

1926

KENYA

23

X. 330  
11 JAN 1926

GOVERNOR GRIGG 1838

DATE 14th December 1925

CIRCULATION —  
Mr.  
Mr.  
Mr.  
100 U.S. of S.  
Per U.S. of S.  
Per U.S. of S.  
Secretary of State

NATIVE REGISTRATION  
PENALTIES FOR BREACHES OF LABOUR CONTRACTS

Enclosed the opinions of the Acting Chief Native Commr on the points raised in the U.S. Commission Report.

Previous Paper

MINUTES

60 88121  
W

I am inclined to agree generally that things should be left as they are. Desertion is now non-recognizable and the necessity for obtaining a warrant for arrest will greatly increase the difficulty of employers in checking desertion. We shall not increase our popularity if we rush matters by removing desertion from the list of penal offences and as it will normally be punished in future by detention (where a fine is inappropriate), the objectionableness of penal treatment of the offence will be reduced.

As it is probable that detention will lead to much the same sort of labour as they deserted from it may well be that the change will in fact tend to check too light-hearted desertion.

Answered 1046, 27 JAN 1926  
has it  
the same  
in 1926

On

Subsequent Paper  
Lyn 1173

On the punishment of employers who refuse to sign off labour I agree that the maximum penalty laid down is sufficient, but we have no information as to what penalties have been enforced or even showing that any employer has been successfully proceeded against for this offence. I think we should ask for a return on both points.

On the question whether registration should only be applied in the case of natives who leave the reserve (whether for work or for any other purpose), I should be much inclined to trust Colonel Watkins and I think he is right in deprecating our turning the registration arrangements into a purely labour matter. The system is of value from the point of view of the public in the case of crime, and as a means of identification is of value to the registered native himself.

I think the argument against basic labour certificates without charge is sound. It only that it removes all motive for taking care of the certificates.

*2. Ask not, cause generally, but not all 2*

*Col. Stanley*

*16.1.26*

*B "Cognizable" means  
permitted arrest without  
a warrant.*

*CA 20.1.26  
[Signature]*

*B.H.6  
above*

*27.1.26*

*(both as to history of cognizable  
is smaller attached)*

*[Signature]  
1/2/26*

Original of the ...  
with the ...

Note.

Note as to legislation relating to desertion of labourers

Arrest without warrant. Section 48(5) Masters and Servants Ordinance 1917 provides for penalties against any servant who without lawful cause departs from the employer's service without intent to return.

Section 2 of Ordinance No.1 of 1916 provided that offences under the above mentioned sub-section shall be a cognizable offence, and a police officer shall arrest without warrant any person accused of such an offence. This was done on the ground that experience had shown that the delay caused by the officer making a complaint before a Magistrate or J.S. renders the provision for the punishment of desertion nugatory, and it was also pointed out that in many cases the distance at which the former lived from a Magistrate etc., made it impracticable for him to complain in person. The East African Commission suggested that the Government of Kenya should consider whether the time has not now come when it is no longer necessary to regard desertion as a penal offence but merely one of breach of civil contract (page 174 of report).

41/161

6/24

In a despatch dated the 3rd July 1914 para.4 (g) the Secretary of State stated that the Governor had reported in a despatch dated the 8th October 1913, that a bill was under consideration repealing the provision making desertion a cognizable offence and enquired why an amendment had not been included in

the Ordinance submitted in 23446/24 which was ultimately disallowed. On this on page 11 of his memorandum in 49069/24 the Chief Native Commissioner pointed out that it was the intention of the Government to establish detention camps to which natives committed for offences involving no moral turpitude should be sent instead of a prison, and expressed the opinion that a civil remedy against a native is likely to operate more harshly against him than a fine or detention.

The provision of the 1916 Ordinance making desertion cognizable was ultimately repealed by Section 6(3) of Ordinance No.4 of 1925.

26209/25)

(It may be pointed out that the revised laws as originally printed only included legislation up to the end of 1923. The amendment made by No.4 of 1925 was, therefore, not included, but it is included in the omnibus ordinance of amendments to the revised laws No.7 of 1926, and the amendments in that Ordinance have been incorporated in the revised edition by means of slips.)

(6231.26)

- B. Penalties for desertion. Section 47 of the Masters and Servants Ordinance 1910 imposed for desertion a penalty of fine or imprisonment in default. This provision was amended by Section 2(1) of Ordinance No.30 of 1918, which made the penalty rigorous imprisonment for a term which may not extend beyond one month or a fine of Rs.50. or both imprisonment and fine at the discretion of the Magistrate. The reason given was that experience had shown that the imposition of a fine has little or no effect and that imprisonment is not liked and the prospect of imprisonment will have

the

the effect of preventing the offence.

Under Section 48 of Cap.139 (Revised Edition) the penalty for desertion is a fine not exceeding £7.10s. and in default imprisonment of either description not exceeding six months, or at the discretion of the Magistrate sentence without fine, of either description for a period not exceeding six months.

Section 5 of the Detention Camps Ordinance (No.25 of 1925) schedules certain Ordinances including the Masters and Servants Ordinance 1910, and provides that for offences against them the Court must instead of awarding a fine or imprisonment award detention in a camp. The Governor was instructed to amend the Ordinance (see 48015/25) to provide (a) that detention shall not exceed term of imprisonment to which accused could otherwise have been sentenced, and (b) that when fine only or fine and imprisonment in default of payment is provided for in an Ordinance detention may be ordered in default of payment and not as the primary punishment. These amendments were made by Ordinance No.4 of 1926 (X.F.1872/26 No.9).

I am not clear, however, as to the effect of these amending provisions in the case of Section 48 of Cap.139 (i.e. Masters and Servants Ordinance) since that section does not merely provide for fine or imprisonment in default but also for imprisonment with an option of a fine. It might be useful to have legal opinion on this.



X. - 330  
11 JAN 1925  
NAIROBI

KENYA.

No. 1535

GOVERNMENT HOUSE.

KENYA.

14 December, 1925.

Sir,

With reference to your despatch No. 788 of the 18th of August, I have the honour to enclose the observations of the Acting Chief Native Commissioner upon the points raised on page 174 of the Report of the East African Commission as regards native registration and penalties for breaches of labour contracts.

B.O.  
330/42  
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OBSERVATIONS.

2. The views expressed by the Acting Chief Native Commissioner have my concurrence and the correspondence which led to the first Registration Ordinance bears out his contention as regards the object of the measure.

3. I agree with the Commissioners that some form of control of native movement would be required in substitution were the Registration Ordinance to be repealed; but I consider it probable that the Pass System as in use in South Africa would be regarded by the Native as more restrictive of his liberty than is the present law, while I have no reason to believe that it would prove more effective.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Edward Gigg*

GOVERNOR.

RIGHT HONOURABLE  
LIEUTENANT COLONEL L. C. M. S. AMERY, P. C., M. P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON S. W.

*Copy  
MAG 26/10/46*

tion of  
nizable  
ffence.

By the Master and Servants Amendment Ordinance 1925, which repealed Section 2 of the Master and Servants Amendment Ordinance 1916, desertion was made a non-cognizable offence.

Some administrative officers are inclined to the view that desertion should no longer be a penal offence. On the whole, however, it seems probable that the natives have not yet attained to an adequate sense of discipline and responsibility to make it advisable to substitute civil for criminal procedure. In practice moreover, it is likely that a native deserter would suffer more hardship as a result of a civil action for damages than he would by being sentenced to pay a small fine or to undergo a few days imprisonment. Civil procedure might easily mean the payment of considerable costs, delays which he would never be able to undertake and finally distress on his property. All this would worry him more than a week in gaol and an order to finish his contract on completion of his sentence.

I cannot recommend at present that desertion should cease to be a penal offence.

ual by  
loyer  
sign off.

An employer who refuses to sign off an employee may be fined £100 or imprisoned for a year or both. This maximum penalty is surely sufficient. Possibly the Commissioners meant that in practice the penalties awarded by Magistrates are commonly too light. I do not know on what facts they based this opinion. It is believed that the offence is not uncommon among a few unscrupulous employers who find it difficult to retain their labour. Obviously, however, it soon recoils on their own heads as an employer with a reputation for dishonesty of this kind will get no labour at all, and it is not a practice which is likely to survive. It is an offence which is very

difficult to prove as, if a native charges his employer with having refused, the employer replies that he was not asked by the native and that he believed that the latter was willing to continue in his service. I am unable to say that the penalties inflicted by Magistrates for this offence are too light.

Registration  
compulsory  
only outside  
Reserves.

"That the registration should only be compulsory in the case of natives who leave their reserve for work." Taking the last two words I submit that it would be totally impossible to ascertain whether a native had left his reserve for work or for any other purpose and the effect of such a ruling would be to render the Ordinance entirely useless.

It would be a total perversion of the intention of the Ordinance to turn it entirely into a measure for labour control. In its origin and intention it was essentially a measure for giving the native a sense of importance of his own individuality and of his individual responsibility for his movements and actions and of enabling Government to trace him and his record, to distinguish between the good and the bad the industrious and the idle and to enforce the importance of the performance of contracts and of the duties of ~~native~~ citizenship.

Omitting the last two words, I am still of opinion that the change would be inadvisable since most natives at some time or other require to leave their reserve and would then have to take out a registration certificate. Since they only have to do this once in their lives they may as well do it while they are young and give us the valuable statistics of the adult male population that we hope will be soon invaluable in checking census returns.

The actual cost of replacement is cents -/65 per  
of  
placement  
Certificate. certificate (this includes material and overhead charges).



I am not of opinion that the charge should be reduced. On the contrary, if anything, it is too little. It is a not uncommon practice for a native who may wish for some reason to change his identity to "lose" his certificate and buy a new one under a different name (he is of course eventually detected by his finger prints but this is known only to the Registration Department and - in the case of criminals - to the Police). Obviously this is a practice to be discouraged - to lessen the cost would be to encourage it.

Cliffe 25.1.26.  
Allen 26/1/26  
Boltanley 26.1.26 fs

- J Harding
- Maichey
- Shuckburgh
- Grendle.
- Davis.
- Wilson
- Smithy-Care
- Clarendon
- Emery

Ind.  
Amsd  
4/13/26

C. U.  
R 26 JAN  
D. 27

27. January 1926.

Sir.

I have so to acknowledge  
the receipt of your Despatch  
No: 1585 of the 14<sup>th</sup> of  
December, in which you  
transmit the observations  
of the Acting Chief Native  
Commissioner on the points  
raised in the Report of  
the East African Commission  
regarding native registration  
and conditions for bundles of

~~14~~

DRAFT.

104  
Governor Gigg

labour contracts.

2. I come generally  
in the news expressed  
by the Acting Chief  
Native Commissioner, with  
which I believe you are  
also in agreement. With  
regard, however, to the  
question of the <sup>penalties of</sup> ~~reporting~~  
<sup>for violation of</sup>  
employers of ~~sign off~~  
native employees and ~~the imposition~~  
~~fine levied for this~~  
<sup>report</sup>  
offense, I should be glad  
to learn whether in fact  
any employees have been  
successfully proceeded  
against for this offense, and  
if so, what penalties  
have been enforced in  
each case.

(Signed) L. S. AMERY

labour contracts.

2. I come generally  
in the news expressed

by the Acting Chief  
Native Commissioner, with

which I believe you are  
also in agreement. With

regard, however, to the  
question of the <sup>penalisation of</sup> ~~offences~~  
employers of <sup>involuntarily</sup> ~~eyes~~ off  
native employees and ~~the imposition~~

~~fine levied for this~~  
<sup>respect</sup> ~~offense~~, I should be glad

to learn whether in fact  
any employers have been

successfully proceeded  
against for this offense, and

if so, what penalties  
have been enforced in

each case.

(Signed) L. S. AMERY

Downing Street.

27 January, 1926.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 1 B36 of the 14th of December, in which you transmit the observations of the Acting Chief Native Commissioner on the points raised in the report of the East African Commission regarding native registration and penalties for ~~agreements~~ or labour contracts.

2. I concur generally in the views expressed by the Acting Chief Native Commissioner, with which I observe you are also in agreement. With regard, however, to the question of the penalising of employers for refusing to sign off native employes, I should be glad to learn whether in fact any employes have been successfully proceeded against for this offence, and if so, what penalties have been enforced in each case.

I have the honour to be,

Sir,

Your most obedient,

Humble servant,

GOVERNOR

LIEUTENANT COLONEL

SIR A. W. M. GIBB, K.C.V.O., C.M.G., D.S.O.,

etc.

etc.

etc.

Downing Street.

27 January, 1926.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 1535 of the 14th of December, in which you transmit the observations of the Acting Chief Native Commissioner on the points raised in the report of the East African Commission regarding native registration and penalties for ~~agreements~~ or labour contracts.

2. I concur generally in the views expressed by the Acting Chief Native Commissioner, with which I observe you are also in agreement. With regard, however, to the question of the penalising of employers for refusing to sign off native employes, I should be glad to learn whether in fact any employers have been successfully proceeded against for this offence, and if so, what penalties have been enforced in each case.

I have the honour to be,

Sir,

Your most obedient,

Lambie servant,

GOVERNOR

LIEUTENANT COLONEL

SIR A. W. M. GRIGG, K.C.V.O., C.M.G., D.S.O.,

etc.

etc.

etc.