

1937,

38208

C0533/483
KENYA

38208

RETURNS OF CORPORAL PUNISHMENT

Previous

1936

Subsequent

1938

277

29/11/37

309

29/11

Mr. Parkin

30

Mr. Duncan

31/7/37

Mr. Parkin

12/1

Mr. Duncan

3/2/38

Mr. Parkin

10/1

~~277~~
R. G. G.

38208

In spite of the assurance given in para 2 of (4) in '36 file that steps would be taken to prevent coming ultra vires, there have been two cases ~~so~~ in 1936.

Table E shows a higher total of adult floggings than in any year since Jan 1931. The decline in 1935 of floggings in prisons has however been maintained.

Subject to legal objections this may be
? put by

E. Clarke White
7/11

J.P. [Signature]
30/11

Mr. Paskin.

I mentioned this to you on the telephone today.

31/12/37 / A. Duncan.

Mr. Paskin

You asked me to consider whether these returns ought to be gone into, here with a view to checking any punishments inflicted "ultra vires".

I think the answer is that it would be unnecessary to do so for the reasons—

(1) In para 2 of No 1 it is stated that

CORPORAL PUNISHMENTS.

In spite of the assurance given in para 2 of (A) in 35 file, that steps would be taken to prevent coming ultra vires, there have been two cases ~~two~~ in 1936.

Table E shows a higher total of adult floggings than in any year since 1931. The decline in 1935 of floggings in prisons has however been maintained.

Subject to legal objections this may be ? met by

Clonke, White 29/11

J.P. Bacon 30/11

Mr. Parkin

I mentioned this to you on the telephone today.

31/12/37 / A. Duncan.

Mr. Parkin

You asked me to consider whether these returns ought to be gone into here with a view to checking any punishments inflicted "ultra vires".

I think the answer is that it would be unnecessary to do so for these reasons:-

(1) In para 2 of report it is stated that

As returns have already been scrutinised in accordance with

(2) the request made in para 5 of the despatch of 28th Jan 1937 (at 6 on 6663/2/36 Govt, attached) to ensure that no punishment is made ultra vires.

(3) please see 42163/1/37 Tanganyika (attached) where similar returns in accordance with the same despatch have been left unscrutinised here in the absence of any special assurance by the Govt that they were scrutinised before despatch.

(4) Similarly in the case of Uganda - see 40066/37 attached - no attempt has been made to go into the details of the cases even though the returns are not, in this case, in the form required by the despatch.

Kenya would in fact appear already to have examined her cases of flogging in greater detail than other colonies' cases have received both here and on the spot taken together.

Costley White
H/1

Mr. Duncan.

Points (3) and (4) in Mr. Costley-White's minute are perhaps hardly a sufficient justification for not imposing a further check

in

X
in this Office on the Kenya returns, but having regard to the fact that, as a result of our circular of the 28th of January, 1937, the Governor has stated that these returns have been carefully scrutinised in the Colony, I think it is safe to dispense with a further scrutiny even of the canings awarded by the Prison authorities.

Mr. Paskin

J. Paskin
12/1

I always go into the returns of corporal punishments inflicted for breaches of prison discipline (they are the ones which now require watching), and I did so before I wrote my minute of 27/5/37 on Uganda 40066/37. It also appears from the first two lines of Mr. MacDonnell's minute of 7/5/37 on that file that the Department also examined the returns in question.

Mr. Costley White is therefore wrong in what he says at (4) of his minute of 4/1/37 above.

As regards the present case, if the Department are satisfied, for the reason given at X of your minute of 12/1/38, that

no further scrutiny of the returns
is necessary here, it is not clear why
the file was sent to me for legal
observation (see 9ms minute of 30/11/37).

5/2/38

/A. Duncan.

I do not think there is any
reasonable room for doubt that these returns
have been properly checked in Kenya and need
not be checked again here. This will apply
to all future returns of the same kind when the
covering despatch contains a statement to the
effect that the returns have been checked in
the Colony. This file can now be put by

J. P. Parson

10.2.38.

above

no further scrutiny of the returns
is necessary here, it is not clear why
the file was sent to me for legal
observations (see 9th minute of 30/11/37).

5/2/38

/t. Duncan.

I do not think there is any
reasonable room for doubt that these returns
have been properly checked in Kenya and need
not be checked again here. This will apply
to all future returns of the same kind when the
covering despatch contains a statement to the
effect that the returns have been checked in
the Colony. This file can now be put by.

J. P. Barrow

10.2.38.

above

AIR MAIL

KENYA

No. 684



GOVERNMENT HOUSE

NAIROBI

KENYA

15 November, 1937.

RECEIVED

22 NOV 1937

C. O. REGY

Sir,

664 3/2/36
Goul.

With reference to your Circular despatch of the 28th January last regarding the form of returns of corporal punishment required to be furnished to you annually in accordance with Colonial Regulation No.155 and Appendix 7 to those Regulations, I have the honour to transmit the accompanying returns in respect of the year 1936.

2. The returns have been carefully scrutinised as requested in paragraph 5 of your despatch, and I am advised that in two cases canings inflicted by order of Courts have been found to be ultra vires.

In one case the Judge who has re-examined the relative Court case file comments as follows:

" On reading the criminal return it was noticed that accused was described as aged about 17 years. This was overlooked by me in perusing the file before. Under Section 27(3) P.C. only juveniles under 16 can be whipped. Therefore the sentence is ultra vires. But as the sentence has been carried out no order is made."

As regards the other case the following were the comments made by the Chief Justice when he had read the relevant Court case file with a view to any necessary revision:-

" An argument was addressed to the learned Magistrate that corporal punishment was a suitable form of punishment in this case and reliance was placed upon Section 27(2) of the Penal Code which enacts inter alia that 'no sentence of corporal punishment shall be passed upon (c) males whom the Court considers to be more than 45 years of age' for the imposition of corporal punishment. The learned Magistrate agreed to this submission and sentenced the accused to 12 strokes. Doubtless the punishment has already been received. On reflection it will occur to the learned Magistrate that the sentence was bad in law for the reasons that the accused was not under the age of 16 (Sec.27(3)) and Section 3(1) of the Prevention of Cruelty to Animals

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.1

Animals Ordinance does not prescribe corporal punishment as a punishment. In the circumstances that the punishment has been received, in formally quashing the order, no other punishment is substituted therefor."

3. Whereas the returns were originally submitted to Government by the Commissioner of Prisons on the 11th May last, it is regretted that the necessary scrutiny by my legal advisers and consequent amendment of the returns has caused delay in forwarding them.

I have the honour to be,

Sir,

Your most obedient, humble servant,

P. Brooke-Polham

AIR CHIEF MARSHAL,
GOVERNOR.

ANALYSIS OF CASES OF CORPORAL PUNISHMENT INFLICTED
ON ADULTS BY ORDER OF THE COURT FOR THE YEAR END-
ING 31ST DECEMBER, 1936.

1936 - TABLE "A".

A	B	C	D	E	F.	
No.	Offence	Authority for sentence	Number of persons	Average number of strokes	Greatest number of strokes in any one case.	Remarks
1.	Assault, contra Sec.229 P.C.	Sec. 229 P.C.	18	10.3	12	Punishment in all cases with light cane.
2.	Committing an unnatural offence, contra Sec. 145 P.C.	" 145 P.C.	6	13.6	18	
3.	Attempt to commit unlawful offence - Indecently assaulting a boy under 14 years, contra Sec. 146 A. P.C.	" 146 A. P.C.	3	12	12	
4.	Committing an act of gross indecency, contra Sec.146 B.P.C.	" 146 B. P.C.	2	16	20	
5.	Indecent assault, contra Sec. 127 P.C.	" 127 P.C.	13	12	18	
6.	Attempting to defile a girl under 16, contra Sec.128(2) P.C.	" 128(2) P.C.	1	30	20	
7.	Rape, contra Sec.123 P.C.	" 123 P.C.	11	16.7	24	
8.	Robbery, contra Sec.272 P.C.	" 272 P.C.	5	17	20	
9.	Attempted robbery, contra sec.273 P.C.	" 273 P.C.	2	12	12	
10.	Theft, contra Sec. 252 P.C.	" 252 P.C.	6	8	10	
11.	Grave misconduct, contra Sec.57(2) & (3) Prisons Ord.	" 61(1)(d) Prisons Ord,1930.	1	8	8	
12.	Cruelty to an ox, contra Sec.3(1)(a) Cap.160 L. of K.	Sec.3 Cap.160 Laws of Kenya.	1	12	12	

Total:- 69

7A

ANALYSIS OF CASES OF CORPORA L PUNISHMENT INFLICTED ON
PERSONS UNDER 16 YEARS OF AGE BY ORDER OF THE COURT FOR THE YEAR ENDING
31ST DECEMBER, 1936.

1936 - TABLE "B".

A	B	C	D	E	F	
No.	Offence.	Authority for sentence.	Number of persons.	Average number of strokes.	Greatest number of strokes in any one case.	Remarks
1.	Assault, causing actual bodily harm, contra Sec. 229 P.C.	Sec. 229 P.C.	15	7.55	12	Punishment in all cases with light cane
2.	Indecent assault, Sec. 127(1) P.C.	" 127 P.C.	4	10.75	15	
3.	Unnatural offence, contra Sec. 145(2) P.C.	" 145 P.C.	1	6	6	
4.	Attempted robbery, Sec. 273 P.C.	" 273 P.C.	2	7	8	
5.	Housebreaking, contra Sec. 280 P.C.	" 280 P.C.	6	8.6	12	
6.	Entering a dwelling with intent to commit felony contra Sec. 281 P.C.	" 281 P.C.	2	7	10	
7.	Burglary, contra Sec. 280(2) P.C.	" 280 P.C.	1	10	10	
8.	Breaking and entering a building, contra Sec. 282 P.C.	" 282 P.C.	4	7	10	
9.	Housebreaking contra Sec. 283 P.C.	" 283 P.C.	2	7	9	
10.	Rape, contra Sec. 125 P.C.	" 125 P.C.	1	12	12	
11.	Forgery, contra Sec. 321 P.C.	" 321 P.C.	1	12	12	
12.	Fraud, contra Sec. 320(1)(2) P.C.	" 320 P.C.	1	8	8	
13.	Stock theft, contra Sec. 255 P.C.	" 255 P.C.	10	9.4	12	
14.	Theft, Sec. 251 P.C.	" 251 P.C.	1	6	6	
15.	Theft, contra Sec. 252 P.C.	" 252 P.C.	95	7.7	12	
16.	Theft, contra Sec. 256 P.C.	" 256 P.C.	3	10	12	
17.	Theft, contra Sec. 280(b) P.C.	" 280 P.C.	1	6	6	
18.	Theft by servant, contra Sec. 258 P.C.	" 258 P.C.	14	7.5	12	
19.	Possession of stolen property, contra Sec. 295 & 296 P.C.	" 295 & 296 P.C.	6	8.1	10	
20.	Unlawful wounding, contra Sec. 211(1) P.C.	" 211 P.C.	1	11	11	
21.	Unlawful possession of bhang, contra Sec. 10(e) Ord. 45/32.	" 17(2) Ord. 45/32.	1	10	10	
22.	Desertion contra Sec. 47(2) Cap. 159 L. of K.	" 47 Cap. 159 L. of K.	1	10	10	
23.	Performing work carelessly, contra Sec. 47(4) Cap. 159 L.K.	" - do -	1	8	8	
24.	Desertion before working off an advance of wages, contra Sec. 53 Cap. 159 L. of K.	" 53 Cap. 159 L. of K.	2	7	8	
25.	Gambling, contra Sec. 3(a) Cap. 72 L. of K.	" 3 Cap. 72 L. of K.	11	4.7	8	
26.	Setting trap to kill game, contra Sec. 35 Cap. 161 L.K.	" 44(1) Cap. 161 L. of K.	4	5.5	10	
27.	Being in Game Reserve without a permit, contra Sec. 16/4 Cap. 161 L. of K.	" - do -	2	4	4	
28.	Hunting Game without a licence, contra Sec. 44(1) Cap. 161 L. of K.	" - do -	5	6.6	7	

ANALYSIS OF CASES OF CORPORAL PUNISHMENT INFLICTED ON
PERSONS UNDER 18 YEARS OF AGE BY ORDER OF THE COURT FOR THE YEAR ENDING
31ST DECEMBER, 1956.

1956 - TABLE "B" (Continued).

A	B	C	D	E	F	
No.	Offence.	Authority for sentence.	Number of persons	Average number of strokes	Greatest number of strokes in any one case	Remarks.
29	Drunk and disorderly, contra Sec. 22 Ord. 36/30	Sec. 34 Ord. 36/30	1	4.	4	Punishment in all cases with light cane
30.	Tapping native liquor without licence, contra Sec.7(1) Ord. 36/30.	" 34 Ord. 36/30	5	5.4	10	
31.	Being in unlawful possession of native intoxicating liquor, Sec. 18/1 Ord. 36/30	" - do -	1	10	10	
32.	Moving cattle without permit, contra Rule 21(2) Diseases of Animals Rules 1951.	Rule 27 D. of A. Rules, 1951	1	6	6	
33.	Giving prohibited articles to convicted prisoner, contra Sec. 52(a) Ord. 37/30	Sec. 52 Ord. 37/30	1	4	4	
34.	Doing an act likely to endanger the lives of persons travelling, contra Sec. 51(a) Ord. 15/27	" 51 Ord. 15/27	1	8	8	
35.	Travelling without a ticket, contra Sec. 21(a) Ord. 15/27.	" 21 Ord. 15/27	1	6	6	
36.	Trespassing on railway, contra Sec. 49(a) Ord. 15/27.	" 55(1) Ord. 15/27.	7	3	3	
37.	Setting fire to grass, contra Sec. 2 Cap. 73 L. of K.	" 2 Cap. 73 L. of K.	3	5.6	10	
38.	Committing a nuisance, contra Rule 189(7) Township General Rules (p. 418 of R.S.L.)	Rule 189 of T.G. Rules.	1	6	6	
39.	Being upon premises without permission, contra Rule 3(a) Township Rules, 1951.	Rule 3 T.R., 1951.	3	4.6	6	
40.	Placing obstruction on a road, contra Sec. 40(b) Traffic Ordinance, 1928.	Sec. 44 of T. Ord. 1928.	2	6	6	
41.	Returning after repatriation, contra Sec. 11(3) Cap. 63 L. of K.	Sec. 11(3) Cap. 63 L.K.	1	6	6	
41.	Returning after repatriation, contra Sec. 11(3) Cap. 63 L. of K.	Sec. 11(3) Cap. 63 L.K.	1	6	6	
42.	Leaving the custody of parents after being repatriated, contra Sec. 14(2) Cap. 63 L. of K.	Sec. 14 Cap. 63 L.K.	5	6	6	
43.	Committing a nuisance, contra Bye-Law 565/6 of Nairobi Municipal Bye-Laws, 1929. (p. 676 R.S.L.)	Bye-Law 5 Nairobi M. Bye-Laws.	1	4	4	
44.	Refusing to obey lawful order, contra Sec. 14(7) Ord. 5/25.	Sec. 14 Ord. 5/25	1	4	4	

Total 215

ANALYSIS OF CASES OF CORPORAL PUNISHMENT AWARDED TO
ADULTS BY ORDER OF THE PRISON AUTHORITIES FOR THE
YEAR ENDING 31ST DECEMBER, 1956.

1956-TABLE " C "

A	B	C	D	E	F	G
Name of convict	Age	Number of strokes.	Instrument.	Offence	Authority.	Remarks
Kihara Kerio	50	12	Light cane	Refusing to work, contra Sec.57(26) Pris.Crd.	Sec.61(1)(d) P.Crd. 1950	
Wamonga Sigum	50	12	"	Immorality, contra Sec.57(34) P.Crd. 1950	"	
Lukabau Numani	22	12	"	- do -	"	
Kinuthia Machina	35	12	"	Immoral and Indecent behaviour "	"	
Onyango Oloo	35	10	"	Malingering, Sec.57(36) Pris.C d. (3 offences)	Sec.61(1)(a) P.Crd. 1950.	
Sitiemi Tanui	27	6	"	Theft of maize cobs, contra Sec.57(2)	Sec.61(1)(a) P.Crd. 1950.	
Kimwigei Murgor	25	6	"	- do -	"	
Kipchumba Sang	25	6	"	Attempting to escape, Sec.57(26) & (39)	"	
Muthigame Nouru	35	6	"	Fighting with a fellow prisoner, Sec.57(32)	Sec.61(1)(a) P.Crd. 1950.	
Mwita Segiria	32	10	"	Striking a warder, Sec.57(32)	" 61(1)(a) P.Crd. 1950.	
Kitsao Mwaringa	35	8	"	- do -	"	
Husein Mabruku	50	10	"	- do -	"	
Juma Khamasi	35	6	"	Refusing to obey orders Sec.57(27)	" 61(1)(d) P.Crd. 1950.	
Charo Dele	35	6	"	- do -	"	
Otieno Iila	32	10	"	Assaulting a prisoner Sec.57(32)	" 61(1)(a) P.Crd. 1950.	
Njoroge Keriro	35	10	"	Wounding another prisoner Sec.57(32)	"	
Muthoi Karanja	30	15	"	Striking a warder Sec.57(32)	"	
Some Malabu	38	4	"	Assaulting a Lance Corporal Sec.57(32)	"	
Kariuki Mwongi	55	4	"	- do -	"	
Kariuki Kariso	35	4	"	- do -	"	
Ghelanga Kipken	36	4	"	- do -	"	
Chebor Kipken	30	4	"	- do -	"	
Kipsilgich Kuptingei	28	6	"	Refusing to work Sec.57(26)	Sec.61(1)(d) P.Crd. 1950.	
Kamethe Miritu	28	6	"	Fighting Sec.57(32)	"	
Mugheni Gitahi	38	12	"	Escaping Sec.57(36)	"	
Dominico Mateo	28	8	"	Attempted escape Sec.57(36) & (39)	Sec.61(1)(b) P.Crd. 1950.	
Thiongo Mjuki	31	10	"	Assaulting a warder Sec.57(32)	" 61(1)(d) P.Crd. 1950.	
Thega Makari	33	6	"	Grave misconduct Sec.57(41)	"	
Kariuki Karumba	35	6	"	- do -	"	
Kibuchi Gatumuta	30	6	"	- do -	"	
Idi Juma	30	12	"	Assaulting a warder Sec.57(32)	Sec.61(1)(b) P.Crd. 1950.	
Otieno Iila	30	10	"	- do -	61(1)(a) P.Crd. 1950.	
Chang Ingule	17	10	"	Attempted sodomy Sec.57(34)	"	
Makari Moya	30	10	"	Creating a disturbance, etc. Sec.57(35)	Sec.61(1)(b) P.Crd. 1950.	
Mahongie Mubishinie	30	12	"	I. Stealing food Sec.57(36) II. Repeated offences against Prison Discipline.	" 61(1)(a) P.Crd. 1950.	

Sec.61(1)(a) and (d)

II. Repeated refusals to perform allotted tasks. Sec.57(27).

ANALYSIS OF CASES OF CORPORAL PUNISHMENT AWARDED TO JUVENILES BY ORDER OF THE PRISON AUTHORITIES FOR THE YEAR ENDING 31ST DECEMBER, 1936.

1936 - TABLE "D"

A	B	C	D	E	F	G
Name of convict.	Age	Number of strokes	Instrument	Offence	Authority	Remarks
Gitau Kabebi	14	6	Light cane	Bullying another inmate	Rule 8(1) A.S.R. 1924	
Mundero s/o Kimama	17	6	"	"	"	
Kamau s/o Njuguna	17	6	"	Striking Askari Musungu	"	
Olwal s/o Ayindo	11	12	"	Escaping from Approved School	" 8(1) "	
Chungule s/o Njongera	13	12	"	Escaping from Quarry	"	
Njeroge s/o Njuguna	15	12	"	Escaped from wash place	"	
Mutia s/o Kwaniki	16	12	"	Refusing to obey an order	"	
Hamisi bin Yusuf	16	4	"	Bullying a small inmate and assaulting a fellow inmate	" 8(1) "	
Kamau s/o Njeroge	16	4	"	- do -	"	
Mugo s/o Karogi	14	12	"	Escaping from Approved School	" 8(1) "	
Mungei s/o Kamau	13	6	"	Escaping from Approved School	" 8(1) "	
Kamau s/o Njeroge	15	3	"	Being in possession of a tom key and lying to the Superintendent.	" 8(1) "	
Nderi s/o Mwanja	15	6	"	Escaping from Infectious Diseases Hospital, Nairobi.	" 8(1) "	
Mweu s/o Mutisia	15	13	"	Escaping	"	
Kabanda s/o Mugo	16	6	"	Stealing maize.	" 8(1) "	
Kotut bundatho	16	6	"	Rendering himself medically unfit for work.	"	
Buruko Emere	14	10	"	Soliciting for an unnatural offence.	Sec. 61(1)(d) Pr. Ord. 1930 Juveniles	
Njuguna Karioki	16	5	"	Attempting to commit sodomy.	Sec. 61(1)(d) Pr. Ord. 1930 Juveniles	
Nderi s/o Karanga	16	3	"	Stealing maize from kitchen.	Rule 8(1) A.S.R. 1924 Nairobi	
Charo s/o Kalama	15	3	"	Refusing to work.	" 8(1) "	
Ali s/o Asman	15	3	"	Refusing to obey orders and instructions	"	
Karioki s/o Kamau	14	3	"	Smoking in the bungalow	"	
Kwangi s/o Sicheu	13	3	"	- do -	"	
Kachanja s/o Juma	13	3	"	- do -	"	
Kiblagat arap Kooch	14	3	"	- do -	"	
Kagamba s/o Mutu	16	3	"	- do -	"	
Njonge s/o Kisthe	15	8	"	Striking another inmate with a stick	"	
Kamau s/o Njeroge	16	12	"	Inciting another inmate to escape.	"	
Mwaka bin Dafu	13	3	"	Selling shorts, the property of Government	"	
Chungule s/o Njuguna	14	3	"	Gross disobedience.	"	
Kamau s/o Njuguna	17	6	"	Being in possession of cents sixty	" 8(1) "	
Butere s/o Karani	13	3	"	Stealing soap from store.	"	
Kimaru s/o Chuma	13	3	"	Being implicated in the theft of soap.	"	
Abdalla bin Said	17	3	"	- do -	"	
Kiblagat arap Kooch	14	3	"	Stealing soap from store	"	
Kamisi bin Yusuf	17	3	"	Absent from work and lying to the Superintendent	"	
Justice s/o Sidiq	17	3	"	Destroying a book and attempting to obtain Sh.2/- from outside sources.	"	
Justice s/o Sidiq	17	3	"	Attempting to obtain water from the Instructor.	"	
Karioki s/o Kamau	17	3	"	Leaving his work and being absent.	"	
Kachanja s/o Juma	13	3	"	Stealing vegetables.	"	
Kamau s/o Njuguna	17	3	"	Attempting to escape and hitting another inmate to escape.	" 8(1) "	
Mungei s/o Kamau	13	3	"	- do -	"	
Muma bin Bakari	17	13	"	Being in possession of Sh. 2/-	" 8(1) "	
Muma s/o Mohamed	12	6	"	Attempted escape.	" 8(1) "	
Chero s/o Kalama	15	6	"	- do -	"	
Mwaka bin Yusuf	13	6	"	"	"	
Mwaka bin Yusuf	14	12	"	Smashing the window of Staff house.	"	
Mwaka bin Yusuf	14	12	"	Escape from the School.	"	
Gathogo wa Kamau	17	12	"	- do -	"	
John Joseph	15	4	"	Being in possession of cents 10/-	"	
Kwangi bin Yusuf	17	4	"	"	" 8(1) "	

COMPARATIVE TABLE OF AWARDS OF CORPORAL
PUNISHMENT FOR THE YEARS 1931 - 1936 INCLUSIVE.

TABLE "E".

TOTAL AWARDS OF CORPORAL PUNISHMENT

Table	1936	1935	1934	1933	1932	1931
A.	69	45	60	44	63	62
B.	320	221	322	249	546	315
C.	55	25	47	28	17	35
D.	50	25	22 ✓	1		

✓ Approved Schools gazetted 2nd half 1934.

COMPARATIVE TABLE OF AWARDS OF CORPORAL PUNISHMENT FOR THE YEARS 1931 - 1936 INCLUSIVE.

TABLE "E".

TOTAL AWARDS OF CORPORAL PUNISHMENT

Table	1936	1935	1934	1933	1932	1931
A.	69	43	60	44	63	62
B.	220	221	222	249	346	315
C.	55	25	47	28	17	35
D.	50	25	22	1		

* Approved Schools gazetted 2nd half 1934.