

1931.

Kenya.

No. 17315.

SUBJECT

CO 533/416

Medical Survey of Masai Reserve.

Report by Dr. Philip.

Previous	
Subsequent	

9  
50

2

in 1930.

4. There have been no cases during 1930 in which orders to natives to perform work have been unlawfully or improperly given.

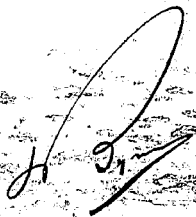
5. I am not entirely satisfied as to the number and severity of these penalties and I have instructed the Acting Chief Native Commissioner to look into the matter.

I have the honour to be,

My Lord,

Your Lordship's most obedient,

humble servant,



Brigadier-General.

G O V E R N O R.

<u>II. District.</u>	<u>No. of offenders.</u>	<u>Offences.</u>	<u>Period of Detention.</u>
Embu	15	Refusing to perform unpaid labour under Sec.8(h) Cap.129. Laws of Kenya.	2 months.
Kitui	2	- do -	2 months.
Kiambu	1	- do -	45 days.
Fort Hall	1	- do -	45 days.
Kericho	1	- do -	1 month.
Meru	11	- do -	1 month.

III. The only cases in which imprisonment was awarded were:-

<u>District.</u>	<u>No. of Offenders.</u>	<u>Offences.</u>	<u>Period of Imprisonment.</u>
Fort Hall.	1	Refusing to perform unpaid labour under Sec.8(h) Cap.129. Laws of Kenya.	3 months.
Kiambu	1	- do -	1 month.
Kavirondo	1	- do -	1 month.

3. The total number of natives convicted during 1930 for refusing to perform work when called upon under Section 8 (h) of the Native Authority Ordinance, was 1247. With the exception of 14 cases tried by European Subordinate Courts, all these convictions took place before Native Tribunals.

In Sir Edward Grigg's despatch No. 718 of 22nd November, 1929, the number of convictions for the first 9 months of that year was 945 and the number of convictions for 1930 is therefore proportionately the same. In the biggest province, Nyanza, there has been a decrease in the number of convictions but in Kikuyu Province there has been a slight increase. This appears to have been partly due to political agitation and also to the fact that a greater demand was found necessary for maintaining existing roads on account of the exceptional

NO 38 on 18612/29

KENYA

No. 443



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

RECEIVED  
14 AUG 1931  
GOV. OFFICE

4<sup>th</sup> August, 1931.

My Lord,

I have the honour to refer to your Lordship's despatch no. 444 of the 10th June, 1930, asking to be furnished annually with a summary showing the various kinds of punishment inflicted, with particulars of the most severe penalties under each kind of punishment awarded, on natives convicted during the year 1930 for refusing to perform work when called upon under Section 8 (h) of the Native Authority Ordinance.

2. As in the case of 1929, the kinds of punishment inflicted again fell within three categories, fines, detention and imprisonment. The most severe penalties imposed in each category are given below in Schedule I form.

SCHEDULE.

1. The only fines imposed amounting to as much as Shs.50/- were:-

<u>District.</u>	<u>No. of offenders.</u>	<u>Offences.</u>	<u>Fine.</u>
Marigo	10	Refusing to perform unpaid labour under Sec.8(h) Cap.129, Laws of Kenya.	Shs.50/- each.
Kiambu	2	- do -	Shs.50/- each.

11. The most severe penalties of Detention imposed were .....

11-23-1931

labour, ~~and in view of the relative~~  
~~severity of the sentence,~~

I shall be glad if you will inform me of the circumstances in *the sentence* which ~~it~~ was inflicted.

I have, etc.,

(SIGNED) J. H. THOMAS.

C. O.

C. D.  
R 12 SEP  
D ✓

Mr. Chamberlain 21/9/31

Mr. Freeston 21/9/31

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

23 September, 1931.

SF4

Sir,

DRAFT.

(No.1)

KENYA

No. 661

Gov. Byrns.

Am 3

I have the honour to  
acknowledge the receipt of your  
despatch No.443 of the 4th of  
August, transmitting <sup>particulars of the</sup> ~~summary~~  
~~showing the various kinds of~~  
~~punishment inflicted, with particu-~~  
~~lars of the most severe penalties~~  
~~under each kind of punishment~~  
~~awarded, on natives convicted~~  
~~during the year 1930 for refusing~~  
~~to perform work when called upon~~  
~~under Section 8(h) of the Native~~  
~~Authority Ordinance.~~

2. I observe that in the  
Fort Hall district, a native was  
sentenced to three months' imprison-  
ment for refusing to perform unpaid

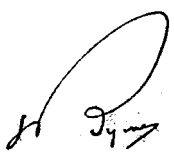
of his failure to appear before the Native Tribunal.

4. In the return therefore of punishments awarded for refusing to perform work when called upon, the punishment in this particular case should have been shewn as one month's imprisonment not three months.

I have the honour to be,

Sir,

Your most obedient humble servant,



BRIGADIER - GENERAL,  
GOVERNOR.

KENYA.

No. 664



4  
3  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

20th November, 1931.

LOCAL

Sir,

I have the honour to refer to Mr. Thomas' Despatch No. 661 of 23rd September, 1931, on the subject of punishment inflicted on natives convicted during the year 1930 for refusing to perform work when called upon under Section 8 (h) of the Native Authority Ordinance.

2. With regard to the sentence of three months imprisonment inflicted on a native in the Fort Hall District, I am informed that the sentence was in respect of two separate offences which, by a clerical error, were shown in the return from the Fort Hall District as one offence.

3. The two offences committed were, firstly, refusing to perform work when called upon under Section 8 (h) of the Native Authority Ordinance and, secondly, disobeying the summons of the Native Tribunal when ordered to appear before them to answer the first charge. The two charges were tried together and the accused sentenced to one months imprisonment for refusing to perform work when called upon and to two months further imprisonment in respect

of

THE RIGHT HONOURABLE,  
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
L O N D O N, S.W.I.



Further, under Section 10 of the Ordinance, the penalty for disobedience of orders is a fine not exceeding £1.10.0 and/or imprisonment for a term not exceeding two months. Sir C. Bottomley should now see, but no further action seems required.

10/11/31

16/17/31

As the number of cases of imprisonment is large I think we can leave this alone. The figures compare favourably with the previous year.

Partly

6/12/31

See 54 of Order 16.  
428 Kassa Hina  
15/12/31.

Mr. Chamberlain pointed out to me that the penalty on natives for disobeying orders is imprisonment of not more than two months or a fine not exceeding £7.10.0., and, in default, imprisonment for not more than two months, or both such fine and imprisonment. It therefore seems possible that the three months' sentence referred to might represent two separate offences by the same offender at different periods in the year, or (2) separate offences tried at the same time, the sentences running consecutively, or (3) a sentence of fine and imprisonment, part of the three months representing imprisonment in default of the fine. The last is perhaps the likeliest. Do you agree that it would be at any rate <sup>or</sup> desirable to ask for an explanation.

W. Allen

4/9/31

I agree to you and suggest that in the dispatch to be sent out to you and any explanation when the reply is received the legality of the imprisonment can be considered in the light of the facts. S. 78(iii) of the Penal Code may assist.

*W. Chamberlain*  
10/9

Then ask for what the  
obj was be read to receive an  
explanation of the circumstances  
of the sentence of three months

imprisonment recorded in para 2 III.

(This can go on even as

at the ref.)

W. Allen

19/9

atance

2 No. Gov 661 - 1 Ahmad - 23 SEP 1931

3 No. Kenya 664 - 25/11/31

States that the sentence of 3 months referred to in No 2 was in respect of two separate offences, which by a clerical error was shown in the Port Hall return as one offence. The punishment for the charge of refusing to work should have been shown as 1 month.

W. Allen

Satisfactorily disposed of.

You will now consider dates to send on no. 11.

Otherwise this may be put by?

*W. Chamberlain*  
14.12.31

As regards the second offence, Section 7 of the Native Authority Ordinance provides that a Headman may compel the attendance of a native before a Native Tribunal, and can arrest him and bring him before the Tribunal, if he neglects to attend.

Further

See S 4 of Police Act.  
428 Section 42  
5/12/29.

Mr. Chamberlain pointed out

to me that the penalty on natives for disobeying orders is imprisonment of not more than two months or a fine not exceeding £7.10.0., and, in default, imprisonment for not more than two months, or both such fine and imprisonment. It therefore seems possible that the three months' sentence referred to might represent two separate offences by the same offender at different periods in the year, or (1) separate offences tried at the same time, the sentences running consecutively, or (2) a sentence of fine and imprisonment, part of the three months representing imprisonment in default of the fine. The last is perhaps the likeliest. Do you agree <sup>that</sup> that it would be at any rate <sup>or</sup> desirable to ask for an explanation.

J. H. Allen

4/9/31

I agree to you and suggest that in the absence of evidence as to why and any explanation <sup>when the</sup> ~~is~~ is not the legality of this imprisonment can be considered in the light of the facts of S. 28(iii) of the Penal Code may

J. H. Allen  
18/9

Then ask if you had the info would be glad to receive any explanation of the circumstances of the sentence of three months

1 Gov. Byrne 443 - 4 August.

Forwards summary showing various kinds of punishment inflicted, with particulars of most severe penalties under each kind of punishment awarded on natives convicted during 1930 for refusing to work when called upon under Native Authority Ordinance.

The comparison with the 1929 figures is:-

	1929.	1930.
Imprisonment	1 case	3 cases
Detention of 1 month or over	77 cases	31 cases
Fines of 50/- or over	15 cases	12 cases

Convictions were about the same in both years.

I see that one man got 3 months S.H.L. for refusing to work.

The return, except for this, seems satisfactory.

As the Governor is making further inquiries we might ask and say that the Secretary of State observes that in one case it was found necessary to inflict a sentence of 3 months imprisonment on an individual for refusing to perform unpaid labour. Say that the Secretary of State has no doubt that this sentence was properly awarded but that in the absence of explanation it would appear rather severe and in the circs. the S. of S. would be glad to be informed briefly of the circs. of the case.

(Sgd) G.D. Chamberlain. 26/8.

The maximum penalty for offences under Section 8(a) is a fine of Sh.150; and, in default of payment, imprisonment for a term not exceeding two months. Possibly the 3 months was given in respect of more than one offence; but the point calls for enquiry.

See Sec.10.