



THE OFFICIAL GAZETTE

OF THE COLONY AND PROTECTORATE OF KENYA

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GOVERNMENT NOTICE NO 998

(S D /Leg Co 17/1)

LEGISLATIVE COUNCIL

WHEREAS the Legislative Council was adjourned *sine die* on Friday, 11th July, 1952

And whereas I have received a request from the Government to appoint a day for the next sitting of the Legislative Council, and it has been made to appear that lesser notice than fourteen days may be given

Now, therefore, in accordance with Standing Order 5 of the Standing Orders of the Legislative Council, I do hereby appoint the 25th day of September, 1952, at 10 o'clock in the forenoon as the day and time on which the Legislative Council next meet

W K HORNE, *Speaker,*
Legislative Council.

GOVERNMENT NOTICE No 999

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

G J ELLERTON,
Acting Clerk to the Legislative Council

A BILL ENTITLED
AN ORDINANCE TO AMEND THE INDIAN EVIDENCE
ACT, 1872, AS APPLIED TO THE COLONY

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 Evidence (Amendment) Ordinance, 1952, and shall be read and construed as one with the Indian Evidence Act, 1872, as applied to the Colony, hereinafter referred to as the principal Act Short title
2. Section 25 of the principal Act as applied to the Colony, shall have effect as if there were added, at the end thereof, the words— Amendment of section 25 of the principal Act

unless—

 - (a) such police officer is of or above the rank of, or a rank equivalent to, Chief Inspector, or
 - (b) such police officer be an administrative officer acting in the capacity of a police officer
3. Section 26 of the principal Act as applied to the Colony, shall have effect as if, immediately after the word “magistrate” appearing therein, there were inserted the words “an administrative officer, or a police officer of or above the rank of, or a rank equivalent to, Chief Inspector,” Amendment of section 26 of the principal Act

MEMORANDUM OF OBJECTS AND REASONS

1 Section 25 of the Indian Evidence Act, 1872, which was first applied to the Colony by Order in Council in 1897, provides that “No confession made to a police officer shall be proved as against a person accused of any offence”

Whilst this provision may very well have been a necessary safeguard in past years, it is considered that in present-day circumstances no objection can reasonably be taken to the admission in evidence of confessions made to responsible police officers

Clause 2 of the Bill accordingly amends section 25 to enable confessions made to officers of or above the rank of Chief Inspector to be so admissible. As administrative officers occasionally act as police officers, reference is required to be made to administrative officers acting in such a capacity

2 Section 26 of the Indian Evidence Act, 1872, provides “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person”

It is considered that the presence of a police officer of or above the rank of Chief Inspector, or of an administrative officer affords in present-day circumstances the like safeguard as that required by the section, namely the presence of a magistrate, where confessions are made by persons in police custody, and clause 3 of the Bill provides accordingly

3 It may be added that section 24 of the Indian Evidence Act expressly provides for the inadmissibility in evidence of any confession induced by a threat or promise made by a person in authority

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

Nairobi,
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1000

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

G J ELLERTON,
Acting Clerk to the Legislative Council

A BILL ENTITLED
AN ORDINANCE TO AMEND THE PENAL CODE

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

Short title

(Cap 24)

1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1952, and shall be read and construed as one with the Penal Code, hereinafter referred to as the principal Ordinance

Insertion of
new section
30A in the
principal
Ordinance

2. There shall be inserted next after section 30 of the principal Ordinance the following new section—

Suspension or
forfeiture of
right to carry
on business

30A (1) Where a person is convicted of any offence mentioned in Chapter XXXI of this Code and such offence arose out of, or was committed in the course of, any trade or business, whether carried on by such person 10 or not, the court by which the conviction is recorded may, in addition to any other penalty which it may impose, make an order, having effect for such period as the court may think fit, prohibiting such person from carrying on, or being concerned or employed, directly or indirectly, in 15 carrying on, any such trade or business or any branch of any such trade or business of the same or similar character

(2) Any person who fails to comply with an order made under the provisions of sub-section (1) of this section 20 shall be liable, on conviction, to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment

Increase of fines
in the principal
Ordinance

3. The fines prescribed by the sections and sub-sections 25 of the principal Ordinance enumerated in the First Column of the Schedule to this Ordinance shall be increased to the amounts set out in relation thereto in the Third Column of the Schedule

SCHEDULE

FIRST COLUMN <i>Sections and sub-sections</i>	SECOND COLUMN <i>Present fines (expressed in shillings)</i>	THIRD COLUMN <i>Revised fines (expressed in shillings)</i>
54 (1)	2,000	8,000
54 (2)	1,000	4,000
55	1,000	4,000
58 (1)	2,000	8,000
58 (2)	1,000	4,000
92	2,000	6,000
116 (2)	400	1,400
124	1,000	3,000
172 (4)	100	300
172 (4)	400	1,200
175	4 000	5,000
175A	4,000	5,000
177	2,000	7,000
178	40	100
180 (1)	200	600
180 (2)	400	1,200
180 (3)	2,000	6,000
240	2,000	7,000
258	4,000	14,000
289	1,000	3,000
320 (2)	400	1,400
338	400	1,200
339	400	1,200
365	2,000	8,000
375	1,000	3,000
385	6,000	20,000
386	10,000	30,000

MEMORANDUM OF OBJECTS AND REASONS

Chapter XXXI of the Penal Code establishes the offence of receiving stolen property and allied offences, and it is considered desirable to limit the opportunities afforded to persons engaged in trading and other business to commit these offences whilst so engaged Cap 24

2 Although section 17 of the Traders' Licensing Ordinance, 1951, empowers a court to cancel the licence of a licensee convicted of such offences, the power is exercisable over persons trading under licence only, and has no effect in relation to persons who are not required by that Ordinance to obtain a traders' licence. In addition it has come to notice that in cases where a trader is convicted of one of the offences specified and punished by having his licence cancelled, the punishment may amount to no more than a minor inconvenience to the delinquent, since it is possible for him to continue in business in the name of a near relative or associate No 11 of 1951

3 *Clause 2* of this Bill empowers the Court to prohibit a person committing an offence against Chapter XXXI of the Code, who has committed the offence in the course of a trade or business, from associating himself in any way in the same or a similar trade or business, and to apply such prohibition for any period the court deems fit

4 The Penal Code and its amendments impose a number of maximum fines in addition to imprisonment and other sanctions. The monetary penalties were imposed at various times from 1930 to the present day and have remained unaltered although the value of money has fluctuated considerably within that period. The deterrent effect of a number of such fines is therefore not as originally intended and *Clause 4* accordingly increases the maximum fines imposed by the Code in appropriate cases Cap 24

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

Nairobi,
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1001

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE POLICE
ORDINANCE, 1948**

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

Short title 1. This Ordinance may be cited as the Police (Amendment) Ordinance, 1952, and shall be read and construed as one with the Police Ordinance, 1948, hereinafter referred to as the principal Ordinance

Amendment of section 10 of the principal Ordinance 2. Section 10 of the principal Ordinance is amended by substituting for the words “an occurrence book” appearing therein, the words “a record” 5

Amendment of section 14 of the principal Ordinance 3. Section 14 of the principal Ordinance is amended by substituting for the form of declaration appearing therein the following form of declaration— 10

I, A B , do solemnly and sincerely declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and that I will faithfully serve Her Majesty the Queen, Her Heirs and Successors, during my service in the Force and will obey all orders of the Governor and of the officers placed over me, and will subject myself to all Ordinances, orders and regulations, from time to time in force, relating to the Force

Signature or thumb print of police officer 20

Declared } at this day of
Affirmed }

19

Before me
(Signature of magistrate or superior officer) 25

Insertion of new section 28A into the principal Ordinance 4. There shall be inserted next after section 28 of the principal Ordinance the following new section—

Prohibition or restriction of traffic 28A (1) Notwithstanding the provisions of any other law in force in the Colony, the Commissioner may, if he considers it necessary so to do for the maintenance and preservation of law and order or for the prevention or detection of crime, by order prohibit or restrict the driving or use of motor vehicles, or any class of motor vehicles, on specified roads or parts of roads, or in any specified area, either generally or in such circumstances or subject to such conditions as may be so specified 30

(2) Any such order may—

(a) make different provision for different roads or parts of roads and for different areas and for

different days or hours, but no such order shall apply to the driving or use of any kind of motor vehicle on any road or part of a road or in any area between the hours of six o'clock in the morning and six o'clock in the evening of any day,

(b) provide for the issue by the Commissioner, or by anyone authorized by him, of a written permit exempting any motor vehicle or class of motor vehicles or any person or class of persons from the provisions of the order or any part thereof, either generally or subject to such conditions or in such circumstances as may be specified in any such permit, and the Commissioner is hereby authorized to issue and to authorize the issue of such permits which, to the extent therein specified, shall have effect under this section

(3) Any such order may be revoked, modified or rescinded by any subsequent order made under this section and shall, upon publication in the Gazette, have effect from such date and for such period or periods as may be specified therein

(4) Any person who drives or uses, or causes or permits to be driven or used, any motor vehicle in contravention of the terms or conditions of any order made under this section shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment and any such offence shall be cognizable to the police

(5) For the purposes of this section the expressions "motor vehicle" and "road" shall have the meanings assigned to them in the Traffic Ordinance

Cap 232

5. Section 32 of the principal Ordinance is amended by adding the following new sub-section thereto—

Amendment of section 32 of the principal Ordinance

(2) An offence under this section shall be cognizable to the police

6. There shall be substituted for section 34 of the principal Ordinance the following section—

Repeal and replacement of section 34 of the principal Ordinance

34 (1) Any magistrate, justice of the peace or police officer of or over the rank of Assistant Inspector or any police officer in charge of a police station may take, or cause to be taken, in his presence, for the purposes of record and identification, the measurements, photographs, footprints and casts thereof, palm prints and fingerprints of any person in lawful custody or who is subject to police supervision The Member may prescribe the form upon which footprints, palm prints or fingerprints shall be taken and such magistrate, justice of the peace, or police officer, as the case may be, shall certify, on such form that such footprints, palm prints or fingerprints have been taken by him, or caused to be taken in his presence, in accordance with the directions contained on such form, and that the particulars entered on such form are to the best of his knowledge and belief accurate and true

Taking of measurements, photographs, footprints and casts thereof, palm prints and fingerprints

Provided that if such person is not charged with an offence or is discharged or acquitted by a court, and has not previously been convicted, all records of such measurements, photographs, footprints and casts thereof,

palm prints and fingerprints and any negatives and copies of such photographs or of photographs of such footprints, palm prints and fingerprints shall forthwith be destroyed or handed over to such person

(2) Any such person who refuses to permit his measurements, photographs, footprints and casts thereof, palm prints and fingerprints to be taken under the provisions of sub-section (1) of this section shall be guilty of an offence

Amendment of
section 35 of the
principal
Ordinance

7. Section 35 of the principal Ordinance is amended in the following respects—

(a) by deleting from sub-section (1) thereof the words “within the limits of the police station of which he is in charge, or to which he is attached”, and by adding at the end of that sub-section the following words and proviso—

and take possession of any such thing

Provided that if anything is seized by the police officer, he shall carry it before the court of any magistrate within whose jurisdiction the thing is found in order that it may be dealt with according to law,

(b) by deleting sub-section (2) thereof,

(c) by deleting sub-section (4) thereof,

(d) by re-numbering sub-section (3) thereof as sub-section (2)

Amendment of
section 36 of the
principal
Ordinance

8. Section 36 of the principal Ordinance is amended in the following respects—

(a) by substituting for sub-section (1) of that section the following—

(1) Any police officer making an investigation into any offence may, in writing, require the attendance before himself of any person who he has reason to believe has any knowledge which will assist in such investigation, and such attendance may be required at any police station or police office situate within the district in which that person resides or, for the time being is or is found, for the purposes of this sub-section the expression “district” shall have the meaning assigned to it by the Interpretation and General Clauses Ordinance,

(b) by inserting the word “truly” immediately after the word “answer” where the latter word occurs in sub-section (2) of the section

Cap 1

MEMORANDUM OF OBJECTS AND REASONS

No 79 of 1948

Experience has shown that the Police Ordinance, 1948 (herein referred to as the “principal Ordinance”) requires further amendment and this Bill is designed to effect this

Section 10 of the principal Ordinance makes it obligatory for an “Occurrence Book” to be kept at all police stations as a means of recording Complaints and Charges. The Criminal Investigation Department are gradually instituting a more modern scheme for recording crime which may eventually lead to the discarding of the Occurrence Book, and the substitution by clause 2 of the Bill of the term “a record” will cover any method of recording Complaints and Charges

Clause 3 substitutes the new form of declaration necessitated by Her Majesty’s Accession

Clause 4 adds a new section authorizing the Commissioner of Police to prohibit or restrict traffic at night where he considers it necessary to do so in the interests of law and order, it is considered that this is a desirable measure especially to combat the activities of gangs of criminals and members of unlawful societies, which activities are materially facilitated by the use of vehicles at night

Section 32 of the principal Ordinance deals with unlawful assemblies and it is considered that it should be placed beyond doubt that the Police are empowered to arrest without warrant persons taking part in such assemblies

Clause 5 adds a new sub-section to section 32 to accomplish this

Clause 6 of the Bill repeals and replaces section 34 of the principal Ordinance. This section deals with the taking of measurements, photographs, finger prints, etc., of suspect persons. The original section did not include palm prints, or foot prints or casts of foot prints, among the forms of identification dealt with and has been redrafted to include them

Clause 7 amends section 35 of the principal Ordinance to make it obligatory upon a police officer that if he seizes anything in the course of a search or investigation to take it forthwith to the court of any magistrate within whose jurisdiction the thing is found

Clause 8 substitutes a new sub-section for sub-section (1) of section 36 of the principal Ordinance concerning the power of an investigating police officer to require the attendance of any person who he has reason to believe has any knowledge which will assist him in making his investigations. The amendments effected by *clauses 7* and *8* of the Bill are the outcome of a Supreme Court judgment delivered in 1951

Clause 8 also makes a minor amendment to sub-section (2) of section 36 which the police consider will assist them

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

Nairobi,
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1002

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO REGULATE THE KEEPING OF
PRINTING PRESSES AND PRINTING OF MATTER**

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

Short title and
commencement

1. (1) This Ordinance may be cited as the Printing Presses (Temporary Provisions) Ordinance, 1952, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint

(2) This Ordinance shall continue in operation for the period of one year after the coming into operation thereof and shall then expire

Cap 1

(3) Upon the expiry of this Ordinance sub-section (3) of section 13 of the Interpretation and General Clauses Ordinance (which relates to the effect of repeals) shall apply as if this Ordinance had been repealed

Interpretation

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

Cap 310

“document” means any book and any newspaper as those expressions respectively are defined by the Book and Newspaper Registration Ordinance,

“licence” means a licence issued under the provisions of this Ordinance,

“local authority” means—

No 30 of 1952

(a) a county council established under the Local Government (County Councils) Ordinance, 1952,

Cap 136

(b) a municipal council or municipal board constituted under the Municipalities Ordinance,

Cap 140

(c) a district council constituted under the Local Government (District Councils) Ordinance or any Ordinance replacing the same,

No 12 of 1950

(d) an African District Council established under the African District Councils Ordinance, 1950,

Cap 133

(e) the District Commissioner of any Township established under the Townships Ordinance,

“Member” means the Member of the Executive Council for the time being responsible for Law and Order,

“printing press”, subject to the provisions of section 3 of this Ordinance, includes any apparatus, machine or equipment, operated manually or mechanically, which, when so operated, reproduces or is capable of reproducing or multiplying copies of any document by means of printing, lithography, cyclo-styling, photography or other means, whether similar to the foregoing or not, but shall not include any printing press owned or directly operated by the Government, the East Africa High Commission or any local authority,

“register” means the register required to be kept under section 7 of this Ordinance,

“Registrar” means the person appointed to be Registrar of Printing Presses under section 4 of this Ordinance, or failing such appointment the person for the time being performing the duties of Registrar under the Book and Newspaper Registration Ordinance, and “Registrar” includes any Deputy or Assistant Registrar,

Cap 310

(2) For the purposes of this Ordinance, but subject to the provisions of section 3 hereof, expressions referring to printing shall be construed as including writing, lithography, photography, cyclostyling and any other mode, whether similar to the foregoing or not, of representing or reproducing words in visible form

Exceptions and
exclusions

3. (1) Nothing in this Ordinance shall extend to the impression of any pictorial engraving or to the printing of any visiting or business card, bill-head or letter heading

(2) The Member may, by order published in the Gazette, exclude from the operation of this Ordinance—

(a) any specified document,

(b) any specified printing press, or

(c) the keeping or use of any printing press by any specified person,

15

and any such order may be revoked or varied at any time

Appointment of
Registrars

4. (1) The Governor may appoint a Registrar of Printing Presses for the Colony, and such number of Deputy Registrars of Printing Presses and Assistant Registrars of Printing Presses as he may consider necessary for the purposes of this Ordinance

(2) No suit shall lie against any public officer for anything done or omitted to be done by him in good faith without negligence and in intended exercise of any power or performance of any duty conferred or imposed on him by this Ordinance

Licence required
for printing press
and penalty for
unlicensed
printing press

5. (1) Subject to the provisions of section 3 of this Ordinance, if any person keeps for use, or uses any printing press for the printing of any document without being the holder of a licence in force at the time, or keeps for use or uses such a printing press in any place not specified in his licence, he shall be guilty of an offence against this Ordinance and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment

Provided that any person who at the date of the commencement of this Ordinance keeps for use or uses such a printing press shall not, if he applies for a licence within a period of one month from such date, be guilty of an offence under this section pending consideration of such application

(2) Any application for a licence shall be made to the Registrar and shall be accompanied by the prescribed fee

(3) Subject to the provisions of this section, the Registrar shall, on receipt of an application, issue to and in the name of the applicant a licence in the prescribed form, to keep for use or use a printing press in a specified place

Provided that the Registrar shall, after consulting the Member, refuse to issue a licence where—

(a) it appears to him that the applicant is likely to keep or use a printing press for unlawful purposes, or for the printing of any document prejudicial to, or incompatible with, peace or good order in the Colony, or

(b) he is satisfied that the application does not comply with the provisions of this Ordinance or any rules made thereunder

(4) Every licence granted under this section shall expire on the 31st day of December of the year in which it is granted

Cancellation of
licence

6. (1) The Registrar may after consulting the Member, cancel any licence where it appears to him that the licensee has kept or used, or is likely to keep or use, a printing press for

unlawful purposes, or for the printing of any document prejudicial to, or incompatible with, peace or good order in the Colony

(2) The cancellation of a licence shall be deemed to be sufficiently communicated to the licensee if a notice of 5 cancellation is personally served on the person in charge of the press or is sent by prepaid registered post to the address furnished by the licensee in his application for a licence

Apeals against refusal or cancellation of a licence

7. Any person who is aggrieved by a decision of the Registrar to refuse to grant a licence or by a decision of the 10 Registrar to cancel any licence may, within twenty-one days, or such extended period as the Governor in Council may allow, from the date of such refusal or cancellation, appeal against such refusal or cancellation to the Governor in Council

Register

8. The Registrar shall keep a register in which he shall 15 enter such particulars as may be prescribed relating to persons licensed under this Ordinance and to persons and printing presses excluded from the operation of this Ordinance under paragraphs (b) and (c) of sub-section (2) of section 3 of this Ordinance and may require any such person to furnish such 20 information as may be prescribed

Presumptions

9. For the purposes of this Ordinance—

- (a) the occupier of any premises on which a printing press is found shall be deemed to have kept the same for use until the contrary is proved, 25
- (b) where a corporation is the occupier of any premises on which a printing press is found, every director, secretary and officer of the corporation shall be deemed to have kept the same for use until the contrary is proved, 30
- (c) where any firm is the occupier of any premises on which a printing press is found every partner in, and every manager or other person concerned in the management of the business of, such firm shall also be deemed to have kept the same for use, until the 35 contrary is proved
- (d) any person who keeps for use, or is deemed under the provisions of this section to keep for use, a printing press shall, until the contrary is proved be deemed to keep the same for use for the printing of documents 40

Printed document to bear the name of printer and publisher

10. (1) Every document printed or published within the Colony shall have printed legibly in the English language on its first or last printed leaf the name and address of its printer and publisher and the name of the place in which it is printed or published 45

(2) Any person who shall print or publish or distribute or assist in distributing any document which does not comply with the requirements of this section shall be guilty of an offence against this Ordinance

Printer to keep copy of document and to produce same to magistrate

11. Every person who prints any document shall during 50 the period of six months from the date of the printing thereof keep one copy thereof on which he shall write or print the name and either the residence or postal address of the person by whom he is employed to print it, and shall produce the same to a magistrate if required so to do, any person who fails 55 to comply with the provisions of this section shall be guilty of an offence against this Ordinance

Right to inspect register

12. Any person may search and inspect the register during the usual hours of business on payment of the prescribed fee for every search and inspection, and any person 60 may require a copy of any entry in the said register to be made and certified by the Registrar on payment of the prescribed fee for each such copy

13. Every such certified copy shall be received as conclusive evidence of the contents of the entry of which it purports to be a copy, and every such certified copy shall in all proceedings civil or criminal be accepted as sufficient evidence of all the matters and things thereby appearing, until the contrary is proved

Copy of entry in register to be evidence

14. No prosecution shall be instituted under this Ordinance without the previous sanction in writing by the Attorney General

Sanction for prosecution

15. Any administrative officer or any police officer not below the rank of Assistant Inspector who has reason to believe that any printing press is being kept for use or used in any place without a licence or is being kept for use or used by a licensee in any place not specified in his licence may, with such assistance and by such force as may be necessary, by night or day, enter into and search any such place and may seize any printing press and all the types and other articles thereto belonging, and all documents found therein

Searches for unlicensed printing press

16. Any administrative officer or any police officer not below the rank of Assistant Inspector who has reason to believe that any of the provisions of this Ordinance is not being complied with by a person who is the holder of a licence in force at the time may, with such assistance and by such force as may be necessary, by night or day, enter into and search any place where he believes any printing press to be kept or used by such person and may seize any documents which have been printed in contravention of the provisions of this Ordinance

Search when requirements of Ordinance not being complied with

17. Except where otherwise herein provided any person who fails to comply with the requirements of this Ordinance shall be liable on conviction before a subordinate court of the First Class to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment

Penalty

18. The court may, on a conviction for an offence against any of the provisions of this Ordinance, order all the copies of any document, in the possession of the person or persons so convicted which have been printed in contravention of any of the provisions of this Ordinance, to be destroyed

Destruction of documents

19. (1) The Member may, from time to time, make rules for the purposes following or any of them—

Rules

- (a) prescribing the forms which may be used for carrying out the provisions of this Ordinance,
- (b) prescribing information to be furnished to the Registrar by way of annual or periodical return or otherwise,
- (c) prescribing the fees which may be levied under this Ordinance,
- (d) prescribing the manner of and procedure for licensing under this Ordinance and for cancellation of licences,
- (e) prescribing the form of, and particulars to be entered in, the register,
- (f) prescribing a duty on the part of every licensee to give notice to the Registrar of any change in his residence or place of business and postal address and of any changes in the place where any printing press is kept for use or used by a licensee is, for the time being, kept,
- (g) generally for carrying into effect the provisions of this Ordinance in relation to any matters, whether similar or not to those in this sub-section mentioned, as to which he may deem it expedient to make rules

(2) A refusal to give any information required under any rule made under this section, or the giving of false information thereunder or an omission to give any notice required to be given to the Registrar under any such rule, shall be an offence and the person convicted therefor shall be liable on conviction to a fine not exceeding shillings two thousand

MEMORANDUM OF OBJECTS AND REASONS

It has been considered desirable that, as a temporary measure, printing presses used for the printing of "documents" should be licensed, and the Bill is designed to effect this purpose

The Bill, if it becomes law, will not come into operation until the Governor so appoints, and will continue in force for one year

The expression "documents" is defined by reference to the definitions of "book" and "newspaper" contained in the Book and Newspaper Registration Ordinance which read as follows —

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"book" includes every volume, part or division of a volume, pamphlet, sheet of letterpress, newspaper, sheet of music, map, chart or plan separately produced, but does not include price lists, annual reports, trade circulars, trade advertisements, or other legal or business documents,

"newspaper" means any paper containing public news or occurrences, or any remarks or observation thereon printed for sale and published periodically or in parts or numbers at intervals not exceeding two months between the publication of any two such papers, parts or numbers,

Printing presses controlled by the Government, the East Africa High Commission and local authorities are excluded from the provisions of the Bill, and the Member for Law and Order, who will be responsible for the administration of the measure, is empowered by *clause 3* to make other exemptions if he should think fit

Clause 4 provides for the appointment of a Registrar of Printing Presses but if it is not considered necessary to appoint a special person, the officer who is holding the post of Registrar of Books and Newspapers under the Book and Newspaper Registration Ordinance will be the Registrar *virtute officii*

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Clause 5 deals with the licensing of printing presses and the penalties for keeping for use or using an unlicensed printing press for the printing of documents, the Registrar may refuse a licence under certain circumstances. Licences expire on the 31st December of the year in which they are issued. Under *clause 6* the Registrar is empowered to cancel a licence if it appears to him that the printing press has been or is likely to be used for unlawful purposes or for printing documents which are prejudicial to peace and good order in the Colony. Appeals against the refusal by the Registrar to grant a licence, or the cancellation by him of a licence may be made to the Governor in Council within twenty-one days of the date of the refusal or notification of cancellation (*clause 7*)

The register the Registrar is enjoined to keep under the provisions of *clause 8* of the Bill must contain not only particulars of the persons who are licensed to keep printing presses, but also details of persons exempted from doing so

Clause 9 sets out certain presumptions which will be made as to the responsibility of various classes of occupiers of premises (and their servants or agents) where printing presses are kept for use or used

Clause 10 makes it obligatory on any person who prints a document to print in English on such document his name and address and the name and address of publisher, and the place where the document is printed or published. It will be an offence to distribute a document which does not bear these particulars. The printer must also keep a copy of any document he prints for six months from the date of printing and must enter on such copy the name and address of the person who required him to print it, he shall produce this copy to a magistrate if required to do so (*clause 11*)

Clauses 12 and 13 deal with searches and inspections, and certified copies of entries in the register and provide that a certified copy shall be accepted as evidence in civil and criminal proceedings

The sanction of the Attorney General will be required for all prosecutions under the Bill (*clause 14*)

Clauses 15 and 16 provide for the procedure relating to searches by the police and administrative officers for unlicensed printing presses or presses used in contravention of the provisions of the Ordinance. These powers may not be exercised by a police officer below the rank of Assistant Inspector.

Clause 17 sets out the penalty for non-compliance with the provisions of the Ordinance, and *clause 18* enables a court when a person is convicted of such an offence to order the destruction of documents which have been so printed.

Clause 19 enables the Member to make rules for carrying the provisions of the Ordinance into effect, and also provides that any person who refuses to give any information required by such rules, or who knowingly gives false information or who omits to give any notice required by any rule, shall be guilty of an offence.

If the provisions of this Bill become law there may be some extra expenditure of public moneys incurred, but it is hoped partly to set this off by fees collected.

Nairobi
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1003

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO PROVIDE FOR THE
REGISTRATION OF SOCIETIES**

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

Short title and
commencement

1. (1) This Ordinance may be cited as the Societies Ordinance, 1952, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint

(2) This Ordinance shall apply to such area or areas of the Colony as the Governor may, from time to time, by notice in the Gazette appoint and where the Ordinance, for the time being, applies only to a part or parts of the Colony, references in this Ordinance to the Colony shall be construed as references to that part or those parts of the Colony

Interpretation

2. In this Ordinance, unless the context otherwise requires—

“exempted society” means any society for the time being exempted from registration under this Ordinance,

“local society” means any society established in the Colony or having its headquarters or chief place of business in the Colony and includes any society deemed to be established in the Colony by virtue of section 4 of this Ordinance,

“office-bearer” of a society means any person who is the president, or vice-president, chairman or deputy-chairman, or secretary or treasurer of such society, or who is a member of the committee or governing body thereof, or who holds in such society any office or position analogous to any of those mentioned above,

“Registrar” means the officer appointed as Registrar of Societies for the Colony and includes any officer appointed as Deputy Registrar or Assistant Registrar,

“registered society” means any society for the time being registered under this Ordinance,

“society” includes any club, company, partnership or association of ten or more persons, whatever its nature or object, but does not include—

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(a) any company as defined by the Companies Ordinance, or any existing company as so defined, or any company registered under Part XI of the Companies Ordinance, or any company to which Part XIII of the Companies Ordinance applies which has complied with the requirements of section 327 of that Ordinance,

Cap 288

(b) any company or association constituted under Royal Charter, or Royal Letters Patent, or any Imperial Act, or any law for the time being in force in the Colony,

Cap 288

(c) any Lodge of Freemasons regularly constituted under any of the registered governing bodies of Freemasons in the United Kingdom of Great Britain and Northern Ireland,

- (d) any registered trade union or probationary trade union as defined by the Trade Unions Ordinance, 1952, and any employees' association, employees' organization or staff association as defined, respectively, by that Ordinance, No 23 of 1952
- 5 (e) any company, association or partnership consisting of not more than twenty persons, formed for the sole purpose of carrying on any lawful business,
- 10 (f) any co-operative society, registered as such under any law for the time being in force in the Colony,
- 15 (g) any Advisory Council, Regional Education Board, Board of Governors, District Education Board, School Committee, School Area Committee or similar organization established under and in accordance with the provisions of any Ordinance for the time being in force in the Colony relating to Education

3. (1) The Governor may appoint a Registrar of Societies for the Colony, and such number of Deputy Registrars of Societies and Assistant Registrars of Societies as he may consider necessary for the purposes of this Ordinance Appointment of Registrars

(2) No suit shall lie against any public officer for anything done or omitted to be done by him in good faith without negligence and in intended exercise of any power or performance of any duty conferred or imposed on him by this Ordinance

25 4. A society shall be deemed to be established in the Colony, although it is organized and has its headquarters or chief place of business outside the Colony, if any of its office-bearers or members resides in the Colony or is present therein, or if any person in the Colony manages or assists in the management of such society or solicits or collects money or subscription in its behalf Societies deemed to be established in the Colony

30

Provided that no society shall be deemed to be so established, if and so long as—

- 35 (i) it is organized and is operating wholly outside the Colony, and
- (ii) no office, place of business or place of meeting is maintained or used in the Colony by such society or by any person in its behalf, and
- 40 (iii) no register of all or any of the members of such society is kept in the Colony, and
- (iv) no subscriptions are collected or solicited in the Colony by the society or by any person in its behalf

5. (1) Every local society shall, in manner prescribed, make application to the Registrar for registration under this Ordinance Registration of societies

45

(2) Upon application being made in that behalf the Registrar shall, subject to the provisions of sub-sections (3) and (4) of this section, register any local society or exempt from registration under this Ordinance any society not being a society which was immediately before the commencement of this Ordinance, an unlawful society within the meaning of paragraph (ii) of sub-section (2) of section 69 of the Penal Code, on registering, or exempting from registration, a society the Registrar shall issue to the society a certificate in the prescribed form which shall be prima facie evidence of registration or exemption, as the case may be Cap 24

50

55

(3) The Registrar may refuse to register a local society where he is satisfied that such local society is a branch of, or is affiliated or connected with, any organization or group of a political nature established outside the Colony

Cap 24

(4) The Registrar shall refuse to register a local society where—

- (a) the society was, immediately before the commencement of this Ordinance, an unlawful society within the meaning of paragraph (ii) of sub-section (2) of section 69 of the Penal Code, or
- (b) it appears to him that such local society is likely to be used for unlawful purposes or for any purpose prejudicial to or incompatible with peace, welfare or good order in the Colony, or
- (c) that he is satisfied that the application does not comply with the provisions of this Ordinance or of any rules made thereunder, or
- (d) he is satisfied that the society does not exist, or
- (e) the name under which the society is to be registered—
 - (i) is identical to that of any other existing local society, or
 - (ii) so nearly resembles the name of such other local society as, in the opinion of the Registrar, is likely to deceive the public or the members of either society, or
 - (iii) is, in the opinion of the Registrar, undesirable

(5) The Registrar shall effect registration of a local society by entering in a register kept for the purpose the particulars given in the application form and the date of such entry subject to the payment of the prescribed fee the register may be searched and examined by any person during the usual office hours on application being made to the Registrar or to an Assistant Registrar

(6) The Registrar may, with the approval of the Governor in Council, rescind at any time any exemption granted by him under sub-section (2) of this section if he is satisfied that it is expedient so to do on the ground that the society concerned is affiliated or connected with any organization or group of a political nature established outside the Colony or on the ground that such society is being used, or is likely to be used, for unlawful purposes or for any purpose prejudicial to or incompatible with peace, welfare or good order in the Colony or if such society has altered its objects or pursues objects other than the objects declared by it at the time in the application for exemption from registration

Provided that the society concerned may within the period of ten days from the date of the receipt of such notification apply for registration under this Ordinance and where the society does so it shall not, pending a refusal of such application, be deemed to be an unlawful society notwithstanding the provisions of section 9 of this Ordinance

(7) The Registrar may, in his discretion cancel at any time, the registration of any society effected under sub-section (5) of this section if he is satisfied that it is expedient so to do on any of the grounds mentioned in sub-section (6) of this section

Provided that, prior to cancelling any registration, the Registrar shall notify his intention to the society concerned and shall give it an opportunity to submit reasons (if any) why the registration should not be cancelled

(8) Any society which is aggrieved by the Registrar's refusal to register such society or his decision to cancel the registration thereof may, within twenty-one days or such extended period as the Governor may allow, from the date of such refusal or cancellation, appeal against such refusal or decision to the Governor in Council

6. (1) If the Registrar has reason to believe that any registered or exempted society has ceased to exist, he may publish in the Gazette a notification calling upon such society to furnish him with proof of its existence within three months
5 from the date of such notification

Cessation of
existence of a
society

(2) If at the expiration of such three months the Registrar is satisfied that the society has ceased to exist, a notification to that effect shall be published in the Gazette, and the society shall thereupon cease to be a registered or exempted society,
10 as the case may be

7. (1) The Registrar may, at any time, by notice under his hand, order any exempted society or registered society to furnish him in writing with—

Information to
be furnished by
societies

(a) a true and complete copy of the constitution and rules
15 of any such society in force at the date of such order,

(b) a true and complete list of office-bearers and members of any such society residing in the Colony or present therein at the date of such order,

(c) a true and complete return of the number of meetings
20 held by such society in the Colony within the period of six months immediately preceding such order, stating the place or places at which such meetings were held,

(d) such accounts, returns and other information as may
25 be prescribed

(2) An order given under sub-section (1) of this section shall specify the time (not being less than seven days) within which the information shall be supplied

Provided that the Registrar may, on application made to
30 him and on good cause being shown, grant an extension of time at his discretion

8. (1) Any order made by the Registrar in relation to any exempted society or registered society under section 7 of this Ordinance shall be binding upon every office-bearer and upon
35 every person managing or assisting in the management of any such society in the Colony

Persons
responsible for
supplying
information

Provided always that any such office-bearer or other person as aforesaid shall not be so bound unless he has been served with the order given by the Registrar

(2) If any exempted society or registered society fails to
40 comply with the whole or part of any order given under section 7 of this Ordinance, each of the persons mentioned in sub-section (1) of this section who has been served as aforementioned shall be liable, on conviction to a fine not exceeding
45 two thousand shillings unless he establishes to the satisfaction of the court that he has exercised due diligence and has failed to comply with the order for reasons beyond his control

(3) If any information supplied to the Registrar in compliance with an order given under section 7 of this Ordinance
50 is false, incorrect or incomplete in any material particular, the person who has supplied such information shall be liable, on conviction, to a fine not exceeding two thousand shillings unless he establishes to the satisfaction of the court that he had good reason to believe that the information was true,
55 correct and complete

9. Every local society, not being a registered society or an exempted society, shall be deemed to be an unlawful
society

Unlawful
societies

Provided that where a society has made an application for exemption for registration under this Ordinance it shall not be deemed to be an unlawful society pending a refusal of such application

Penalties on
office-bearer, etc.,
of unlawful
society

10. Any office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of a felony and liable, on conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment 5

Penalties on
member of
unlawful society

11. Any person who is or acts as a member of an unlawful society or attends a meeting of an unlawful society shall be guilty of a felony and liable, on conviction, to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment 10

Persons allowing
unlawful society
on premises

12. Any person who knowingly allows a meeting of an unlawful society or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of a felony and liable, on conviction, to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment 15 20

Presumptions

13. In any proceedings under this Ordinance—

(a) where it is proved that a club, company, partnership, or association is in existence, it shall be presumed that such club, company, partnership or association is a society within the meaning of this Ordinance unless the contrary is proved, 25

(b) it shall not be necessary for the prosecution to prove that a society possesses a name, or that it has been constituted or is usually known under a particular name, 30

(c) where it is alleged that a society is an unlawful society, the burden of proving that it is a registered society, or an exempted society, or that it is not a local society, shall lie on the person charged 35

Presumption of
membership, etc.,
of society

14. (1) Where any books, accounts, writings, lists of members, seals, banners or insignia of or relating to, or purporting to relate to, any society are found in possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of such society and such society shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings, lists of members, seals, banners or insignia are so found 40

(2) Where any books, accounts, writings, lists of members, seals, banners or insignia of, or relating to, any society are found in the possession of any person, it shall be further presumed, until the contrary is proved, that such person assists in the management of such society 45

Order for
winding up
affairs of
unlawful
society and
distribution of
surplus assets

15. (1) The Governor in Council may order that the property, moveable and immoveable, of an unlawful society shall vest in an officer specified in such order and thereupon such officer shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of winding up, if there shall then be any surplus assets shall prepare and submit to the Governor a scheme for the application of such surplus assets 50 55

(2) An order made under sub-section (1) of this section shall be registered by the officer concerned with the registration of the title to any immoveable property affected by the order, without payment of any registration fee, and no stamp duty shall be payable on any such order 60

(3) A scheme submitted to the Governor under sub-section (1) of this section may be amended by the Governor in such way as he shall think proper in the circumstances of the case and the approval of the Governor to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the Governor, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed

(4) For the purpose of the winding up of the affairs of a society under this section the officer specified in the order shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realization thereof

(5) The Governor may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of any order made under this section for such period as to him shall seem expedient

(6) The provisions of this section shall not apply to any property ordered to be forfeited under section 21 of this Ordinance

16. Any administrative officer or any police officer of or above the rank of Assistant Inspector, who has reason to believe that any registered society or any exempted society is being used for purposes prejudicial to public peace or welfare or good order in the Colony, may enter, with or without assistance and using force for that purpose, if necessary, into any place which he has reason to believe is used as a place of meeting or place of business of such society, and may search such place and any person found therein or escaping therefrom for evidence that such society is being used for such purpose as aforesaid

Power of entry by police and administrative officer in special cases

17. (1) Any administrative officer or any police officer of or above the rank of Assistant Inspector may, with or without assistance, using force if necessary, enter into any dwelling-house, or other building or into any place in which he has reason to believe that a meeting of any unlawful society, or of persons who are members of an unlawful society, is being held, or that any books, accounts, writings, lists of members, banners, seals, insignia, arms or other articles belonging to any unlawful society are concealed, kept or deposited, and to arrest or cause to be arrested all persons found in such house and to search such house, building or place, and seize or cause to be seized all books, accounts, writings, banners, lists of members, seals, insignia, arms and other articles which he has reasonable cause to believe to belong to any unlawful society or to be in any way connected therewith

Powers of entry and search

(2) All persons so arrested and all articles so seized may be detained in custody and brought before a magistrate to be dealt with according to law

18. (1) Any administrative officer or any police officer of or above the rank of Assistant Inspector may summon before him any person who he believes, is able to give any information as to the existence or operations of any unlawful society, or suspected unlawful society, or as to the operations of any registered society or exempted society

Powers of police and administrative officers to summon witnesses

(2) The person so summoned shall attend at the hour and place in the summons specified, and produce all documents in his custody, possession or power relating to such society or suspected society, and answer truthfully all questions which such officer may put to him, any person who fails to comply with the provisions of this sub-section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand shillings

(3) If any person summoned by an officer under this section shall without lawful excuse fail to comply with any obligation imposed upon him by sub-section (2) of this section and to answer truthfully any question put to him under that sub-section or shall give information which the officer 5 believes to be false, the officer may, if he considers it advisable to provide for the future identification of such person, order that a photograph and impressions of fingerprints of such person be taken at such time and in such place and manner as the officer may think fit 10

(4) Any person who refuses to comply with such order or who obstructs compliance with such order may be arrested and detained in custody and shall be liable on conviction to a fine not exceeding one thousand shillings

(5) No statement made by a person summoned before an 15 officer under the provisions of this section shall subject him to any arrest or criminal prosecution, or be proved against him in any criminal proceeding, except a prosecution for failing to answer truthfully under this section

Consent to
prosecution

19. Except in the case of persons arrested under the 20 provisions of section 17 and sub-section (4) of section 18 of this Ordinance, no person shall be charged with an offence under this Ordinance or any rule made thereunder unless the prior consent in writing of the Attorney General has been obtained, 25

Forfeiture

20. Any books, accounts, writings, banners, insignia, or other property belonging to any unlawful society shall, upon the order of a Judge or Magistrate, be forfeited and given to the Registrar or to an Assistant Registrar for disposal in such manner as he may see fit 30

Registered office

21. (1) Every registered or exempted society shall have a registered office and postal address to which all communications and notices may be addressed

(2) Notice of the situation of such registered office and of any change thereof or of such postal address shall be given to 35 the Registrar and shall be registered by him, and the registered society or exempted society shall not be deemed to have complied with the provisions of this Ordinance until such notice has been given

(3) If any registered society or exempted society— 40

(a) operates without having a registered office, or without giving notice of the situation of its registered office as hereinbefore required, or

(b) operates at any place to which its registered office may have been removed without having given notice of 45 the change in the situation thereof to the Registrar, or

(c) fails to give notice of any change of its postal address,

then such registered society or exempted society and every office-bearer thereof shall be liable to a fine not exceeding 50 twenty shillings for every day during which such society operates

Service of
summons etc.

22. (1) Every order, notice, summons or other document issued under this Ordinance, or under any rule hereunder, shall be deemed to have been validly and effectually served on the 55 person to whom it is addressed if it is personally served on him, or is left with him, or is sent to him by prepaid registered post addressed to him at the registered office of the society with which he is concerned

(2) Every order, notice or other document issued under this Ordinance or under any rule made hereunder, shall be deemed to have been validly served on a society if it is sent by prepaid registered post addressed to the society at its registered office

(3) Any document served by being sent by registered post shall be deemed to have reached the person or society to whom or to which it is addressed within forty-eight hours of posting

23. Every offence against the provisions of sections 11 and 12 of this Ordinance shall be a cognizable offence within the meaning of the Criminal Procedure Code

Certain offences
cognizable

Cap 27

24. In any prosecution under this Ordinance, it shall be no objection to the admissibility of evidence as to the constitution, objects or activities of any society that the witness tendering such evidence is not or has not been a member of any unlawful society

Evidence

25. (1) Every local society in existence at the date of the commencement of this Ordinance shall make application for registration in accordance with section 5 of this Ordinance within thirty days of such date, and, subject to the provisions of sub-section (2) of this section, no such society (not being a society to which paragraph (a) of sub-section (4) of section 5 of this Ordinance refers) shall be deemed to be an unlawful society until such period has elapsed

Transitional
provisions

(2) Where application for registration has been made by a local society within such period of thirty days, such society (not being a society to which paragraph (a) of sub-section (4) of section 5 of this Ordinance refers) shall, notwithstanding the provisions of section 9 of this Ordinance, not be deemed to be an unlawful society until registration (or exemption thereof) has been refused

26. (1) The Governor in Council may, from time to time, make rules for the purposes following or any of them—

Rules

(a) prescribing the manner of exemption and registration of societies under this Ordinance,

(b) regulating or restricting changes of the name or objects of exempted societies or of registered societies,

(c) regulating or restricting changes of the place of business or place of meetings of registered societies or of exempted societies,

(d) prescribing the forms which may be used for carrying out the provisions of this Ordinance,

(e) for securing the submission to the Registrar of accounts relating to the assets and liabilities, income and expenditure, of exempted or registered societies, in such form and at such time or times and in respect of such period or periods as may be prescribed,

(f) prescribing the fees which may be levied under this Ordinance,

(g) securing the submission to the Registrar of annual or other periodical returns relating to the constitution, objects, membership and management of exempted or registered societies in such form as may be prescribed,

(h) generally for carrying into effect the provisions of this Ordinance in relation to any matters, whether similar or not to those in this sub-section mentioned, as to which he may deem it expedient to make rules

(2) A contravention of any rule under this Ordinance shall be an offence and a person guilty thereof shall be liable on conviction, to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment unless a lesser penalty is prescribed

Repeal
Cap 24

27. Sections 69 to 75 of the Penal Code inclusive are hereby repealed

MEMORANDUM OF OBJECTS AND REASONS

Cap 24

Sections 70 and 71 of the Penal Code make it a felony for a person to manage, or be a member of, an unlawful society or to allow meetings thereof on his premises

By section 69 an unlawful society is defined as a society formed for certain obviously unlawful purposes and any society declared by the Governor in Council to be a society dangerous to good government of the Colony

It is considered that these provisions are inadequate and that a system of registration, or exemption from registration, of societies, with well-defined exceptions, should be introduced, particularly to provide for the examination of the constitutions and objects of societies

Clause 1 of the Bill provides for the application to a part only of the Colony, if desired

Clause 2 defines a society as any association of ten or more persons with the exceptions of companies, Freemasons, trade unions, business concerns, co-operative societies and statutory educational bodies

Clause 3 provides for the appointment of a Registrar and staff

Clause 4 deals with the circumstances in which a society is to be deemed to be established in the Colony and thus to be a local society required to be registered or exempted from registration

The Registrar may refuse to register a local society affiliated or connected with a political body established outside the Colony and must refuse to register certain societies, namely any proscribed society, e.g. any society which appears to be formed for unlawful purposes or purposes incompatible with good order. *Clause 5* makes provision for these matters and further provides for exemption from registration. Cancellation of registration and rescission of exemption is also provided for by this clause, on grounds similar to those on which registration is refused

In the event of there being doubt as to the continued existence of any society, the Registrar may, under *clause 6* call upon the society, by notice in the Gazette, for proof of existence

Clause 7 enables the Registrar to require any society registered (or exempted) to furnish details of its constitution, membership and meetings, the obligation to provide which rests, by *clause 8* upon the office-bearers or persons managing the society

Clause 9 provides that every local society which is not registered (or exempted) shall be an unlawful society and *clauses 10, 11 and 12* deal with the consequences on the lines of the existing provisions of the Penal Code referred to in the first paragraph above

Cap 24

To deal with the inherent difficulties of proof, *clause 13* raises presumptions as to the existence of a society and *clause 14* raises a presumption of the membership of a society where books, accounts, insignia, etc., of a society are found in the possession of any person, on the lines of existing provisions in the Penal Code

Cap 24

Under *clause* 15 the Governor in Council may order the winding up of the affairs of, and the distribution of the assets of an unlawful society in the same terms as at present provided by section 74 of the Penal Code Cap 24

Clauses 16 and 17 give the necessary powers to the police or administrative officers in relation to searches, etc

By *clause* 18 a police or an administrative officer may summon and examine witnesses where he suspects the existence or operations of a society

Any powers conferred upon the police may only be exercised by an officer of or above the rank of Assistant Inspector

Clause 19 substantially repeats the provisions of the Penal Code Cap 24 requiring the consent of the Attorney General to prosecutions

Clause 27 repeals those provisions of the Penal Code replaced by Cap 24 this Ordinance

If the provisions of the Bill become law some additional expenditure of public moneys may be incurred in providing for the staff required for administration purposes, but it is expected that the fees collected will off-set this to a large extent

Nairobi,
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1004

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE SPECIAL
DISTRICTS (ADMINISTRATION) ORDINANCE IN
MINOR RESPECTS AND TO ADD CERTAIN
TEMPORARY PROVISIONS THERETO**

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

Short title

Cap 45 (A)

1. This Ordinance may be cited as the Special Districts (Administration) (Amendment) Ordinance, 1952, and shall be read and construed as one with the Special Districts (Administration) Ordinance, hereinafter referred to as the principal Ordinance 5

Removal of doubts as to amendments effected by Cap 45 (B)
Cap 45 (B)

2. For the purpose of removing doubts as to the effect of the amendments to the principal Ordinance enacted by sections 6 and 8 of the Special Districts (Administration) Ordinance, 1948, it is hereby declared that those sections respectively shall have, and be deemed always to have had, 10 effect as if—

(a) in section 6, for the word and figures "Section 15" there were substituted the word and figures "Section 14",

(b) in section 8, for the words and figures "Section 17 15 (now renumbered 16)" there were substituted the word and figures "Section 16"

Addition of new section 15A to the principal Ordinance

3. The following new section shall be inserted in the principal Ordinance immediately after section 15 thereof—

Power to remove persons and make restriction orders

15A (1) Whenever a Provincial Commissioner is 20 satisfied that any person for the time being within his jurisdiction—

(a) is, or has recently been, a member of an unlawful society specified in the Schedule to this Ordinance, or 25

(b) manages or assists in the management of, or has recently managed or assisted in the management of, any such society, or

(c) has recently permitted a meeting of any such society to be held upon any land or premises in 30 his possession or under his control, or

(d) is, or has recently been, an active supporter of the aims or objects of any such society,

such Provincial Commissioner may by order in writing require such person forthwith to remove himself from and 35 subsequently refrain from entering any area specified in the order and to reside in such area as may be so specified

Provided that an order requiring any such person to reside in an area outside the jurisdiction of the Provincial 40 Commissioner making the order shall not be made without the prior consent of the Governor

(2) An order made under sub-section (1) of this section shall—

5 (a) specify a period, not being less than fourteen days from the service thereof upon the person to whom the order relates, within which such person shall remove himself from the area from which he is required by the order to remove himself, and

10 (b) have effect for a term to be stated therein, and any such order may at any time be revoked or varied by the Provincial Commissioner or the Governor

(3) Where a person in respect of whom an order has been made under sub-section (1) of this section—

15 (a) fails to remove himself from any area in accordance with the terms of any such order within the period limited by sub-section (2) of this section or such extended period as the Governor may, upon an appeal against the order under sub-section (2) of section 25 of this Ordinance, allow, or

20 (b) at any time after the expiry of such period or later period and during the continuance in force of the order, enters any area into which he is required by the order to refrain from entering, or

25 (c) fails at any time after such period and during the continuance in force of the order, to reside in the area in which he is required by the order to reside,

30 he shall be guilty of an offence, and any such offence shall be cognisable to the police

4. Section 22 of the principal Ordinance is amended by adding thereto the following new sub-sections—

Amendment of section 22 of the principal Ordinance

35 (3) Where any person has been convicted of an offence under section 15 or section 15A of this Ordinance the Provincial Commissioner by whom the order in respect of the contravention of which such person has been convicted, was made, may issue an order for the arrest and detention, or if he is already in prison, or in a detention camp, for the detention in prison or in a detention camp, of such person and upon the expiry of any period limited for appeal against such conviction or upon the determination of any such appeal, the officer in charge of such prison or detention camp shall cause such person to be conveyed under police escort to the area in which he is required by such first-mentioned order to reside

Detention in custody of person disobeying removal or restriction order

40 (4) Any person arrested and detained, or detained, under the provisions of sub-section (3) of this section shall whilst so detained and until released in accordance with such provisions be deemed to be in lawful custody

5. There shall be substituted for the words and figures "sections 7, 15 and 16" appearing in section 27 of the principal Ordinance, the words and figures "sections 7, 15, 15A and 16"

Amendment of section 27 of the principal Ordinance

55 6. (1) The Schedule appearing at the end of this Ordinance shall be added to the principal Ordinance immediately after the concluding section of the principal Ordinance

Addition of Schedule to the principal Ordinance

60 (2) The Governor in Council may, by notice published in the Gazette, vary the Schedule referred to in sub-section (1) of this section by deleting any society specified therein or by adding thereto any society which is, for the time being, an unlawful society within the meaning of the Societies Ordinance, 1952

Temporary
operation of
sections 3, 4,
5 and 6 of this
Ordinance

7. Sections 3, 4, 5 and 6 of this Ordinance and the Schedule referred to in such section 6, shall have effect until the 30th day of September, 1953, and shall then expire

Provided that on the expiry of those sections all orders then in force thereunder shall lapse and cease to be of effect without prejudice, however, to anything lawfully done or suffered thereunder or to any penalty or punishment or liability thereto incurred in respect of any contravention of any such order or failure to comply therewith, or to any proceeding or remedy in respect of any such punishment, penalty or liability

(Section 15A)

SCHEDULE

- 1 The unlawful society known as Mau Mau
- 2 The unlawful society known as Dini ya Msambwa
- 3 The unlawful society known as Dini ap Mbojet

MEMORANDUM OF OBJECTS AND REASONS

This Bill is designed to remedy minor defects in the Special Districts (Administration) Ordinance and to provide, as a temporary measure, for the making of an order by a Provincial Commissioner restricting the place of residence of any person associating with the proscribed "Mau Mau" and "Dini ya Msambwa" and "Dini ap Mbojet" societies and his entry into any area specified in such order

Clause 2 will effect the minor amendments referred to above

Clause 3 adds the new temporary provisions for the making of an order by a Provincial Commissioner. Dealing with its sub-clauses *seriatim*—

Sub-clause (1) specifies the persons in respect of whom an order may be made and the terms in which the order will be made

Sub-clause (2) provides for the order allowing at least fourteen days for a person's removal from the area from which he is ordered to remove himself, under this sub-clause the order may be for a term to be stated therein

Under *sub-clause (3)* failure to observe the terms of an order is to be an offence under the principal Ordinance, which provides for a penalty of a fine of Sh 2,000 or imprisonment for 12 months or both

Clause 4 adds new sub-sections to section 22 of the principal Ordinance empowering the detention in custody and removal of persons convicted of contravention of orders made under sections 15 and 15A

Clause 5 effects a minor consequential amendment to section 27 of the principal Ordinance

Clause 6 provides for the Schedule of unlawful societies, association with which renders a person liable to an order under *clause 3*. The Schedule may be varied by the Governor in Council

The temporary nature of *clauses 3, 4, 5 and 6* is provided for by *clause 7*

Some small additional expenditure of public moneys will be incurred if the provisions of this Bill become law

Nairobi,
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1005

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE TRESPASS
ORDINANCE**

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 Trespass (Amendment) Ordinance, 1952, and shall be read and construed as one with the Trespass Ordinance, hereinafter referred to as the principal Ordinance

Short title

Cap 166

2. Section 9 of the principal Ordinance is hereby amended as follows—

Amendment of section 9 of the principal Ordinance

(a) by substituting for the words “fifty shillings” appearing therein the words “two hundred and fifty shillings”,

10 (b) by substituting for the words “one month” appearing therein the words “three months”

MEMORANDUM OF OBJECTS AND REASONS

This Bill is designed to increase the maximum penalty laid down for offences under the Trespass Ordinance. The existing penalty has remained unchanged since 1924, namely a fine of fifty shillings or, in default of payment imprisonment for a term not exceeding one month.

Trespass on private property has recently been particularly prevalent and it is apparent that the existing penalty is inadequate to provide for sufficient punishment for the offence or to operate as a deterrent. Moreover the value of money has greatly decreased since 1924. Accordingly it is proposed to increase the maximum penalty for the offence to a fine of two hundred and fifty shillings or, in default of payment, three months' imprisonment.

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

Nairobi
30th August, 1952

JOHN WHYATT,
Attorney General

GOVERNMENT NOTICE No 1006

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

G J ELLERTON,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO MAKE TEMPORARY PROVISION
FOR THE ADMISSION IN EVIDENCE OF STATE-
MENTS MADE TO POLICE OFFICERS AND
ADMINISTRATIVE OFFICERS BY PERSONS
FEARING INTIMIDATION**

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

1. (1) This Ordinance may be cited as the Evidence (Temporary Provisions) Ordinance, 1952

Short title and duration

(2) This Ordinance shall continue in force for the period of one year after the passing thereof and shall then expire

5 (3) Upon the expiry of this Ordinance sub-section (3) of section 13 of the Interpretation and General Clauses Ordinance (which relates to the effect of repeals) shall apply as if this Ordinance had been repealed

Cap 1

Admissibility of
statements made
to police or
administrative
officers
Cap 27

2. (1) Notwithstanding the provisions of the Indian Evidence Act, 1872 as applied to the Colony, or of the Criminal Procedure Code or of any other law for the time being in force in the Colony, in any proceedings to which this Ordinance applies, where direct oral evidence of a fact would be admissible, any document purporting to record any statement tending to establish that fact made on oath to a police officer not below the rank of Assistant Superintendent or to an administrative officer by any person (hereafter in this section referred to as a "deponent") shall, on production of such document and subject to the provisions of sub-section (2) of this section be admissible as evidence of that fact

(2) No such document shall be admissible as evidence unless—

(a) the deponent appears, on the face of the document, to have personal knowledge of the matters dealt with therein, and

(b) the document is subscribed, by signature or fingerprint, by the deponent, and is in the form of an affidavit made on oath by the deponent before such police or administrative officer as aforesaid,

(c) the police officer or administrative officer to whom such oral statement was made deposes, in such proceedings—

(i) that the document records accurately the oral statement made by the deponent and the date and place when and where the statement was taken, and

(ii) that the deponent is dead, or cannot be traced, or is unwilling to appear in any court to give or having so appeared is unwilling to give oral evidence of any fact recorded in such document by reason of genuine fear that if he does so appear or if he does give such evidence his personal safety or that of his family will be in any way endangered or that he or his family will be subjected to reprisals by the accused or by any other person known or unknown,

(d) the judge or magistrate before whom the document is produced is satisfied that the accused has been informed of the contents of the document, so far as it is possible so to inform him without indicating to him or leading him to ascertain the identity of the deponent, and has been given the opportunity to comment thereon and reply thereto, and that either—

(i) the deponent has been questioned on oath by a Law Officer, or any person authorized by a Law Officer in that behalf, on matters arising out of such comment or reply, and the substance of such questioning and the answers thereto are before the judge or magistrate, or

(ii) such questioning would serve no useful purpose, or

(iii) the deponent is dead or cannot be traced

(3) If a deponent, in an affidavit made under this section or in the course of any questioning referred to in subparagraph (i) of paragraph (d) of sub-section (2) of this section, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, he shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand shillings or to both such imprisonment and fine

(4) For the purposes of this section—

(a) a police officer not below the rank of Assistant Superintendent, an administrative officer, a Law Officer and a person authorized by a Law Officer for the purposes of sub-paragraph (i) of paragraph (d) of sub-section (2) of this section shall have respectively the like powers of administering oaths and of taking affidavits as a Commissioner of Oaths has, by virtue of his commission, under the Oaths and Statutory Declarations Ordinance, 10

Cap 20

(b) where any person is by law required or permitted to make a solemn affirmation in lieu of taking an oath, such affirmation shall have the like effect as an oath

Weight to be attached to such evidence

3. In estimating the weight, if any, to be attached to any document rendered admissible as evidence by this Ordinance, 15 regard shall be had, by the judge or magistrate before whom the same is produced, to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the contents thereof, and in particular to the question whether or not the oral statement recorded therein was made 20 contemporaneously with or shortly after the occurrence or existence of the facts recorded therein, and to the question whether or not the person whose oral statement is recorded therein appears thereby to have had any incentive to conceal or misrepresent facts 25

Corroboration

4. A person charged in any proceedings to which this Ordinance applies shall not be liable to be convicted solely upon the statement or statements of one person embodied in a document rendered admissible as evidence by this Ordinance

Confirmation by Supreme Court of conviction before Magistrate where affidavit admitted as evidence

5. (1) Where a person is convicted in any proceedings, 30 being proceedings to which this Ordinance applies, before a magistrate, and any document rendered admissible as evidence by this Ordinance is received in evidence in such proceedings, no sentence imposed upon such conviction shall be executed until the record of the proceedings, or a copy thereof certified 35 by the magistrate, shall have been transmitted to, and the sentence has been confirmed by, the Supreme Court

Cap 27

(2) Sub-section (1) of this section shall apply whether or not the magistrate was, in such proceedings, exercising powers conferred on him under section 15 of the Criminal Procedure 40 Code

Cap 27

(3) For the purposes of sub-section (1) of this section, the provisions of section 12 of the Criminal Procedure Code shall have effect in relation to any proceedings to which this Ordinance applies as if such proceedings were proceedings the record 45 of which, or a certified copy thereof, is required under Part II of the said Code to be transmitted to the Supreme Court for confirmation of the sentence imposed therein

Proceedings to which this Ordinance applies

6. This Ordinance shall apply to proceedings relating to the offences specified in the Schedule to this Ordinance 50

Variation of Schedule

7. The Governor in Council may, from time to time, by order published in the Gazette, vary the Schedule to this Ordinance, by adding any offence thereto or deleting any offence therefrom

Secrecy of identity of persons making statements

8. (1) Every person having any official duty in connexion 55 with any document rendered admissible as evidence by this Ordinance or in connexion with obtaining, recording, copying, interpreting, receiving in evidence or otherwise dealing with any such document, shall regard and deal with such parts of the document as indicate the identity of the person whose 60 statement is recorded therein and any particulars contained therein from which the identity of such person might become known to the accused, as secret and confidential

(2) Every person having knowledge of any information establishing or tending to establish the identity of the person whose evidence is recorded in any document rendered admissible by this Ordinance who, at any time, communicates such information—

5

(a) otherwise than to a person to whom he is bound in the course of his official duty to communicate it, or

(b) otherwise than for the purposes of his official duty, shall be guilty of an offence against this Ordinance and liable on conviction to a fine not exceeding two thousand shillings ¹⁰ or to imprisonment for a term not exceeding six months or to both such fine and imprisonment

SCHEDULE

Cap 24

A—OFFENCES AGAINST THE PENAL CODE—

- (i) unlawful oaths to commit capital offences contrary to section 61,
- (ii) other unlawful oaths to commit offences contrary to section 62,
- (iii) compelling another person to take an oath contrary to section 62A,
- (iv) arson contrary to section 327,
- (v) attempts to commit arson contrary to section 328

No of 1952

B—OFFENCES AGAINST THE SOCIETIES ORDINANCE, 1952—

- (i) managing or assisting in the management of unlawful society contrary to section 10,
- (ii) being a member of, or acting as a member of an unlawful society contrary to section 11,
- (iii) knowingly allowing a meeting of an unlawful society or members thereof on premises contrary to section 12

MEMORANDUM OF OBJECTS AND REASONS

This Bill will render admissible in evidence what are commonly called "witnesses proofs", that is to say the records taken down by police or administrative officers of oral statements made in the course of investigations by persons having knowledge of alleged offences

It is recognised that the Bill, if passed into law, will involve a considerable departure from the normal principles of criminal procedure but it is considered that the serious increase in the intimidation of witnesses in cases concerning the proscribed Mau Mau Society makes this temporary measure necessary and justified

Dealing with the clauses of the Bill, *seriatim*—

Clause 1 of the Bill provides for the temporary operation of its provisions

Clause 2 effects the substantial enactment rendering statements taken down by a police or administrative officer admissible in evidence, it will be noted that the clause contains certain safeguards in respect of admissibility, particularly in that the statements must be on oath or affirmation and proof must be given of the witness's genuine fear of the consequences if he appears in court to give evidence. Provision is made for accused persons to have the opportunity to reply to such statements

The important consideration of the weight to be attached to such statements is dealt with by *clause 3*

Further safeguards are provided by *clauses 4* and *5*. *Clause 5* provides for confirmation by the Supreme Court of a conviction obtained before a magistrate and *clause 4* requires corroboration of the statements of only one person

Clause 6 and the Schedule specify the offences to which the Bill applies. It will be noted that the offences are those of a violent character or those associated with unlawful societies, *clause 7* of the Bill provides for the variation of the Schedule by the Governor in Council

It is considered essential to preserve the secrecy of the identity of the witnesses whose statements are rendered admissible by the Bill and *clause 8* seeks to ensure this

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

Nairobi
30th August, 1952

JOHN WHYATT,
Attorney General.