

CHAPTER 61.

TRIBAL AUTHORITIES.

ARRANGEMENT OF SECTIONS.

SECTION.

1. Short title.
2. Interpretation.

PART I.—TRIBAL AUTHORITIES.

3. (1) Establishment of Tribal Authorities.
(2) Presumptions where persons discharging specified functions, etc., are appointed.
(3) Limitation of powers of Tribal Authority.
(4) Revocation of orders and appointments.
(5) Defaulting Tribal Authorities.
(6) Existing Tribal Authorities to be deemed appointed under this Ordinance.
4. Duties and powers of Tribal Authorities.
5. Duty of natives to assist Tribal Authorities.
6. Prevention of crime.
7. Duty of natives to attend before Government officers and others when so directed by Tribal Authority.
8. Power of Tribal Authority to issue orders.
9. Promulgation of orders.
10. Powers of Provincial Commissioner in relation to orders which may be issued by Tribal Authorities.
11. Penalty for breaches of orders made under sections 8 and 10.
12. Preservation of the jurisdiction of Courts concerned in the issue of orders.
13. Acts and defaults of Chief and Tribal Authority.
14. Person professing to be Chief or Tribal Authority.
15. Conspiracy against Chief or Tribal Authority.

PART II.—POWER OF TRIBAL AUTHORITY TO MAKE BYE-LAWS.

16. Power to make bye-laws.
(4) Power of Governor to revoke bye-laws.
17. Saving of existing bye-laws.

PART III.—LEGAL PROCEEDINGS.

18. Suits by and against Tribal Authorities.
19. Limitation of suits against Tribal Authorities.
20. Mode of service of notice, etc., on Tribal Authorities.
21. Representation of Tribal Authorities at hearing of suit.

PART IV.—MISCELLANEOUS.

22. Penalties.
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CHAPTER 61.

TRIBAL AUTHORITIES.

8 of 1937.
19 of 1940.
29 of 1952.
4 of 1957.

An Ordinance to Prescribe the Powers and Duties of Tribal Authorities.

[1ST JANUARY, 1938.]

Short title.

1. This Ordinance may be cited as the Tribal Authorities Ordinance; it shall apply to the Protectorate and shall be read and construed as one with the Protectorate Ordinance (hereinafter referred to as the Principal Ordinance) or any Ordinance substituted therefor.

Cap. 60.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—
“ Tribal Authority ” means the Paramount Chief, the Chiefs, the councillors and men of note elected by the people according to native law and custom, approved by the Governor and appointed a Tribal Authority under this Ordinance for the area concerned.

Cap. 8.

“ Native Court ” means a Native Court established under the provisions of the Native Courts Ordinance or any Ordinance substituted therefor.

“ suit ” has the meaning assigned to the term by section 2 of the Native Courts Ordinance.

PART I.—TRIBAL AUTHORITIES.

Establishment of Tribal Authorities.

3. (1) The Governor by notice published in the *Gazette* may—
(a) constitute the office of Tribal Authority for any specified area;

(b) appoint to such office so constituted any other chief or native;

(c) direct that any Tribal Authority shall be subordinate to any other Tribal Authority in any group of chiefdoms.

Presumptions where persons discharging specified functions, etc., are appointed.

(2) Where the person or persons for the time being discharging specified functions, or being members of a specified group, are appointed to be a Tribal Authority under this section, a person shall be deemed to be lawfully discharging such functions or to be lawfully a member of such group if and so long as he is so recognised by the Governor or by such person as the Governor may direct.

(3) When constituting the office of a Tribal Authority or at any time thereafter the Governor may direct that such authority shall exercise only such of the powers conferred upon Tribal Authorities by this Ordinance as he may specify, and when any such direction shall have been given, this Ordinance shall be deemed to confer upon such authority only such powers as the Governor shall have specified.

Limitation
of powers
of Tribal
Authority.

(4) The Governor may at any time revoke, suspend or vary any constitution, appointment, direction or order made by him under this Ordinance, and may at any time order that such person or persons appointed to be a member or members of a Tribal Authority shall cease to be such member or members, and thereupon such person or persons shall cease to be a member or members of such Tribal Authority.

Revocation of
orders and
appoint-
ments.

(5) If at any time the Governor in Council is of the opinion that a Tribal Authority is no longer exercising any of its powers or performing any of its duties in a manner conducive to the welfare of the chiefdom over which it has jurisdiction, he may appoint any person to exercise and perform, during the continuance of the appointment, all or any specified powers and duties of the Tribal Authority, and the Tribal Authority shall forthwith cease to exercise and perform such powers and duties accordingly.

Defaulting
Tribal
Authorities.

4 of 1957.

(6) Every Tribal Authority which at the commencement of this Ordinance was a Tribal Authority exercising jurisdiction over a chiefdom shall be deemed to be a Tribal Authority appointed under and in accordance with this Ordinance for the area of that chiefdom.

Existing
Tribal
Authorities to
be deemed
appointed
under this
Ordinance.

4. It shall be the duty of every Tribal Authority to perform the obligations by this Ordinance imposed and generally to maintain order and good government in the area over which its authority extends, and for the fulfilment of this duty it shall have and exercise over the natives residing or being in such area the powers by this Ordinance conferred in addition to such powers as may be vested in it by any other Ordinance or by any native law or custom, and, subject to any directions given by the Governor under section 3 (3), all such natives shall be deemed to be subject to the jurisdiction of the Tribal Authority.

Duties and
Powers of
Tribal
Authorities.

5. It shall be the duty of every native subject to its jurisdiction when thereto required by a Tribal Authority or any member of a Tribal Authority to assist in carrying out the duties imposed upon such authority by this or any other Ordinance or by any native law or custom; and every native so required

Duty of
natives to
assist Tribal
Authorities.

by a Tribal Authority or by one of its members shall be deemed to be empowered to do all that may be reasonably necessary to give effect to any lawful order issued by such authority.

Prevention
of crime.

6. (1) It shall be the duty of any Tribal Authority to interpose for the purpose of preventing, and to the best of its ability to prevent, the commission of any offence within the area of its authority by any native.

(2) A Tribal Authority knowing of a design to commit an offence within the area of its authority by any native may arrest or direct the arrest of such native if it appears to such authority that the commission of the offence cannot be otherwise prevented. Any native so arrested shall unless released within twenty-four hours of his arrest be taken forthwith before a District Commissioner or a Native Court having jurisdiction over him.

(3) Every Tribal Authority receiving information that any native, who has committed an offence for which he may be arrested without warrant or for whose arrest a warrant has been issued, is within the area of its authority, shall cause such person to be arrested and taken forthwith before a District Commissioner or a Native Court having jurisdiction over him.

(4) Every Tribal Authority receiving information that property of any description which has been stolen, whether within or without the area of its authority, is within such area, shall cause such property to be seized and detained pending an instruction from the District Commissioner or an order of a Native Court having jurisdiction in the matter, and shall forthwith report such seizure and detention to the District Commissioner or such Native Court.

Duty of
natives to
attend before
Government
officers and
others when
so directed
by Tribal
Authority.

7. (1) It shall be the duty of every native when so directed by a Tribal Authority having jurisdiction over him or by any member of such Tribal Authority to attend before such Tribal Authority or before a District Commissioner, or any other Government Officer, or before a Native Court having jurisdiction over such person.

(2) Any such native who, when so directed to attend before such authority, officer or court, shall without reasonable excuse, neglect or refuse to attend as and when directed, may be arrested and taken before such authority, officer or court.

(3) If, in the intended exercise of its powers under the last preceding sub-section, a Tribal Authority or member of a Tribal Authority shall purport to exercise such powers, or cause them to be exercised, in relation to a person not subject to

the jurisdiction of the Authority, the Authority or member shall not be liable in respect thereof if the Authority or member shall satisfy the Court before which proceedings are taken that it or he acted *bona fide* and without negligence and had reasonable cause for believing that the person aforesaid was subject to the jurisdiction of the Authority.

8. Subject to the provisions of any Ordinance or other law for the time being in force, a Tribal Authority may (subject to the general or specific directions of the Tribal Authority, if any, to whom it is subordinate), issue orders, to be obeyed by natives within its area to whom the orders relate, for all or any of the following purposes—

Power of
Tribal
Authority to
issue orders.

- (a) prohibiting, restricting or regulating gambling;
- (b) prohibiting, restricting or regulating the carrying of weapons;
- (c) prohibiting any act or conduct which in the opinion of the Tribal Authority might cause a riot or disturbance or a breach of the peace;
- (d) preventing the pollution of the water of any stream, water-course or water hole, and preventing the obstruction of any stream or water-course;
- (e) prohibiting, restricting or regulating the cutting or destruction of trees;
- (f) requiring natives within the area to report the presence within that area of any native who has committed an offence for which he may be arrested or of any property stolen or believed to have been stolen whether within or without such area;
- (g) prohibiting, restricting or regulating the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush or house or other buildings;
- (h) requiring any native to cultivate land in all respects to such an extent and with such crops as will secure an adequate supply of food for the support of such native and of those dependent upon him;
- (i) requiring the birth or death of natives within its area to be reported to it or to such person as it may direct;
- (j) preventing the spread of infectious or contagious disease, whether of human beings or animals, and for the care of the sick (or feeble minded);
- (k) prohibiting, restricting or regulating the movement in or through the area of its authority of livestock of any description;

(l) prohibiting, restricting, regulating or requiring to be done any matter or thing which the Tribal Authority, by virtue of any Ordinance or other law for the time being in force or native law or custom and not repugnant to morality or justice has power to prohibit, restrict, regulate or require to be done; and

(m) for any other purpose, whether similar to those hereinbefore enumerated or not, which may, by notice published in the *Gazette*, be sanctioned by the Governor, either generally or for any particular area.

Promulgation
of orders.

9. Every order issued under section 8 of this Ordinance other than an order directed to an individual, shall be published to the persons by whom it is to be obeyed by being orally promulgated and a copy thereof posted in the market place or court barri of the principal town of the chiefdom; and thereupon the order shall be binding on the persons by whom it is to be obeyed. Every order directed to an individual shall be binding upon him on his being notified thereof by the Tribal Authority.

Powers of
Provincial
Commissioner
in relation to
orders which
may be
issued by
Tribal
Authorities.

10. (1) Whenever in the opinion of a Provincial Commissioner it is expedient for the good order and government of a chiefdom that any order should be issued which the Tribal Authority is empowered to issue by section 8, the Provincial Commissioner may direct the Tribal Authority to issue and enforce any such order, and if the Tribal Authority shall neglect or refuse to issue the order which it is so directed to issue, the Provincial Commissioner may himself issue such order and thereupon such order, when made known in the manner prescribed by section 9, shall have the same force and effect as if it had been issued by the Tribal Authority.

(2) When a Provincial Commissioner is of opinion that any order issued by a Tribal Authority should not have been issued or should not be enforced, he may direct the Tribal Authority to revoke such order or to refrain from enforcing such order or may himself revoke such order, and may, with the consent of the Governor, require the repayment of any fine imposed by a Magistrate's Court or a Native Court or the release from custody of any native sentenced to imprisonment by any such Court for contravention of such order, whether before or after his direction to revoke or to refrain from enforcing such order, or his revocation of such order, was issued.

Penalty for
breaches of
orders made
under
sections 8
and 10.

11. (1) Any native who without lawful excuse contravenes or fails to obey an order issued by a Tribal Authority under section 8 or by a Provincial Commissioner under section 10 may be brought before the Native Court and shall be liable to a fine

not exceeding ten pounds or to imprisonment for a period not exceeding three months with or without hard labour.

(2) Any native accused of a breach of such an order may be arrested by instruction of the Tribal Authority.

12. No Court shall be precluded from trying an offence under this Ordinance merely by reason of the fact that such offence, if committed, was a breach of an order, direction or rule issued or made by any member of the Court as a member of the Tribal Authority.

Preservation of the jurisdiction of Courts concerned in the issue of orders.

13. Any Chief or Tribal Authority who or which—

(a) is ordered by the Provincial Commissioner, either directly or through a District Commissioner, to do or refrain from doing any public act or acts, whether the order be issued under section 10 or not, and who or which neglects or refuses to obey such order; or

Acts and defaults of Chief and Tribal Authority.

(b) shall wilfully neglect to give a direction to any person under section 7; or

(c) shall wilfully neglect to exercise the powers conferred under section 8; or

(d) shall wilfully neglect to enforce any lawful order issued by a Tribal Authority or group of Tribal Authorities to which he or it is subordinate; or

(e) shall be guilty of any abuse of authority conferred on him or it by this Ordinance or by any other law or by native custom,

shall be guilty of an offence.

(2) Proceedings may be taken against such Chief or all or any members of such Tribal Authority, either together or separately, in respect of any act or default punishable under this section and upon proof of the commission of an offence by such authority every member thereof shall individually be liable on summary conviction to the penalties prescribed, unless he shall satisfy the Court that he was in no way responsible for or a party to the commission of the offence:

Provided that no Chief or Tribal Authority shall be prosecuted under this section without the prior consent of the Governor.

14. Any person who, not being a person exercising administrative functions with the approval of the Governor, or a Tribal Authority or a Chief, shall profess to exercise administrative

Person professing to be Chief or Tribal Authority.

functions or hold himself out to be a Chief or assume the powers of a Tribal Authority shall be guilty of an offence.

Conspiracy
against Chief
or Tribal
Authority.

15. Any person who shall conspire against or in any manner attempt to undermine the lawful power and authority of any Chief or Tribal Authority shall be guilty of an offence:

Provided that no person shall be prosecuted under this section without the prior consent of the Governor.

PART II.—POWER OF TRIBAL AUTHORITY TO MAKE BYE-LAWS.

Power to
make
bye-laws.
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16. (1) Subject to the provisions of any Ordinance or other law for the time being in force, a Tribal Authority may, subject to the approval of the Governor, make bye-laws as it may deem expedient for promoting the peace, good order and welfare of the people within such towns as may be within its area. Such bye-laws, *inter alia*, may deal with—

(a) the setting aside of land in or near a town for development of the town and the general benefit of inhabitants of that town and its villages;

(b) public services provided by the Tribal Authority in any capacity, and the imposition of general or other rates in respect of the same;

(c) fees to be paid in respect of any service, matter or act for which provision is made in any bye-law;

(d) the construction and position of new buildings, the repair of existing buildings, the demolition, or alteration, of buildings erected contrary to any bye-law made under this section, or to any directions given by any person authorised by any such bye-law to give directions with regard to erection and position of new buildings;

(e) street trading;

(f) the establishment, regulation, control, maintenance and management of markets, slaughterhouses, public wash-houses and cemeteries;

* The Governor has delegated to (a) the person for the time being holding the office of Minister of Internal Affairs; and (b) any person for the time being holding the office of Provincial Commissioner of a Province the power to give approval to bye-laws made, amended or revoked by a Tribal Authority for promoting the peace, good order and welfare of the people within such towns as may be within the area of such Tribal Authority:

Provided that no such approval may be given by any Provincial Commissioner except where such bye-laws are, or are substantially, in the same terms as previous bye-laws which—

(a) deal with a particular subject or subjects;

(b) have been approved by the Governor or by the Minister of Internal Affairs by virtue of this delegation; and

(c) are in force at the time of approval.

(P.N.45 of 1958.)

(g) the prohibition, regulation and restriction of the purchase or sale of any article of food or drink except in a market established under this Ordinance or any place or building exempted from the provisions of any such bye-law:

Provided that no such bye-law shall apply to any goods permitted to be sold by hawkers.

Subject to any exception specified in such bye-laws, bye-laws made under this section shall apply to all persons within the area of the Tribal Authority making the bye-laws.

(2) All such bye-laws shall be deemed to have been published by being orally promulgated and a copy thereof posted in the market place or court barri of the principal town of the Chiefdom, and shall also be made known by publication in the *Gazette*.

(3) A copy of the said bye-laws with the fact of such publication in the manner aforesaid endorsed thereon by the District Commissioner shall be recorded in the District Decree Book. Without prejudice to any other mode of proof, a certificate purporting to be signed by the District Commissioner shall be conclusive proof of the provisions of any bye-laws made under this section and of the due publication of the bye-laws in the manner herein prescribed.

(4) The Governor may at any time revoke any bye-law made by a Tribal Authority under this section and such revocation shall be made known in the manner herein prescribed for the promulgation of such bye-law and shall thereupon have effect.

Power of
Governor
to revoke
bye-laws.

(5) Any person contravening or neglecting or failing to comply with any of the provisions of any bye-laws made under this section shall be guilty of an offence and shall be liable on conviction thereof, if a native before the Native Court, or if a non-native before the Magistrate's Court, to a fine not exceeding five pounds or to imprisonment with or without hard labour for a period not exceeding two months.

29 of 1952.

(6) A Tribal Authority may at any time subject to the approval of the Governor, amend or revoke any bye-laws made by it. Any such amendment or revocation shall be promulgated as if it were an original bye-law.

17. Notwithstanding the provisions of this Part of this Ordinance, all bye-laws made and promulgated under the Principal Ordinance shall remain in full force and effect unless and until they are amended or revoked and shall be deemed to have been made under section 16 of this Ordinance.

Saving of
existing
bye-laws.

PART III.—LEGAL PROCEEDINGS.

Suits by and against Tribal Authorities.

18. Subject to the provisions of this Ordinance, suits may be instituted by and against any Tribal Authority as such.

Limitation of suits against Tribal Authorities.

19. (1) No suit against any Tribal Authority for any act done in pursuance, or execution, or intended execution of any Ordinance, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority, shall lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of, or in a case of a continuance of damage or injury, within twelve months next after the ceasing thereof; provided that if the suit be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within six months after the discharge of that person from prison.

(2) No suit shall be commenced against a Tribal Authority until three months at least after written notice of intention to commence the same shall have been served upon the Tribal Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.

Mode of service of notice, etc., on Tribal Authority.

20. The notice referred to in the last preceding section, and any summons, notice or other document required or authorised to be served on a Tribal Authority in connection with any suit by or against such Tribal Authority, shall be served by delivering the same to, or sending it by registered post addressed to the Paramount Chief of the area of such Tribal Authority:

Provided that the Court may with regard to any particular suit or documents order service on the Tribal Authority to be effected otherwise, and in that case service shall be effected in accordance with the terms of such order.

Representation of Tribal Authority at hearing of suit.

21. In any suit pending before a Court a Tribal Authority may be represented in Court at any stage of the proceedings by any member or officer of the Tribal Authority who shall satisfy the Court that he is duly authorised in that behalf.

PART IV.—MISCELLANEOUS.

Penalties.

22. Every person guilty of an offence under this Ordinance for which no other penalty is provided shall be liable on conviction in the Court of a Magistrate to a fine not exceeding ten pounds or to imprisonment with or without hard labour for a period not exceeding six months.