may, on the application of the successful party to any civil case, order that the amount of such compensation or costs or any instalment thereof, as the case may be, shall be recovered by attachment and sale of any attachable property belonging 45 to and any salary accrued or to become due to the person against whom the order was made

(3) A native court may, on the application of the successful party to any civil case, make an order requesting a subordinate court to take steps for the arrest and detention of any 50 person who has failed to comply with an order for the payment of compensation or costs made by such native court

(4) For the purposes of this section "attachable property" shall not be deemed to include—

- (a) the necessary wearing apparel, cooking utensils, bed 55 and bedding of the judgment debtor and of his wife and children,
- (b) the tools of artisans or of agriculturists,



(c) the salary of any public officer, servant of the East African Railways and Harbours Administration or of a local authority or any person privately employed to the extent of—

5 (i) the whole of the salary, where the salary does not exceed forty shillings monthly

(ii) forty shillings, where the salary exceeds forty shillings monthly but does not exceed eighty shillings monthly,

10 (iii) one half of any salary which exceeds eighty shillings monthly,

(d) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decree

24. Any person subject to the jurisdiction of a native court who, in any proceeding before any court or authority exercising judicial powers under this Ordinance without lawful excuse— Enforcement of orders

(a) fails, upon being ordered so to do by the court, to produce or deliver to the court any document or other thing, or

(b) refuses to answer any question asked by the court,

(c) refuses to sign any statement which the court may lawfully require him to sign, or

(d) intentionally insults the court or any member thereof, or

(e) intentionally interrupts the proceedings of the court or

(f) refuses or neglects to comply with any lawful order of the court, or

(g) wrongfully refuses to vacate or re-takes possession of any land from any person who has obtained judgment for the recovery of possession of such land, or

(h) wrongfully re-takes possession of any child from any person who has obtained the custody of such child under an order of the court, or

(i) having the means to pay any sum by way of damages, compensation or costs awarded against him refuses or neglects, after due notice, to make such payment shall be guilty of an offence and shall be liable on conviction therefor to a fine of two hundred shillings or in default of payment to imprisonment for two months

45 Provided that no person other than an accused person shall be bound to answer any question the answer to which might tend to incriminate him and no accused person shall be bound to answer any question the answer to which might tend to incriminate him in respect of an offence other than that for which he is being tried

25. (1) A native court may in the exercise of its jurisdiction under this Ordinance—

(a) in any criminal matter—

(i) issue a warrant of arrest,

(ii) grant bail to any person brought before the court in custody

55 (iii) order the remand in custody of an accused person pending trial or upon the adjournment of any trial,

(b) in any case, issue a summons for the attendance of any party thereto

60 (2) Any party to a case who, being subject to the jurisdiction of a native court, without reasonable excuse, refuses or

Power to issue warrants and summonses and to remand persons in custody

neglects to obey any summons issued by a native court shall be guilty of an offence and upon conviction therefor shall be liable to a fine of two hundred shillings or in default of payment to imprisonment for two months

Power to  
summon  
witnesses

26. (1) Every native court shall have power to summon 5  
before it for the purpose of giving evidence any person subject  
to the jurisdiction of the court

(2) Any person served with a summons lawfully issued  
pursuant to sub-section (1) of this section who, without reason-  
able excuse, fails to obey such summons may be arrested and 10  
brought before the native court out of which such summons  
issued and shall be liable to a fine of one hundred shillings or  
in default of payment to imprisonment for one month

(3) If, in any case, a native court considers that the  
interests of justice require that the evidence of any person not 15  
subject to the jurisdiction of a native court should be obtained,  
the native court may apply to the district officer for the  
evidence of such person to be taken before a magistrate and  
the district officer may, in a proper case, request a magistrate  
to record the evidence of such person in the presence of the 20  
parties to the case if any such party wishes to be present and  
any such party shall have the right to question any person  
whose evidence is being recorded as aforesaid

(4) A magistrate, upon being requested to record the  
evidence of any person pursuant to sub-section (3) of this 25  
section, shall record such evidence accordingly

(5) All evidence taken pursuant to sub-section (3) of this  
section shall be transmitted to the native court which requested  
the recording of such evidence and shall form part of the 30  
record of the case

Service or  
execution  
outside  
jurisdiction  
of native  
court

27 (1) Any summons, warrant, order, or other process  
issuing out of a native court, and endorsed by a district officer  
with a request for the service or execution thereof within the  
jurisdiction of another court may upon payment of the pre-  
scribed fee for service or execution, as the case may be and 35  
subject to any rules made under this Ordinance, be served or  
executed within the jurisdiction of such other court

(2) An affidavit that a summons, warrant, order, or other  
process has been served or executed pursuant to the provisions  
of sub-section (1) of this section, or an endorsement that it has 40  
not or cannot be so served or executed, shall be made by the  
person by whom such service or execution was effected or  
attempted

(3) The court within the jurisdiction of which any sum-  
mons to a witness in a civil case is to be served may order that 45  
such summons be not served unless the court is satisfied that  
there has been paid or tendered such sum as the court considers  
reasonable to cover the expenses of such witness in attending  
the trial

Return of  
cases to be  
submitted to  
the district  
commissioner

28. Every native court shall, if called upon so to do, 50  
submit to the district commissioner a return, in such form and  
containing such particulars as may be prescribed, of all cases  
tried in such court

Parties to  
appear in  
person

29. (1) No advocate may appear or act for any party—  
(a) before a native court, or 55  
(b) before any court or authority hearing an appeal from  
a native court

(2) A native court may permit the husband or wife or guardian, or any servant, or the master (if an African), or any person normally resident in the household, of any party to a civil case, upon the request of any party, to appear and act for such party

(3) Nothing in sub-section (1) of this section shall operate to prevent an advocate appearing in any case before the Court of Review if such court grants leave to an advocate so to do

30. The Native Courts Officer may sit as adviser to any native court, a provincial native courts officer may sit as adviser to a native court within his province and a district officer may sit as adviser to a native court within his district

Advisers to  
native courts

#### PART IV—OFFENCES

31. Any person who exercises or attempts to exercise any judicial powers within the area of the jurisdiction of a lawfully constituted native court, except in accordance with the provisions of any Order of His Majesty in Council or of any Ordinance, or who sits as a member of such court without due authority shall be guilty of an offence and upon conviction by a subordinate court of the first or second class, shall be liable to imprisonment for twelve months or to a fine of one thousand shillings or to both such imprisonment and fine

Usurping  
judicial powers

Provided, however, that nothing in this section shall be deemed to prohibit any customary arbitration or settlement by the tribal elders of any issue concerned with native law if such arbitration or settlement is conducted in the manner recognized by native law

32. Any person who, being or expecting to become, a member, officer or servant of a native court, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than lawful remuneration, as a motive or reward for doing or forbearing to do any act as a member, officer or servant of such court, or for showing or forbearing to show as a member, officer or servant of such court, favour or disfavour to any person, shall be guilty of an offence and upon conviction by a subordinate court of the first or second class shall be liable to imprisonment for two years or a fine of two thousand shillings, or to both such imprisonment and fine

Members of  
native courts  
taking rewards

33. Any person who accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification or reward whatever whether in money or otherwise, for inducing or attempting to induce by corrupt or illegal means or by personal influence any native court or any member, officer or servant thereof, to do or forbear to do any act which such court, member, officer or servant is authorized to do in the exercise of lawful jurisdiction or authority or to show favour or disfavour to any person shall be guilty of an offence, and, upon conviction before a subordinate court of the first or second class shall be liable to imprisonment for twelve months or to a fine of two thousand shillings, or to both such imprisonment and fine

Taking reward  
for influencing a  
native court

34. Any person who, in any proceedings before a native court gives any evidence, whether upon oath or otherwise which he knows or believes to be false or does not believe to be true shall be guilty of an offence and shall be liable upon conviction by a subordinate court of the first or second class to imprisonment for two years or to a fine of two thousand shillings or to both such imprisonment and fine

False evidence

35. Any person who, with intent to defeat, obstruct or prevent the course of justice in any proceedings before a native court, by any means prevents any person giving evidence or causes any person to refrain from or to delay in giving evidence

Interference  
with witness

before a native court in such proceedings, shall be guilty of an offence and upon conviction therefor, shall be liable to a fine of two hundred shillings or to imprisonment for two months

#### PART V—ADDITIONAL POWERS OF NATIVE COURTS

Power of native court to require person present in court to give evidence whether summoned or not

**36.** If any native court is of opinion that the justice of any case so demands, the court may require any person present at the court, whether a party or summoned as a witness in such case or not, to give evidence 5

Injunction to prevent destruction or waste of property subject to dispute

**37.** If in any case before a native court it is shown to the satisfaction of the court that any property which is in dispute in the case is in danger of being destroyed, hidden, wasted, damaged, alienated or otherwise injuriously dealt with, by any party to the case, the court may, pending final determination of the case, issue an injunction to restrain any such party from destroying, hiding, wasting, damaging, alienating or otherwise injuriously dealing with any such property 10 15

Power to issue search warrant

**38.** (1) The president of a native court or any two members thereof may, if satisfied by information on oath that there is reasonable ground for believing that property alleged to be stolen or wrongfully obtained is to be found on any premises occupied by a person subject to the jurisdiction of a native court, issue a search warrant in the prescribed form authorizing any person or persons therein named to search such premises and seize any such property and take it before a native court having jurisdiction there to be dealt with according to law 20 25

(2) A search warrant under sub-section (1) of this section shall be executed only between the hours of six o'clock in the morning and six o'clock at night

(3) Any person residing in or being in charge of any premises in respect of which a search warrant has been issued shall allow any person executing such warrant free ingress thereto and shall afford all reasonable facilities for making a search therein and where free ingress cannot be obtained the person executing the warrant may use such force as may be necessary to enter such premises and in order to effect such entry and search may break open any door or window 30 35

#### PART VI—REVISION AND TRANSFER OF PROCEEDINGS

Powers of provincial native courts officers and district officers

**39.** (1) Every provincial native courts officer and district officer shall, within his province or district respectively, have access at all reasonable times to any native court and to the records thereof, and upon the application of any interested party or upon his own motion may— 40

(a) revise any of the proceedings of a native court, whether civil or criminal, and may make such orders or impose such sentences in relation thereto as the native court could itself have made or imposed, so, however, that no fine or term of imprisonment imposed in any criminal proceeding shall be increased except the accused is first given an opportunity of being heard 45 50

Provided that when any sentence is so increased the accused shall have a right of appeal to the Provincial Commissioner

(b) order any case to be reheard either before the same native court or some other native court of competent jurisdiction, 55

(c) transfer any case either before trial or at any stage of the proceedings, whether before or after sentence or judgment, to any subordinate court of the first or second class or to another native court of competent jurisdiction. 60

(2) On the rehearing of any case pursuant to an order made under paragraph (b) or after transfer under paragraph (c) of sub-section (1) of this section no person shall be entitled, by reason only of such rehearing, in any civil case to plead that the matter has already been adjudicated upon, or in any criminal case to plead that he has been previously convicted or acquitted as the case may be of the same offence

40. The defendant in any case, whether civil or criminal, commenced or brought before any native court may apply to a district officer for the removal of the proceedings to some other court, and the district officer may, for reasons which he shall record in writing, stop the hearing or further hearing of the case before such native court on such terms as he may consider just, and may direct that such case be tried by any subordinate court of competent jurisdiction or by some other native court of competent jurisdiction

Removal of  
case on  
application  
of defendant

41. When any case is transferred or removed from a native court to another court pursuant to the provisions of paragraph (c) of sub-section (1) of section 39 or of section 40 or of section 46 or of section 51 of this Ordinance, the native court shall forward the proceedings to such other court and thereupon that other court shall proceed to the trial or rehearing, as the case may be, of the case in the same manner as if the case had been commenced in such other court

Proceedings  
transferred from  
native court  
to subordinate  
court

#### PART VII—APPEALS

42. (1) Any person aggrieved by any order or decision of a native court of first instance may, within thirty days from the date of such order or decision, appeal therefrom to a native court of appeal, or, if there be no such native court of appeal, to the district officer

Appeals from  
native courts

(2) Any person aggrieved by any order or decision of a native court of appeal—

(a) in any civil proceeding involving immovable property or in which the subject matter in dispute either cannot be estimated in money or is of the value of not less than one hundred shillings, or

(b) in any criminal proceeding in which a fine or a fine and compensation amounting to not less than one hundred shillings or a term of imprisonment of not less than one month has been imposed,

may, within thirty days from the date of the determination of such appeal, appeal therefrom to a district officer

(3) Notwithstanding the provisions of sub-sections (1) and (2) of this section the Provincial Commissioner of the Coast Province may order that any appeal under the aforesaid sub-sections shall lie to a liwali or mudir to be specified in such order instead of to a native court of appeal or district officer as the case may be

43. (1) Any person aggrieved by any order or decision of a district officer, liwali or mudir, made or given in an appeal heard by such district officer, liwali or mudir under this Ordinance may, within thirty days from the date of such order or decision appeal therefrom to the Provincial Commissioner

Appeal from  
district officer  
liwali or  
mudir

Provided that, except with the leave of the Provincial Commissioner, no such appeal shall lie—

(a) in any civil case in which a district officer, liwali or mudir, as the case may be, has confirmed without substantial variation the order or decision of the native court of first instance and, where such a court exists, the native court of appeal,

(b) in any civil case not involving immovable property, if the value of the subject matter in dispute when

capable of estimation in money, is less than five hundred shillings exclusive of costs,

(c) in any criminal case in which a fine or a fine and compensation amounting to less than three hundred shillings or a term of imprisonment of not less than three months is imposed

(2) For the purposes of paragraph (a) of sub-section (1) of this section the question as to whether or not any order or decision of a native court has been confirmed without substantial variation shall be decided by the Provincial Commissioner and such decision shall be final

Submission of  
case to Court  
of Review

44. (1) Any party aggrieved by the decision of the Provincial Commissioner on any appeal may, within thirty days of such decision, apply in writing to the Provincial Commissioner for a certificate that his case be submitted to the Court of Review. Any such application shall be accompanied by a fee of one hundred shillings

(2) The Provincial Commissioner shall only grant a certificate under this section if he is of opinion that an important point of law is involved in the case or that for any other reason it is a proper case for submission to the Court of Review

(3) Any person aggrieved by the grant or refusal of a certificate under this section may appeal to the Court of Review

(4) In any case in which—

(a) a certificate under this section has been refused, or

(b) such certificate has been granted and the Court of Review has substantially varied the decision of the Provincial Commissioner

the fee of one hundred shillings required to be deposited under sub-section (1) of this section shall be refunded to the applicant. Any question as to whether any variation is or is not a substantial variation shall be determined by the Court of Review

(5) The Provincial Commissioner may notwithstanding that an application under sub-section (1) of this section has not been made may refer any case, whether determined within thirty days of such reference or not, to the Court of Review if he is of the opinion that the order or judgment therein has resulted or is likely to result in grave injustice

(6) Where a Provincial Commissioner refers any case to the Court of Review under sub-section (5) of this section he shall prepare and forward to the Court a memorandum in writing setting out the grounds upon which he considers that the case should be reviewed

Leave to  
appeal out  
of time

45. Leave to appeal out of time to any court or authority under this Ordinance may be granted by such court or authority upon such terms as it thinks fit

Powers on  
appeal

46. A native court of appeal, a mudir, a liwali, a district officer, a provincial native courts officer, a Provincial Commissioner, and the Court of Review may, in the exercise of its jurisdiction under this Ordinance, require the assistance as assessors of such persons as the court or other authority as aforesaid may think fit, and may—

(a) confirm, vary or set aside any decision or order and make such order or impose such sentence as a native court of first instance could have made or imposed,

(b) order any case to be re-heard either before the same native court or some other native court or before a subordinate court of competent jurisdiction

Provided that nothing in paragraph (b) of this section shall empower a native court of appeal to order a case to be reheard by a subordinate court.



## PART VIII—MISCELLANEOUS

47. No proceedings in a native court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal, revision or review solely by reason of any defect in procedure or want of form but all matters shall be decided according to substantial justice without undue regard to technicalities

Substantial justice to be done without undue regard to technicalities

48. (1) Every native court shall execute or cause to be executed any decree or order of any other court directed to such native court and shall cause to be executed or served every warrant and other process issued by any other court and directed to such native court for execution or service and generally shall give such assistance to any other court as may be necessary

Execution of orders and process

(2) A subordinate court shall take steps as it thinks fit to enforce any order or decision of a native court if such order or decision is endorsed by the district officer within whose district such native court has jurisdiction with a request that such order or decision be enforced

(3) Every court or authority exercising appellate or revisionary jurisdiction shall in each case certify in writing its order and decision to the native court by which the case was heard originally and every such native court shall thereafter take such steps as may be necessary to enforce the order and decision so certified and if necessary to amend the record accordingly

49. (1) Whenever it appears to any court that any civil case before the court is a case more properly cognizable by a native court, the court may order that such case shall be removed to and tried by a native court having jurisdiction. Upon making any such order the court may direct that all court fees paid by any party to the case shall be refunded and the court may make such order as to costs as it thinks fit.

Transfer of case to native court

(2) Where any case is so removed to a native court the hearing shall be recommenced before such native court upon payment of the prescribed fees

50. At the end of every month every district commissioner shall forward to the Native Courts Officer a list, containing the prescribed particulars and in the prescribed form, of all criminal cases brought before every native court in his district during such month

Monthly list of criminal cases to be sent to Native Courts Officer

51. Every list of criminal cases forwarded under section 50 of this Ordinance shall operate as an appeal on behalf of every convicted person whose name is included therein and the Native Courts Officer may, without hearing argument, exercise any of the powers conferred by section 39 of this Ordinance

List of criminal cases to operate as appeal

52. (1) No person shall be liable to be sued in any court in respect of any act done or ordered by him in the exercise or purported exercise of any powers conferred by this Ordinance if at the time of doing such act or making such order he believed in good faith that he had authority to do such act or make such order

Persons acting in exercise of powers conferred by Ordinance indemnified

(2) No officer or servant of a native court or other person required to execute any warrant or order issued or made in exercise of any power conferred by this Ordinance shall be liable to be sued in any court in respect of the execution thereof if he believed in good faith that the person issuing or making such warrant or order had acted lawfully



Proceedings  
pending

**53.** Every proceeding pending at the date of the commencement of this Ordinance shall be heard by the appropriate and competent court or authority empowered by this Ordinance to hear such a proceeding

Powers of  
Native Courts  
Officer

**54.** The Native Courts Officer shall at all times have access to every native court and to all records thereof and may exercise in relation to any such court the powers specified in section 39 of this Ordinance

Powers of a  
provincial native  
courts officer

**55.** A provincial native courts officer shall have all the powers conferred upon a district officer by this Ordinance and may exercise the appellate powers conferred upon a Provincial Commissioner in any case in which he is deputed by a Provincial Commissioner so to do

Rules

**56.** (1) The Governor may make rules for the better carrying out of this Ordinance, and in particular, but without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) regulating the practice and procedure of native courts
- (b) regulating the procedure for the arrest, remand in custody and grant of bail to, accused persons,
- (c) regulating the procedure to be adopted by a magistrate in taking, under the powers contained in this Ordinance, the evidence of a person not subject to the jurisdiction of a native court
- (d) regulating the procedure relating to the service of summonses, the execution of orders, warrants and decrees,
- (e) prescribing the costs to be allowed in native courts in civil and criminal cases,
- (f) regulating the practice and procedure in appeals from a native court,
- (g) prescribing the records to be kept by a native court,
- (h) prescribing the fees to be charged in any native court and on appeals from any court or authority,
- (i) regulating the disposal and application of fines and fees;
- (j) regulating the establishment and government of native lock-ups,
- (k) prescribing the forms to be used under this Ordinance

(2) Rules made under this section may be made to apply generally to all native courts or to any specified native court or courts

Repeal  
No 39 of 1930

**57.** The Native Tribunals Ordinance 1930, is hereby repealed

#### MEMORANDUM OF OBJECTS AND REASONS

The Native Tribunals Ordinance was enacted in 1930 and with minor amendments has governed the administration of the tribunals since that time

During the last five years there have been considerable developments in the organization and control of the native courts in the Colony and, with the appointment first of a Judicial Adviser and subsequently in 1948 of a Native Courts Officer, it has been possible to give closer attention and more expert guidance to the development and progress of the African judicial system. This Bill will take account of these developments and remedy weaknesses which this closer attention has disclosed.

In the first instance it is proposed that the courts, which hitherto have been known as Native Tribunals, shall now be renamed Native Courts in accordance with the practice in other parts of the Commonwealth.

These native courts are intended to have jurisdiction in all cases civil and criminal in which Africans are the accused or parties, but provision is made for the warrant of a court to confer jurisdiction

January 25, 1951

in certain cases over persons who are not Africans within the definition contained in the Interpretation and General Clauses Ordinance, Cap 1

In more detail the provisions of this Bill are as follows —

Part I provides for the appointment of a Native Courts Officer and provincial native courts officers who will supervise and advise the native courts, the former on a territorial, the latter on a provincial level. Administrative officers may also exercise advisory functions in addition to the other revisionary and appellate powers proposed to be conferred upon them under other parts of the Bill.

Clause 4 provides for the establishment of a Court of Review which is to have appellate jurisdiction and to consist of a chairman, the Chief Native Commissioner and the Native Courts Officer. The chairman is to be appointed by the Governor on the advice of the Chief Justice and is to be a person who has held high judicial office. This will provide an appellate tribunal versed in native law and custom and presided over by a chairman with judicial experience.

The remainder of Part I will provide for the establishment and control of native courts. As in the 1930 Ordinance, the method is to be by warrant of the Provincial Commissioner. These warrants will specify the extent of his jurisdiction of the native court. Provision is made for native tribunals already existing under the present law to become native courts under the new Ordinance (*clause 5 (4)*). The principal matters with which the warrants will deal are the jurisdiction, constitution and procedure of native courts. Warrants may be revoked or varied by a Provincial Commissioner with the approval of the Governor, in certain circumstances district officers are given authority to suspend and Provincial Commissioners to suspend or dismiss members of the native courts. In these and other respects the provincial native courts officer is to have powers similar to those of a district officer (*clause 7*).

Part II is concerned with the jurisdiction of native courts in civil and criminal matters. Provision is also made for an Arab or a Somali to be subject to a native court provided that he himself consents. In criminal matters the jurisdiction of native courts will extend, subject to the other provisions of the Bill, to trials in which Africans are charged as principals or accessories in any offence committed either wholly or partly within the jurisdiction of a native court. In civil matters the jurisdiction of a native court will cover all suits in which the cause of action arose or the defendant is ordinarily resident within the area of the jurisdiction of that court except in the case of immovable property, where the suit shall lie, unless a district officer otherwise directs, in the native court having jurisdiction within the area in which the property is situated. Proceedings relating to native customary marriage or inheritance and to immovable property situate within the native lands, as defined in the Native Lands Trust Ordinance are, unless a district officer otherwise directs, to be commenced exclusively in the native courts, and, notwithstanding the provisions of the Partnership Ordinance (Cap 284), native courts are to have powers to hear cases in respect of partnership in which the sum involved does not exceed two thousand shillings and the parties are Africans. Native courts are not to have jurisdiction in cases in which a person is charged with an offence in consequence of which death is alleged to have occurred, or which is punishable under any law with death or with imprisonment for life, and cases in connexion with marriages, other than marriages contracted in accordance with native law, are also specifically excluded from the jurisdiction of native courts, except where the claim is one for bride price or adultery only and is founded on native law (*Clause 13*). The Governor will have power, by order published in the Gazette, to confer upon native courts generally, or upon any specified native court, jurisdiction under the provisions of any Ordinance specified in the order (*clause 14*), and will be able to declare that any case or class of case shall not be within the jurisdiction of a native court (*clause 13 (c)*). The Governor will also have power to direct that in any specified area any native court shall be constituted in whole or in part of Somalis and have jurisdiction over Somalis to the same extent as over Africans (*clause 16*).

Part III sets out the law to be administered by native courts which is to be native law, in so far as that law is not repugnant to justice or morality or inconsistent with any Order in Council or Ordinance orders under the Native Authority Ordinance (Cap 97), the provisions of by-laws made under the African District Councils Ordinance, 1950, the provisions of any Ordinance which a native court is by such Ordinance authorized to administer or the provisions of any Ordinance which a native court is by order under *clause 14* of the Bill empowered to administer.

The remainder of Part III deals with the powers of a native court to impose fines, inflict imprisonment and make orders regarding compensation or costs enforcement of such orders and restitution of property

In *clause 18* is set out the maximum periods of imprisonment in default of the payment of fines which may be imposed on the same scale as under the Penal Code

*Clause 23* sets out the powers of native courts in civil cases regarding the award of compensation, restitution of property, specific performance costs This clause also declares that certain essential property or moneys shall not be subject to attachment

Other clauses in this part provide for the exercise of powers incidental to the authority of the court, such as procedure on arrest (*clause 19*) issue of warrants, contempt of court (*clause 24*), ordering of remands and the issue of summonses to accused parties and witnesses

*Clause 29* continues the provision in the 1930 Ordinance that no advocate may appear or act for any party either before a native court of first instance or before any court or authority hearing an appeal from a native court An advocate may, however, with the permission of the court, appear before a Court of Review

Part IV deals with various offences against the administration of justice such as the usurpation of judicial powers the taking of rewards, false evidence and interference with witnesses, and Part V confers certain additional powers regarding the issue of search warrants and injunctions

Part VI deals with the revision and transfer of proceedings By *clause 39* every provincial native courts officer and district officer will have powers of revision either upon the application of an interested party or of his own motion, and will be able to order a rehearing or to transfer the case either to another native court or to a subordinate court as the circumstances may require

Part VII contains provisions for appeal *Clause 42* provides that there shall be an appeal to a native court of appeal or, if there be no native court of appeal, to a district officer in every case and that in certain cases there shall be an appeal from a native court of appeal to a district officer In *clause 43* provision is made for appeals from a district officer, liwali or mudir to a Provincial Commissioner, but certain limitations are imposed on such appeals, in particular in cases where a district officer has upheld the findings of both the lower courts, or of the court of first instance where no native court of appeal exists *Clause 44* is an important clause which sets out the procedure for securing review of cases by the newly established Court of Review It provides that any party aggrieved by the decision of the Provincial Commissioner on appeal may within thirty days apply in writing to the Provincial Commissioner, on payment of the prescribed fee, for an order submitting the case to the Court of Review, and that in cases in which the Provincial Commissioner has varied the order or judgment of a district officer liwali or mudir and is of the opinion that an important point of law is involved, the Provincial Commissioner shall and in other cases may, make an order for review The clause also provides that the Provincial Commissioner shall be entitled within the same period or, in exceptional circumstances without any time limit, to make such an order of his own motion and that, when he so refers any case to the Court of Review, he shall prepare and forward a memorandum in writing, setting out the grounds upon which he considers the case should be reviewed

*Clause 46* will provide for the powers which may be exercised by any court or authority under the Ordinance when exercising appellate jurisdiction or when reviewing a case

Part VIII contains miscellaneous provisions and rule-making powers *Clause 49* gives powers to a subordinate court to transfer a case before it for trial to the appropriate native court when the subordinate court is of the opinion that the case is one between Africans which ought to be determined by a native court

By *clauses 50 and 51* the Native Courts Officer will be empowered to exercise the revisionary powers at present conferred upon the Attorney General regarding criminal cases submitted in monthly returns by native courts

*Clause 55* provides that a provincial native courts officer shall have all the powers conferred upon a district officer and may exercise the appellate powers conferred upon a Provincial Commissioner in any case in which he is deputed by a Provincial Commissioner to do so

It is not expected that any additional expenditure of public money will be incurred if the provisions of the Bill become law

Nairobi,  
16th January, 1951

K K O'CONNOR,  
Attorney General

## GOVERNMENT NOTICE No 73

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

## ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title and commencement	15—Special provisions regulating marriage
2—Interpretation	16—Payment on death of depositor
3—Establishment and management of the Fund	17—Deposits, etc., not to be assigned or attached
4—Who shall become a depositor	18—Deduction of sums due to Government
5—Amount of deposit	19—Regulations
6—Interest	20—Transfer of depositors accounts at present in Government Staff Provident Fund to the Fund
7—Bonuses	21—Transfer of assets of Government Staff Provident Fund
8—Gratuities	22—Exemptions
9—Information to depositors	23—Amendment of section 16 of the Government Staff Provident Fund Ordinance
10—Closing of accounts	24—Repeal
11—Where account closed by death or satisfactory termination of service	
12—Resignation or dismissal	
13—Transfer to pensionable office	
14—Transfer to office other than pensionable or provident fund office in the Government or other public service	

## A BILL ENTITLED

**AN ORDINANCE TO ESTABLISH A PROVIDENT FUND FOR CERTAIN EMPLOYEES OF THE STAFF OF THE GOVERNMENT AND TO PROVIDE FOR CONTRIBUTIONS TO SUCH FUND BY SUCH EMPLOYEES AND BY GOVERNMENT, AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH**

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 Provident Fund Ordinance, 1951, and shall, except as otherwise provided in section 23, come into operation on such date as the Governor may by notice in the Gazette appoint

Short title and commencement

2. (1) In this Ordinance unless the context otherwise requires—

Interpretation

“the Board” means the Board of Management appointed under section 3 of this Ordinance,

“bonus” means the sum of money provisionally credited to a depositor under section 7 of this Ordinance,

“deposit” means the deposit under section 5 of this Ordinance,

“depositor” means any person—

(a) by whom or on whose behalf deposits in the Fund are made under this Ordinance or

(b) in respect of whom any amount is standing to his credit in the Fund,

“Fund” means the Provident Fund established under section 3 of this Ordinance,

“Government employee” means—

(a) a person who has been issued with a letter of appointment (other than a letter of temporary appointment) to the service of the Government,

(b) an enlisted African police officer, prisons officer, tribal policeman or forest guard

Provided that such a person shall be deemed not to be a Government employee whilst he is serving as a recruit,

(c) such other person or class of persons as the Governor may, by notice in the Gazette, direct,

“holder of a provident fund office” means a Government employee who is the substantive holder of such an office, whether or not he is on probation therein, 5

“other public service” means public service other than service under the Government,

No 31 of 1950

“pensionable office” has the same meaning as in the Pensions Ordinance, 1950,

No 31 of 1950

“provident fund office” means an office which has been 10 declared by the Governor by a notification published in the Gazette to be a provident fund office for the purposes of this Ordinance with effect from such date as may be specified in the notification, and any such notification may from time to time be amended, added to or revoked by another notification 15 so made and published but where by virtue of any such amendment or revocation any office ceases to be a provident fund office, then unless such office becomes a pensionable office under the Pensions Ordinance, 1950, so long as the substantive holder of that office continues therein, the office shall, 20 as respects that person, continue to be a provident fund office.

“public service” means service under the Government and such other service as the Governor may determine to be public service for the purposes of this Ordinance,

“salary” means the substantive salary payable to a 25 depositor and does not include any other payment or allowance whatsoever

(2) When it appears to the Government that there is no satisfactory proof of the correct age of a depositor the Governor may, upon such evidence as he thinks fit, presume 30 the age of the depositor and such presumed age shall be taken to be the correct age of the depositor for the purposes of this Ordinance

Establishment  
and management  
of the Fund

3. (1) There shall be established a Fund to be known as the Provident Fund

(2) The Governor shall appoint a Board of Management 35 which shall be responsible for the control and management of the Fund in accordance with the provisions of this Ordinance and of any regulations made thereunder The Accountant General shall be chairman of the Board The procedure of the Board may be regulated by regulations made under section 19 40 of this Ordinance

(3) The moneys paid into the Fund shall, so far as practicable, be invested by the Accountant General on behalf of the Fund in such security or securities yielding interest as the Board may approve or, with the approval of the Board, 45 deposited by him in the Post Office Savings Bank

(4) The Accountant General shall keep a separate account for the moneys of the Fund

(5) The Board shall submit to the Member for Finance as soon as practicable after the thirty-first day of December 50 in each year a full audited statement showing the workings of the Fund and all claims thereon, and containing full particulars of all transactions connected with the workings of the Fund The Accounts of the Fund shall be audited by the 55 Director of Audit

Who shall  
become a  
depositor  
Cap 71

4. (1) Every person in the service of the Government who at the date of the commencement of this Ordinance was a depositor in the Government Staff Provident Fund established

under the Government Staff Provident Fund Ordinance (now repealed) shall, as from the date of the commencement of this Ordinance, become a depositor

(2) Every Government employee who—

- 5 (a) at the date of the commencement of this Ordinance is not a depositor to the aforesaid Government Staff Provident Fund but who is the holder of a provident fund office shall become a depositor as from the date of the commencement of this Ordinance, or on completion of twelve months' service whichever is the later;
- 10 (b) becomes the holder of a provident fund office on or after the date of the commencement of this Ordinance, shall become a depositor as from the date of his appointment to that office, or on completion of twelve months' service, whichever is the later,
- 15 (c) is the holder of an office declared subsequently to his appointment thereto to be a provident fund office shall become a depositor as from the date of the publication of such declaration, or on the completion of twelve months' service, whichever is the later,
- 20

Provided that a Government employee who—

- 25 (i) is transferred from a pensionable office to a provident fund office or whose office becomes a provident fund office and who is permitted under the Pensions Ordinance, 1950, to have his service in the provident fund office taken into account as pensionable service under that Ordinance, or
- 30 (ii) is a married woman,

shall not, subject to the provisions of section 15 of this Ordinance, become or continue to be a depositor

(3) Every Government employee who is required to become a depositor—

- 35 (a) under paragraph (a) of sub-section (2) of this section and whose office has been declared to be a provident fund office with effect from a date prior to the date of the commencement of this Ordinance may elect by notice in writing, addressed to the Accountant General within three months of the date of the commencement of this Ordinance,
- 40 (b) under paragraph (c) of sub-section (2) of this section and whose office has been declared to be a provident fund office with effect from a date prior to the date of publication of such declaration may elect by notice in writing, addressed to the Accountant General, within three months of such date of publication
- 45

to become a depositor as from the date with effect from which his office is declared to be a provident fund office, or on the completion of twelve months' service, whichever is the later

Provided that such a Government employee shall not elect to become a depositor in respect of a period when he was a contributor to any other provident or contributory pension fund except with the approval of the Member for Finance which approval may be given either generally or in any particular case

(4) Where under sub-section (3) of this section a Government employee elects and is permitted to become a depositor



as from a date earlier than that on which he is required to become a depositor under sub-section (2) of this section then—

- (a) a sum equal to the arrears which are due from him in respect of the deposits he would have made during such earlier period shall be advanced to such employee from the general revenue of the Colony and deposited in the Fund and shall be deemed for the purposes of this Ordinance to be a deposit, and
- (b) a sum equal to the amount referred to in paragraph (a) of this sub-section shall be paid out of the general revenue of the Colony into the Fund and shall be deemed for the purposes of this Ordinance to be a bonus,

and the sums so paid in shall be deemed for the purposes of this Ordinance to have been deposited or provisionally credited as the case may be, to the depositor's account on the last day of the month immediately prior to the month in which such employee was required to become a depositor under paragraph (a) or paragraph (c) of sub-section (2) of this section, as the case may be

(5) Where under paragraph (a) of sub-section (4) of this section an amount is advanced to a Government employee such amount shall be recovered from his salary by such instalments as the Accountant General shall direct

Amount of  
deposit

5. (1) Every depositor shall, so long as he remains the holder of a provident fund office, deposit in the Fund monthly an amount equal to one shilling and fifty cents for each twenty shillings of his monthly salary, and such deposits shall be calculated on full salary, whether the depositor is on full, reduced or no salary

Provided that when a depositor is on reduced salary or no salary for a period exceeding two consecutive months, he may elect to contribute in respect of such period in excess of two months at the rate of one shilling and fifty cents for each twenty shillings of the salary which he actually receives

(2) For the purposes of ascertaining the amount to be deposited under sub-section (1) of this section where the monthly salary of a depositor includes any fraction of twenty shillings, an amount of salary less than ten shillings shall be disregarded and an amount of salary of ten shillings or more shall be regarded as twenty shillings

(3) Deposits required to be made under this section shall be deducted from the salary of the depositor on each occasion on which his salary is paid and shall be paid into the Fund, and notwithstanding the actual date on which the deduction is made a deposit shall be deemed for the purposes of this Ordinance to be credited to the depositor's account on the last day of the month in respect of which the salary is due

Interest

6. (1) Interest shall be credited on deposits at a rate of not less than three per centum per annum, to be fixed annually by the Member for Finance, and shall begin to accrue—

(a) on the balance of deposits on hand at the beginning of each year, from the first day of January in that year.

(b) on the sums deposited during the period January to December in each year, from the first day of July of each such year.

and, subject to the provisions of this Ordinance, such interest shall be calculated to the thirty-first day of December in each year and shall then, subject to the provisions of sub-section (2) of this section, be added to and become part of the principal and be deemed for the purposes of this Ordinance to be a deposit.



(2) Where the interest calculated to the thirty-first December in each year includes any fraction of a shilling which is—

- (a) one-quarter or less, that fraction shall be disregarded,
- (b) more than one-quarter but less than three-quarters,  
5 that fraction shall be regarded as one-half,
- (c) three-quarters or more, that fraction shall be regarded as a shilling.

and the amount of interest to be added to and become part of the principal shall be determined accordingly

10 7. (1) On the thirty-first December in each year there shall be paid in to the Fund out of the general revenue of the Colony— Bonuses

(a) in the case of a depositor who has not, prior to the first July in such year, completed a period of ten years  
15 continuous service under the Government a sum equal to the aggregate of the deposits made by the depositor to the Fund during the year together with the interest which is added to and becomes part of the principal under section 6 of this Ordinance;

20 (b) in the case of a depositor who has, prior to the first July in such year, completed a period of ten or more years continuous service under the Government but less than twenty years continuous service, a sum equal to one and one half times the amount payable under paragraph (a) of this sub-section;

25 (c) in the case of a depositor who has, prior to the first July in such year, completed a period of twenty years or more continuous service under the Government, a sum equal to twice the amount payable under paragraph (a) of this sub-section,  
30

and such sum shall be provisionally credited to the account of such depositor

Provided that—

35 (i) in the event of the account of the depositor being closed under section 10 of this Ordinance prior to the thirty-first December in any year the amount to be paid out of the general revenues of the Colony and provisionally credited by the Board to the account of the depositor shall be determined by reference to the  
40 aggregate of the deposits made by the depositor to the Fund during the year up to the date of such closure together with the interest thereon up to the end of the month previous to such closure,

45 (ii) where any sum payable under this section includes a fraction of a shilling, the provisions of paragraphs (a) (b) and (c) of sub-section (2) of section 6 of this Ordinance shall have effect

(2) In determining whether service is continuous for the purposes of this Ordinance the Governor may, either generally  
50 or in any particular case, direct that a break in service which has been caused other than by voluntary resignation or dismissal for misconduct may be disregarded

8. It shall be lawful for the Governor to grant from the general revenue of the Colony to each depositor on his leaving  
55 the public service— Gratuities

(a) in any of the circumstances mentioned in paragraphs (a), (b), (d) and (f) of section 11 of this Ordinance, after seven years' continuous service, or

(b) in any of the circumstances mentioned in paragraph (e) of the said section 11, after fifteen years' continuous service.

a gratuity not exceeding twenty shillings or half a month's salary at the highest rate drawn by him during his service under the Government (whichever is the greater) in respect of each completed year of such service prior to the date on which he became a contributor to the Fund or, as the case may be, to the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance (hereby repealed)

Cap 71

Provided that in the case of a depositor who was a contributor to the fund established under the Government Staff Provident Fund Ordinance—

Cap 71

(a) the gratuity under paragraph (a) of this section may be granted to the depositor on his leaving the service in any of the circumstances mentioned in paragraphs (a), (b) or (d) of the said section 11 notwithstanding that he has not completed seven years' service,

(b) the gratuity under paragraph (b) of this section may be granted to the depositor on his leaving the service after fifteen years' continuous service notwithstanding that the circumstances mentioned in paragraph (e) of the said section 11 do not apply in his case

Information to depositors

9. As soon as practicable after the thirty-first day of December in each year, the Board shall, if so required by the depositor, cause him to be informed of the total amount of the deposits credited and bonuses provisionally credited to him in the Fund at that date

Closing of accounts

10. (1) Subject to the provisions of this Ordinance, on the death of a depositor or on his ceasing to make deposits otherwise than in accordance with the proviso to sub-section (1) of section 5 of this Ordinance, interest up to the end of the month previous to the date of his death or of his ceasing to be a depositor, as the case may be, shall be credited to his account, which shall then be closed

(2) Where any account is closed under this section notice of such closure and of the amount standing to the credit of the account shall be given—

(a) if the depositor is living, to the depositor, or

(b) if the depositor is dead, to such person or persons mentioned in section 16 of this Ordinance as the Board thinks fit

and, in either such case, to such other persons as, in the opinion of the Board, reasonably require such notice

Where account closed by death or satisfactory termination of service

11. Subject to the provisions of this Ordinance, if a depositor dies while in the service of the Government or in other public service or leaves such service in any of the following circumstances, that is to say—

(a) on retirement on medical evidence to the satisfaction of the Accountant General that he is incapable by reason of some infirmity of mind or body of discharging the duties of his office, such incapacity being likely to be of such duration that the Accountant General considers retirement reasonable,

(b) on the abolition of his office,

(c) on resignation after not less than ten years' continuous public service,

- (d) on determination of service by the Government or in the case of other public service by the responsible authority of that service otherwise than by dismissal or on the ground of inefficiency
- 5 (e) on or after attaining the age of fifty-five years or, with the approval of the Member for Finance fifty years, or in the case of retirement from other public service after attaining the age for retirement from that service or such other age as the Member for Finance
- 10 may, either generally or in any particular case, approve,
- (f) in the case of a female depositor, resignation on or with a view to marriage or on being required to retire on account of marriage, subject to the produc-
- 15 tion to the Board, if requested, of satisfactory evidence of her marriage within six months, or such other period as the Board may permit, after resignation or retirement,

the amount of the deposits credited and bonuses provisionally

20 credited to the depositor in the Fund at the closing of the account shall be paid to the depositor or to any other person to whom by virtue of this Ordinance or otherwise payment may lawfully be made

Provided that—

- 25 (i) until the 31st December, 1951, or such later date as the Governor in Council may declare, for the words ‘fifty-five years or with the approval of the Member for Finance fifty years’ where they appear in paragraph (e) of this section there shall be substituted the
- 30 words “forty-five years”,
- (ii) if a depositor leaves such service in the circumstances set out in paragraph (c) of this section, then the amount of the bonuses which shall be paid to the depositor under this section shall be only such
- 35 amount as would have been provisionally credited by the Board to his account if the sum paid out of the general revenue of the Colony under section 7 of this Ordinance in respect of each year of his service had not been increased by reason of the depositor having
- 40 completed ten years or more continuous service, and any part of the bonuses not paid to the depositor shall be refunded to and credited to the general revenue of the Colony

12. (1) Subject to the provisions of this Ordinance, if a

45 depositor is dismissed, or removed from the public service on the ground of inefficiency, or resigns or leaves the public service for any reason or in any circumstances other than one specified in section 11 of this Ordinance—

Resignation or  
dismissal

- (a) the amount of his deposits in the Fund, and interest
- 50 thereon, shall be paid to the depositor,
- (b) all or such part (if any) as the Board, with the approval of the Member for Finance may determine generally, or in any particular case, of the bonuses provisionally credited to the depositor may also be paid

55 (2) Any part of the bonuses not paid to the depositor under this section, shall be refunded to and credited to the general revenue of the Colony

13. (1) If a depositor is transferred to a pensionable office in the public service his account shall be closed in accordance with the provisions of section 10 of this Ordinance and the

Transfer to  
pensionable  
office

amount of the deposits credited and the bonuses provisionally credited to the account of the depositor in the Fund at the time of closure shall not then be paid to the depositor but shall be dealt with in accordance with the provisions of this section

5

Provided that—

(i) notwithstanding that the account is closed interest on the amount of the deposits and bonuses therein shall continue to be credited at the rate of three per centum per annum calculated annually to the thirty-first December in each year, or, if the Member for Finance shall so direct, at the approximate rate of interest earned by the Fund (as determined by the Board) and such rate shall not be subject to any minimum. In the calculation of such interest the provisions of sub-section (2) of section 6 of this Ordinance shall apply and the interest so calculated shall be added to and become part of the deposit or bonus, as the case may be,

(ii) upon the depositor leaving the public service prior to the thirty-first December in any year the interest on the deposits and bonuses shall be calculated up to the end of his last completed month in the public service

(2) If a depositor who is transferred to a pensionable office in the public service—

(a) is confirmed in such office, his service as a depositor shall be taken into account as pensionable service for the purposes of the Pensions Ordinance, 1950, and he shall surrender all claim to the amount then credited or provisionally credited to his account in the Fund and such amount shall be paid into the general revenue of the Colony,

(b) is not confirmed in such office and leaves the public service, or if he dies in such service prior to his confirmation or non-confirmation in such office, the total amount credited or provisionally credited to him in the Fund up to the end of the month previous to the date of his leaving the public service or of his death, as the case may be, shall, subject to the provisions of this Ordinance, be paid out of the Fund in accordance with the provisions of section 11 or 12 of this Ordinance, as the case may be,

(c) is not confirmed in such office but reverts to a provident fund office and continues in the service of the Government he shall resume his deposits to the Fund with effect from the date of his reversion to such office

Provided that if he was not transferred to other public service he may elect to resume his deposits to the Fund with effect from the date on which he was transferred to a pensionable office and in such case the provisions of sub-sections (4) and (5) of section 4 of this Ordinance shall apply

No 31 of 1950

Transfer to office other than pensionable or provident fund office in the Government or other public service

**14.** (1) Where a depositor is transferred to any office in the Government which is neither a pensionable office nor a provident fund office, the depositor shall continue to make deposits and be subject to the provisions of this Ordinance as if he were the holder of a provident fund office

55

(2) Where a depositor is transferred to an office in other public service which is not a pensionable office—

(a) his account shall be closed in accordance with the provisions of section 10 of this Ordinance, and

5 (b) the amount of the deposits credited and bonuses provisionally credited to the depositor in the Fund at the time of closure shall not then be paid to the depositor but shall be dealt with in accordance with the provisions of this sub-section

10 Provided that notwithstanding that the account is closed, interest on the amount of the deposits and bonuses therein shall continue to be credited in accordance with the provisions of the proviso to sub-section (1) of section 13 of this Ordinance,

15 (c) subject to the provisions of this Ordinance, upon the depositor subsequently leaving the public service or upon his death in such service, the amount of the deposits credited and the bonuses provisionally credited to his account in the Fund up to the end of the month previous to the date of his leaving the public service or of his death shall be paid out of the Fund in accordance with the provisions of section 11 or section 12 of this Ordinance as the case may be

25 **15.** (1) Where the holder of a provident fund office is or becomes a married woman the Member for Finance may direct that she shall become or continue to be a depositor

Special provisions relating to marriage

(2) Where a female depositor marries then, whether or not she continues to be the holder of a provident fund office, unless the Member for Finance has given any direction under sub-section (1) of this section interest up to the end of the month previous to the date of her marriage shall be credited to her account which shall then be closed in accordance with the provisions of section 10 of this Ordinance and the amount of the deposits and bonuses credited or provisionally credited to her account in the Fund at the time of such closure shall be paid out of the Fund as if the service of the depositor had terminated in circumstances in which section 11 of this Ordinance applies

40 **16.** (1) Subject to the provisions of this Ordinance on the death of a depositor in the public service—

Payment on death of depositor

(a) if the amount of the deposits credited and of the bonuses provisionally credited to him in the Fund together with any gratuity which might have been granted to him under section 8 of this Ordinance if instead of dying, he had left the public service in the circumstances described in paragraph (a) of section 11 of this Ordinance, does not exceed one thousand shillings, the Board shall pay it to the person or persons nominated for the purpose by the depositor in such manner as may be prescribed, or if no such nomination has been made to the legal personal representative of the depositor, or, at the discretion of the Board, to the District Commissioner to be paid by him to the person or persons appearing to be entitled to receive it,

(b) if that amount exceeds one thousand shillings the Board shall pay it to the legal personal representative of the depositor

60 Provided that the Accountant General may make an immediate payment, not exceeding three hundred shillings in any one case, out of the amount of the deposits credited and

the bonuses provisionally credited to the account of the depositor in the Fund in order to give immediate relief to the widow or children or other dependants of the deceased if in the opinion of the Accountant General such relief is required

(2) Any payment made by the Accountant General under this section shall be valid and effectual against any demand made upon the Government or the Board by any other person in respect of the amount credited or provisionally credited to the depositor

Deposits, etc  
not to be  
assigned or  
attached

17. Subject to the provisions of this Ordinance, no deposit, bonus or interest on such deposit or bonus shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of any debt or claim whatsoever

Deduction of  
sums due to  
Government

18. Any sum or sums due to the Government by a depositor may, on payment out of the Fund of any amount then standing to the credit of his account therein, be deducted from the amount otherwise payable

Regulations

19. The Governor in Council may make regulations generally for carrying out the provisions of this Ordinance and for prescribing anything required by this Ordinance to be prescribed and, without prejudice to the generality of the foregoing, such regulations may provide that a depositor entitled to receive any amount out of the Fund may elect to receive such amount either in a lump sum or by annual payments or in such other manner as may be prescribed

Transfer of  
depositors  
accounts at  
present in  
Government  
Staff Provident  
Fund to  
the Fund

20. (1) With effect from the date of the commencement of this Ordinance there shall be transferred to the Fund from the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance and placed—

(a) to the credit of every depositor who was a depositor under the aforesaid Government Staff Provident Fund Ordinance (now repealed), a sum equal to the aggregate of his deposits in the said Government Staff Provident Fund together with interest thereon, and

(b) to the provisional credit of any such depositor, a sum equal to the bonus credited to his account in the said Government Staff Provident Fund together with interest thereon,

and the sums so transferred as aforesaid shall for the purposes of this Ordinance be deemed to be respectively a deposit and a bonus, as the case may be

(2) Where the sum credited, or provisionally credited, as the case may be, includes any fraction of a shilling which is—

(i) one half or less, the fraction shall be regarded as a half,

(ii) more than one-half, that fraction shall be regarded as a shilling

Transfer of  
assets of  
Government  
Staff Provident  
Fund

21. With effect from the date of the commencement of this Ordinance—

(a) all sums which on such date are standing to the credit of the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance (now repealed) shall be transferred to and shall form part of the Fund,

(b) all investments made in the name of or on behalf of the aforesaid Government Staff Provident Fund shall for all purposes be deemed to have been made in the name of or on behalf of the Fund

Cap 71



22. The Member for Finance may exempt any person or class of persons from all or any of the provisions of this Ordinance

Exemptions

23. (1) Section 16 of the Government Staff Provident Fund Ordinance (now repealed) is amended by substituting for the proviso thereto the following proviso —

Amendment of section 16 of the Government Staff Provident Fund Ordinance Cap 71

Provided that—

10 (a) such gratuity shall not exceed the amount of salary normally payable to the depositor during the twelve months immediately preceding his retirement, with house allowance (if the depositor is eligible therefor),

15 (b) in the case of a depositor who became subject to the new terms of service set out in Government Secretariat Circular No 68 of 1st October, 1948, and any amendments or additions thereto—

20 (i) the provisions of this section shall be read as if for the words “not exceeding twenty shillings or one week's salary” there were substituted the words “not exceeding twenty shillings or half a month's salary”, and

(ii) proviso (a) to this section shall not apply

(2) This section shall be deemed to have come into operation on the 1st of January, 1946

24. The Government Staff Provident Fund Ordinance is repealed

Repeal Cap 71

#### MEMORANDUM OF OBJECTS AND REASONS

The basic principles of this Bill, which is closely modelled on the High Commission Provident Fund Act, 1940, are the same as those of the existing Government Staff Provident Ordinance (Cap 71) and the only important changes are effected by—

(a) *clause 5* which provides for the contributions by a depositor to be at a flat rate of Sh 1/50 or each Sh 20 of salary instead of at a rate of 3/40ths of his monthly salary. By obviating the presence of odd cents this will considerably simplify the accounting and will not result in the depositor suffering any loss,

(b) *clause 6* which provides a method of calculating interest on deposits will reduce from sixteen to five the number of entries which must be made in each account during the year. The new system will not be to the disadvantage of the depositor. Indeed over a long period of years it is calculated that he may benefit to a very small extent,

(c) *clause 7* which provides for a new rate at which the bonus payable by the Government is to be calculated. Under the existing Ordinance the amount contributed by the Government is constantly the same as that contributed by the depositor. Under *clause 7* of the Bill the rate will be the same during the first ten years of the depositor's service, one and a half times the depositor's contributions during the next ten years and twice his contributions for service over twenty years,

(d) *clause 8* which provides for the payment of gratuities to a depositor in respect of service prior to his becoming a depositor at twice the rate provided for hitherto and without any upper limit on the amount payable. Under section 16 of the existing Ordinance the Governor is enabled to grant a gratuity not exceeding twenty shillings or one week's salary in certain circumstances regardless of the depositor's length of service and after fifteen years on a simple resignation. *Clause 8* will further amend this provision so that a depositor will only be eligible for the gratuity if he leaves the service in circumstances in which he would, if he were a pensionable officer, be eligible for a pension or gratuity. A proviso has, however, been added which will preserve the rights of depositors under the existing provisions of section 16,



(e) *clause* 23 which will amend section 16 of the existing Ordinance so as to provide that depositors who became subject to the new terms of service recommended by the East African Salaries Commission will be eligible for the gratuity computed on the basis of twenty shillings or half a month's salary instead of twenty shillings or one week's salary, the clause has necessarily to be made retrospective to the 1st January, 1946, the date from which the recommendations of the Salaries Commission took effect

These amendments are necessary to carry out certain recommendations of the Salaries Commission. Instead of making fairly numerous amendments to the text of the existing Ordinance in order to introduce these changes, it has been thought more convenient to repeal and replace that Ordinance.

It is not possible to state what additional expenditure of public moneys will be necessary to put into effect the provisions of the Bill.

Nairobi,  
15th January, 1951

K. K. O'CONNOR,  
*Attorney General*

## GOVERNMENT NOTICE No 74

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

**A BILL ENTITLED  
AN ORDINANCE TO AMEND THE CRIMINAL  
PROCEDURE 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 Criminal Procedure Code (Amendment) Ordinance, 1951, and shall be read and construed as one with the Criminal Procedure Code (hereinafter referred to as the principal Ordinance) and shall be deemed to have come into operation on the 10th day of December, 1950 Short title and commencement
2. There shall be substituted for sub-section (1) of section 343 of the principal Ordinance the following sub-section— Repeal and replacement of section 343 (1) of the principal Ordinance
- 10           (1) When any person—
- (a) has been convicted of any offence against section 61, 62, 62A or 71 of the Penal Code, or
- (b) having been convicted of any offence punishable with imprisonment for a term of three years or upwards, is again convicted of any offence punishable with imprisonment for a term of three years or upwards or of an offence under section 345 of this Code
- 15           the Court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a period not exceeding five years from the date of his release from prison
- 20           Provided that if he is released on licence to be at large and such licence is thereafter revoked or forfeited any term of imprisonment which he undergoes under the provisions of section 69 of the Prisons Ordinance shall not be taken into account in reckoning the period of police supervision Cap 78
- 25           3. The First Schedule to the principal Ordinance is amended by inserting, in the appropriate numerical position, the following— Amendment of the First Schedule to the principal Ordinance
- |   |                            |  |  |
|---|----------------------------|--|--|
| 62A (1) Compelling another person to take an oath                   | May arrest without warrant | Imprisonment for seven years   | Subordinate court of the first class             |
| (2) Being present at and consenting to the administering of an oath | May arrest without warrant | Imprisonment for three years   | Subordinate court of the first or second class   |
| 175A Chain letters  | May arrest without warrant | Fine of four thousand shillings or imprisonment for six months or both | Subordinate court of the first or second class " |

**MEMORANDUM OF OBJECTS AND REASONS**

Under section 4 of the Criminal Procedure Code an offence under the Penal Code is triable by the Supreme Court or by the subordinate court specified in the fifth column of the First Schedule. The Penal Code (Amendment No. 2) Ordinance, 1950, inserted two new sections creating offences in connexion with unlawful oaths and chain letters, and, as it is desirable that not only the Supreme Court but a subordinate court should have jurisdiction to try such offences, it is necessary to amend the First Schedule to the Criminal Procedure

Code to provide for this This Bill will so provide with retrospective effect to the date of the commencement of the Penal Code (Amendment No 2) Ordinance, 1950

The opportunity has also been taken to amend section 343 of the principal Ordinance so as to render a person who is convicted for the first time of an offence against section 61, 62, 62A or 71 of the Penal Code (which relate to the administration of oaths and to membership of unlawful societies) liable to police supervision upon his release from prison after serving the sentence of imprisonment passed on him

It is not expected that any additional expenditure of public moneys will be involved if the provisions of this Bill become law

Nairobi,  
19th January, 1951

K K O'CONNOR,  
*Attorney General*

## GOVERNMENT NOTICE No 75

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,  
*Acting Clerk to the Legislative Council*

## ARRANGEMENT OF SECTIONS

## SECTION

- 1—Short title and commencement  
2—Resolutions imposing, varying or renewing tax or duty to have statutory effect for limited period

## SECTION

- 3—Saving of the Customs and Excise Duties (Provisional Collection) Ordinance

## A BILL ENTITLED

**AN ORDINANCE TO GIVE STATUTORY EFFECT FOR A LIMITED PERIOD TO RESOLUTIONS IMPOSING NEW TAXES OR DUTIES OR TO INCREASE OR ALTER EXISTING TAXES OR DUTIES, AND TO MAKE PROVISION WITH RESPECT TO PAYMENTS AND DEDUCTIONS MADE IN RESPECT OF SUCH TAXES OR DUTIES DURING SUCH LIMITED PERIOD**

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 Provisional Collection of Taxes Ordinance, 1951, and shall come into operation on such date as the Governor shall, by notice in the Gazette, appoint

Short title and commencement

5 2. (1) If the Governor in Council at any time approves of the moving in the Committee of Ways and Means of the Legislative Council by an *ex officio* Member of that Council of a resolution providing for the imposition of a new tax or duty or for the variation of any existing tax or duty or for the renewal for a further period of any tax or duty in force, whether at the same or at a different rate and whether with or without modifications, and the Governor in Council declares that it is expedient in the public interest that such resolution should have statutory effect under the provisions of this Ordinance, 15 the resolution shall, for the period limited by this section and subject to the provisions of this Ordinance, have statutory effect as if contained in an Ordinance and where the resolution provides for the renewal of a tax, all enactments which were in force with reference to that tax as last imposed by 20 Ordinance shall, during the said period and subject to the provisions of this Ordinance, have full force and effect with respect to the tax as renewed by the resolution

Resolutions imposing, varying or renewing tax or duty, to have statutory effect for limited period

Provided that—

25 (a) the resolution shall have statutory effect from a date to be mentioned therein which date shall not be earlier than the date upon which notice of intention to move the resolution in the Committee of Ways and Means of the Legislative Council is given by an *ex officio* Member in the Legislative Council,

30 (b) the resolution shall cease to have statutory effect—

- (i) if it is not moved in the Committee of Ways and Means of the Legislative Council within three months after notice of intention to move it is given, or  
35 (ii) if it is not agreed to, with or without modification, in the Committee of Ways and Means within ten days, on which the Committee of Ways and Means sits, after it is so moved, and if a

Bill to carry it into effect is not read a second time within twenty days, on which the Council sits, after the resolution is agreed to by the Committee of Ways and Means

- (c) the resolution shall cease to have statutory effect if the Legislative Council is dissolved or prorogued, or an Ordinance comes into operation imposing the new tax or duty or varying or renewing the tax, or the resolution is rejected by the Legislative Council, or the statutory provisions giving effect to the resolution are rejected during the passage of the Bill containing those provisions through the Legislative Council, and the resolution, if modified by the Legislative Council, shall have effect under this Ordinance as so modified, 5 10
- (d) where the resolution so ceases to have statutory effect, or the said period terminates, before an Ordinance comes into operation imposing the new tax or duty or varying or renewing the tax or duty, any money paid in pursuance of the resolution shall be repaid or made good, and any deduction made in pursuance of the resolution shall be deemed to be an unauthorized deduction, 15 20
- (e) where the tax or duty as imposed, varied or renewed by the resolution is modified, either by the Legislative Council or by the Ordinance imposing, varying or renewing the tax or duty, any money which has been paid in pursuance of the resolution, which would not have been payable under the new conditions affecting the tax or duty shall be repaid or made good, and any deduction made in pursuance of the resolution shall, so far as it would not have been authorized under the new conditions affecting the tax or duty, be deemed to be an unauthorized deduction 25 30
- (f) when, during any session, a resolution has had statutory effect under this Ordinance, statutory effect shall not be again given under this Ordinance in the same session to the same resolution or to a resolution having the same effect 35

(2) Subject to the provisions of sub-section (1) of this section, the period for which a resolution shall have statutory force under this section shall be a period expiring at the end of four months after the date on which the resolution is expressed to take effect 40

(3) In this Ordinance any expression referring to the renewal of a tax or duty shall be deemed to refer also to the reimposition of a tax or duty 45

3. Nothing in this Ordinance shall affect the provisions of the Customs and Excise Duties (Provisional Collection) Ordinance, which, as regards duties of customs and excise, shall be and remain in full force and effect

Saving of  
the Customs  
and Excise  
Duties  
(Provisional  
Collection)  
Ordinance  
Cap 272

#### MEMORANDUM OF OBJECTS AND REASONS

Under the Budget procedure in force in the Kenya Legislative Council it is customary for the Member for Finance to make his Budget speech upon a motion that the Council resolve itself into Committee of Supply to consider the estimates of expenditure for the ensuing year. When, in moving this motion, the Member for Finance makes his financial statement, he not only covers the estimates of expenditure, but also gives notice of a motion to resolve into Committee of Ways and Means, at a future date to be fixed, for the pur-

pose of considering and authorizing any proposals there may be for the imposition of new taxes or the increase or alteration of existing taxes or duties, and, during the course of his speech, he discloses what these proposals will be. There is, therefore, public disclosure at this stage of budgetary proposals for raising revenue, and, except in the case of customs or excise duties, there is no provision (such as exists in the United Kingdom) for giving the proposals interim statutory effect until the Council can pronounce upon them. Lack of such provision might encourage undesirable speculation, hoarding and other evils. Under the local budget procedure, consideration of the estimates of expenditure precedes consideration of new revenue proposals and may take several weeks. It is, accordingly, necessary that the position should be secured in the meanwhile by giving interim statutory effect to the proposals for new or altered taxation which the Finance Member has laid bare. This is the object of the present Bill.

By clause 2 of the present Bill it is provided that if the Governor in Council at any time approves of the moving in the Committee of Ways and Means of the Legislative Council by an *ex officio* Member of that Council of a resolution providing for the imposition of a new tax or duty or for the variation of any existing tax or duty or for the renewal for a further period of any tax or duty in force (whether at the same or at a different rate and whether with or without modification) and the Governor in Council declares that it is expedient in the public interest that such resolution should have statutory effect under the provisions of the Ordinance, the resolution shall, for the period limited by the section and subject to the provisions of the Ordinance, have statutory effect as if it were contained in an Ordinance.

Such resolution is to have statutory effect from a date to be mentioned in it, which date is not to be earlier than the date upon which notice of intention to move the resolution in Committee of Ways and Means of the Legislative Council is given in the Legislative Council by an *ex officio* Member. The resolution is to cease to have statutory effect if it is not moved in the Committee of Ways and Means within three months after notice of intention to move it is given, or if it is not agreed to (with or without modification) in the Committee of Ways and Means within ten days after it is moved and if a Bill to carry it into effect is not read a second time within twenty days after the resolution is agreed to by the Council.

The maximum period for which such a resolution can have statutory force under the Ordinance is four months after the date on which the resolution is expressed to take effect. If the resolution ceases to have statutory effect or that period terminates before an Ordinance comes into operation, imposing, varying or renewing the tax or duty, any money paid in pursuance of the resolution is to be repaid or made good. Similarly, if the resolution is modified by the Council, any excess tax or duty paid during the interim period is to be refunded.

It is not expected that any expenditure of public moneys will be involved if the provisions of this Bill become law.

Nairobi,  
19th January, 1951

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