

1923

KENYA

C O
42809
REC'D
REL 28 AUG 23
335

By Sec.
arriving

1186

DATE

30th July, 1923.

REGULATION :-

SUBJECT

~~The Report~~
Sir J. Kebley
Rottentley
S. of S.
S. of S.
S. of State.

Report of a Native
Penal Servants Commission

See also copies

9 copies to Library

Previous Paper

MINUTES

300
30582
(4 persons
parture)

I think that we should have
the views of the local
officers on their important
report.

Would you, please,
consider the Dis. report

Possibly you will wish
to discuss with Sir J. Kebley.

Sir J. Kebley, Chairman
The Commission, is generally
working in the Library here,
and you wish to discuss
any point with him.

all
307925

Reminder to Sec 373 am. - 18 APR 1924

Copy Report to A.S. & P. Socy. 30 NOV 1928
No. 1180267*

Subsequent Paper

Sir J. Kebley,

Most of the findings & recommendations

Come before them without any official
 advice or instruction in my personal
 experience - wh. is in accord with para. 15
 of the report - natives are willing to
 pay quite disproportionate fines to
 avoid imprisonment even for a short
 time & I found sentences of 3 to 7
 days often quite adequate to bring home
 to the offender the necessity of obeying
 the law

Para (15) of the report
 seems - inconsistent with note
 (15)
 N.A

(b) I agree with the C.J. in dissenting
 from the majority of the Comⁿ on the
 subject of flogging & think an op-
 portunity shd be taken of dispelling
 the impression wh. seems to be
 prevalent (v. para 5 of 2^d report); that a
 native can by being given a choice of
 going before a magistrate or accepting
 a flogging confer on his European employer
 jurisdiction to inflict that punishment.
 It shd be impressed on the employer
 that he is not entitled to oust the
 jurisdiction of the magistrate & act
 in his own cause both as prosecutor
 & judge. A native faced with the
 alternative acts on the principle of

This is a matter on which we are likely to have a good deal of trouble in Parliament and elsewhere. For example, the mode of punishment for labour and registration offences will be certain to attract attention. For this reason I think that we should not express any definite view until we have got the Governor's own comments on the Report. As it is ^{already} only two years since the Commission was appointed I do not think the additional delay will have any serious consequences.

There are certain points on which of course it would be necessary to give the Governor a lead, and I think that we should from the start lay it down that ~~the~~ reduction in the offences for which whipping is to be used is essential. The light cane for juveniles, with a maximum of twelve strokes, and the heavier cane (which is now the recognised instrument) for offences involving brutality in the case of adults, should be the limit; and we should very definitely lay down that the practice of employers of offering their men the choice between a magistrate and an unofficial whipping must be discouraged in every possible way. Perhaps the ^{late} ~~Abraham~~ case will have had some effect in this direction.

*Yes
E.P.R.*

On the question whether imprisonment is the best deterrent from crime, my impression had certainly been that of Sir John Risley, that imprisonment in tropical Africa was not a deterrent at all. On this point I think that there is no necessary contradiction between paragraphs 8 and 15 of the Report. It is possible that a few days' imprisonment is ineffective, but that after 14 days or so the native seriously misses his accustomed liberty and imprisonment becomes irksome to him. But we are limited as regards imprisonment by the practical question of ways and means. The despatch makes it quite clear, and we know only too well, that

that financial considerations preclude our providing accommodation for any large increase in prisoners.

It is difficult therefore to suggest any practical way of providing for the punishment of the not inconsiderable number of people who ~~are~~ ^{the first} ~~by past arrangement~~ have been punished by flogging.

I think that the only general line to take is that imprisonment should be the general rule for ordinary offences and that so-called technical offences should be punished either by fine only or by imprisonment with the option of a fine.

If imprisonment is a real deterrent we shall find that fines will be paid, and I have heard that natives generally have far more money in their possession than is commonly believed or than they will own up to by depositing it in the Government Savings Bank.

A general comment on the above lines might be included in a despatch to the Governor asking for his own views in regard to the several points of the Report. He should indicate the cost of the construction of buildings for the detention of any additional prisoners whom he considers would have to be accommodated under his proposals.

W.C.B.
18.9.23.

Sgt: comm.
at once.

K. J. R.

22/10/23

J. J. J.

KENYA.

No. 1186.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

30th July, 1923.

42809

REC'D
REL. 28 AUG 23

My Lord Duke,

With reference to the 4th paragraph of my despatch No. 1578 of November 15th last, I have the honour to transmit for Your Grace's consideration 10 copies of the Report of the Native Punishments Commission.

2. This Commission was appointed by Sir Edward Northey on May 25th, 1921, as a result of a Resolution of a General Committee of Legislative Council. Its report will in due course be laid on the table of Legislative Council. The findings of the Commission have been considered in Executive Council which advises acceptance of all the recommendations save as in the next paragraph. In this advice I concur.

3. In the matter of flogging, Mr. Schwartz agreed with the Majority recommendation but the remaining members of Executive Council supported the Minority view that corporal punishment should be confined to caning juveniles and flogging for brutal offenders, with a reservation by the Acting Principal Medical Officer against flogging for brutal offences.

4. I understand paragraph 3 and recommendation 4 in the sense that Magistrates should be advised by the Chief Justice that generally speaking short terms of imprisonment are ineffective and undesirable. With this view I entirely concur. There is no intention to suggest a Statutory limitation.

5.

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

5. The most important of the other recommendations were thought to be those contained in paragraphs 5, 6, 18, 19 and 31 and to these I would invite Your Grace's especial attention.

(a) Treatment of Technical Offences - paragraph 5 - It is impracticable in the present financial position of the Colony to build central houses of detention in the larger towns but with the perfected system of registration now in force it will, it is considered, be possible to accommodate this class of offenders either in labour camps or landies or even to allow them to make their own housing arrangements during their period of detention. Offences against discipline or refusal to do the allotted task would be a criminal offence punishable by imprisonment in a prison.

(b) Separate association cells.

(c) Penal establishment for long term prisoners.

These are very desirable aims to keep in view but, involving as they do large capital outlay and heavy recurrent expenditure, are at present impracticable. Proximity to a town is not desirable for a long term penal establishment and it will at first be necessary to choose a suitable site.

(d) Reformatory: Extension of minimum term - paragraph 18. - A minimum term of 3 years will afford greater scope to the Reformatory Authorities to establish a lasting influence on boys.

(e) Trades for long term prisoners - paragraph 19 - Lack of accommodation prevents any considerable extension of the present practice but greater facilities should be made available when a separate penal establishment is built.

(f) Sentences not exceeding one year to be served in local gaols - paragraph 31 - The principle of this

recommendation

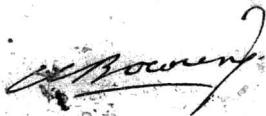
recommendation is accepted by Government but it is impossible at present to indicate to what extent it can be put into practice until details have been more fully considered from the points of view of prisoners' health, prison accommodation and prison staff.

7. I shall be grateful for an expression in due course of Your Grace's concurrence in these recommendations so that steps may then be taken to act upon them so far as is practicable and to introduce such amending legislation as may be required for this purpose.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted
and most obedient servant,



ACTING GOVERNOR.

O. D.
R 29 SEP
D. 2 Oct

End
DRAFT.

DOWNING STREET,

NYA
422

S3
anon
36047
24

2 *October*
September, 1923

Corvydon

MINUTE.

Sir,

- Mr Jewell. 25.9.23.
- Mr. Jeffries. *26/9*
- Mr. *Bottmley* 27.9.
- Mr C. Davis.
- Mr G. Brindle.
- Mr H. Read. *17/10*
- Mr J. Masterton Smith.
- Mr. Ormsby-Gore. *at case 28.9.23*
- Duke of Devonshire.

I have, etc, to acknowledge receipt of Sir Charles Bowring's despatch No. 1186, of the 30th of July, transmitting for my consideration copies of the report of the Native Punishments Commission.

2. The matter dealt with in the report raises important questions of principle requiring very careful consideration; and I do not propose to express any definite opinion on the report as a whole until I have received *detailed comments* your ~~own~~ views on the various points

for comment.

~~What course~~
at issue. There are, however, certain

~~Observations~~
Comments which it will be convenient for
me to make at this stage for your guidance
in submitting recommendations:—

(i) I consider it essential that a
reduction should be made in the offences
for which whipping is to be the penalty
in use, ^{and suggest that the execution} ~~I certainly could not recom-~~
~~end this punishment should be limited to~~
~~plate the continuance of this penalty~~
~~except as regards the use of a light~~
cane with a maximum of twelve strokes
for juvenile offenders, ^{in the case of adults,} and a heavier
cane for offences involving brutality ⁱⁿ
~~in the case of adults.~~

(ii) I am definitely of opinion that
the practice of employers of offering
their men the choice between trial
before a magistrate and an unofficial
whipping must be discouraged in every
possible way.

(iii) If the number of offences for
which whipping is permitted as a penalty
is to be considerably reduced, it is
necessary to consider what alternative
method

~~which are~~
at issue. There are, however, certain

~~branches~~
~~concerns~~ which it will be convenient for

me to make at this stage for your guidance
in submitting recommendations:—

(i) I consider it essential that a
reduction should be made in the offences

for which whipping is to be the penalty

in use, ^{and suggest that the maximum} I ~~certainly could not contem-~~

~~plate the continuance of this penalty~~
^{of this punishment should be limited to}

~~except as regards~~ the use of a light

cane with a maximum of twelve strokes

for juvenile offenders, and ^{in the case of adults,} a heavier

cane for offences involving brutality,

~~in the case of adults.~~

(ii) I am definitely of opinion that

the practice of employers of offering

their men the choice between trial

before a magistrate and an unofficial

whipping must be discouraged in every

possible way.

(iii) If the number of offences for

which whipping is permitted as a penalty

is to be considerably reduced, it is

necessary to consider what alternative
method

method of punishment is to be adopted. It appears to me that as a general practice it will be necessary to adopt imprisonment as the punishment for ordinary offences, "technical" offences being punished either by fine only or by imprisonment with the option of a fine.

3. I shall be glad to be furnished in due course with your considered views in detail on the several questions raised by the report. You will no doubt at the same time indicate the estimated cost of the construction of such buildings as it may be necessary to erect to provide for the detention of any additional prisoners who in your opinion would have to be accommodated if the proposals which you make were adopted.

I have, etc.

(Signed) DEVONSHIRE

14-7-1922
By Secy/42009/25 R.



Sir 9 April 1922

DRAFT.

Kenya

Amos 36047

No.

343.

For Comptroller

MINUTE.

Mr. Westlake 7.4.

Mr. Cullen 8.4

Mr.

Sir C. Davis.

Sir G. Brindle.

Sir H. Read.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

For Wete refer. to my
previous dispatch No. 1622
of the 2nd of October last &
have re. to enquire whether
you are now prepared to
furnish me with ~~the~~ your
detailed comments on the
various points which arise.
~~Several questions raised~~

re: ~~the~~ Report of the Native

Punishment Commission

~~Copy with an estimate
of the cost of any additional
construction of prisons
to submit the estimated
cost of the construction~~

(Case see minute in
C. R. A. below)

~~of such additional buildings
as may be necessary to accommodate
the additional prisoners which would
have to be accommodated if the
proposals which ~~are~~ made in ~~your~~
S. O. No. 306 - Bowring's Dep. No 1186
of 27th July last, were adopted.~~

Signed: I H THOMAS