

1931

Kenya

No. 17097

SUBJECT

C0533/408

Native Labour

(Question of the abolition of forced)

Previous

16303/30.
16381/30. K.

Subsequent

See 26061/31. 2. H.

log in acc
w on 170131
170131

1. Extract from ...
with ... 13

X 20
When X. 170131 return to you.
Please put in the file copies
of minutes by ...
order to Dept (with file
containing recent Dept. with
Archdeacon Owen's views)
for your Dept. as directed
by ...

16281/30 K

acc
28.2.31

Following min-
utes copied
from 17083/31 K.

Seen. I agree with all that is said and think
a copy of the interview might well go to Sir J.
Byrne. Although it is true that the forced labour
still remaining is not of the worst kind, it is
capable of abuse - e.g. it seems to have been
used at times for disciplinary purposes by D.C.s -
and it certainly affords opportunity for serious
misrepresentation. See copy of "Forward" which I
enclose. A similar note was in the "New Leader"
recently, and, as these papers are read by our
labour people, it tends to make Parliamentary ~~xxxx~~
difficulties. And, when one has to admit the main
fact, it is not easy to bring out the truth of the
detailed working of the system. The fact, also,
that, however reasonable the system might be in a
country where no other system prevailed, it is here

areas, where exactly the same kind of services are paid for by Govt., makes it hard to prevent the argument switching on to one of racial discrimination. I would be glad if, in transmitting these papers to Sir Joseph, something of this ~~difficult~~ difficulty could be indicated to him.

(Intld.) T.D.S.
21.2.31

As to Forced Labour, we may as well write separate despatch to Gov. calling attention (a) to the new convention, and (b) to statements constantly being made as to the practice and effects in Kenya; and ask for full report.

Copy of interview s.o. to Gov.

I do not think Canon Leakey need be praised to give evidence to Joint Committee on Closer Union.

(Sgd.) P.
23.2.

X Ea

When 1635/30 is available,
send on to Dept. - also
attaching X.2608/31 S.A.

acc

- 1A Abstract from Manchester Guardian, dated 27 Dec. 7.3.31
2 Abstract from Manchester Guardian, dated 7 March

*In case of the 2 above
attached, still wait for
H to be available.*

9: to continue to 11

*Pat. to
in Parker
2/3/31*

Mr. Parkin

I have had some difficulty in
getting together all the papers on
this subject.

I think the position as to
International Labour Convention

(see paras 2, 6 & 7 of the draft)
is concisely stated, but I
would be glad if before I
send the draft on you could
look through it from this
point of view.

I will come & discuss

if necessary.

Parkinson
20.4.31.

I have deleted para 7 as (for reasons
wh. it is unnecessary to mention
em) it will be some considerable
time before we shall be in
a position to go into the 9th of the
form of annual reports to the I.L.O.

As regards the first sentence
of para 2, it is necessary to point
out that the white paper announcing
the proposal of Am.S. to ratify the
Convention was only laid before
Parliament on 16th April & it has

to be kept for 21 Parliamentary
Days before the Govt. can regard
itself as free to proceed with the
proposal. The Navy is that if
Parliament objects, the Govt's proposal
might be vetoed — a contingency
wh. is inconceivable in the present
instance. Nevertheless I suppose that
a despatch containing this sentence ought
not to issue till 15th Nov.

[Alternatively the first sentence of
para 2 might read:

" Subject to the approval of Parliament,
H.M.G. propose to ratify without
modification - - - - -].

No other obsn., but Mr. Paskin
pls. see the draft.

J. J. Paskin
22/14

I now send on the draft despatch as
directed by the S. of S. I have made a
small amendment in paragraph 2 to meet Mr.
Paskin's point.

The despatch asks Kenya in future to
keep statistics about the use of forced labour
under Section 8 (h) of the Native Authorities
Ordinance. I think it clearly desirable that
these statistics should now be kept even though
they may involve a certain amount of extra
work.

4
work. I believe that, as a matter of fact,
quite a lot of the labour called out under
this section is paid, compulsion being equally
necessary whether it is paid or not. The
despatch also stresses that the S. of S. does
not wish to be regarded as thinking Kenya worse
than ~~the~~ other ^{dependencies} as regards the use of forced
labour. I hope this is correct.)

(I feel sure that it is only because
Kenya's critics are more lynx-eyed than those of
other African territories that more is heard of
abuses of forced labour in Kenya.)

E. Eastwood

23. 4. 31

W. Allen

28/4/31

I am glad to see the last
paragraph of Mr Eastwood's
minute, which, I am
convinced, is a fair statement.

[A.C.C.F.]

Yes, but the abuses ~~are~~, ~~unpleasant~~,
be more active in Kenya. I do not know

W. Allen
6.5.31

J. J. Paskin
7.5.31

P.T.O.

Evidently, the system of forced labour in Kenya is liable to abuses, whatever may be its theoretical justification. Its main defect - and this, rather than its method of operation, is what marks the system out differently in Kenya from that in other African Colonies with a homogeneous indigenous population - is that it involves racial discrimination, as the same services are done for the European areas out of general Govt. Revenue. That makes Kenya different, and we must, as early as we can, abolish it altogether, as it cannot be defended on any equal treatment basis. This consideration does not arise elsewhere - tho' the intractability of the practice without abuses remains an argument against it - where the labour can be regarded as the equivalent of a municipal tax, in which all the inhabitants are equally involved. This draft despatch puts the case well.

T.S.

11.6.31.

As proposed

P 11/5

16/11

Gov. Conf. - Govs - 16 MAY 1931

H London Group on African Native Affairs - 30 May
include memorandum on forced native labour
in Kenya and state willing to place a
deputation if required

In Chattanooga
This is the sort of memorandum
upon which long minutes
could be written. But
I think you will agree that
that is really unnecessary.

As to forced labour see No. 3 in this file.
The publication of laws etc. in Kiswahili is not a new
suggestion - nor is that of a separate native budget,
although we are trying to get what is needed in another
way, i.e. statements of native services, and special
statement as to roads in native areas. It may be
On East Africa
that the Select Committee will commend points like
these to the consideration of the Secretary of State,
though they are not likely to make any specific
recommendations, I think.

? (1) acknowledge receipt - say that Secretary of
State has read the full statement which the group have
been good enough to prepare - that while he
appreciates the suggestion that the statement might be
further elucidated by a deputation, he feels that this
is unnecessary, especially as the matters dealt with
in the recommendations are already in fact engaging
the Secretary of State's attention - add that copies
of the letter and memorandum are being forwarded to
the Governor of Kenya and that the Group may rest
assured that their representations will receive most
careful consideration - end note paragraph 2 of the
letter.

(2) Send to Governor for consideration copy of
4 and enclosure - with copy of the reply - and ask
him to be good enough to report upon the
representations made in the memorandum and to furnish
his observations upon the detailed recommendations
submitted.

(It would be convenient to send this in a public
despatch.

despatch, as we cannot make a reference to No. 2 in the file - but the Secretariat will obviously bring the two together).

*atc Parkin in
P. 6. 31*

*A copy 3 pm. bearing the
despatch will be sent with in over
to Mr. de Silva.*

*I agree. If a resolution
is received its proceedings will
certainly receive publicity, and
that will not be fair to a
harassed Governor.*

W.C.S. 9.6.31.

*Sec of State
(through D. Shiels)*

*I agree
E.H. 6
9.6.31*

Mr. McSwiney,

Dr. Shiels is unwell, and unable to deal with this file before he goes to Geneva.

He therefore asked me to...

5. To London Group on Af. Native Affairs (a Ans. 17th June
To Government (W/Ls. 4 & encl. add 5) cons. 17th
UNDER SECRETARY, Sec. cons. 3 p.m. 17th June
6. Gov. Byrns. Conf. 103. 23rd July.

States cannot regard it as probable that forced labour for portage will have disappeared within five years; comments on forced labour on road-work and difficulties of paying for such labour. It will not be possible to keep statistics unless system of communal labour radically altered. Corrects certain statistics re labour in H.A.D. report

9. Gov. Byrns. Conf. 107. 4th August.

Submits comments and observations on the recommendations made in memorandum submitted by London Group on African Native Affairs.

This has been purposely held up. I attach a memorandum which, I hope covers the ground fully.

- 9a. Note on the origin of exemption (c) 6 Art. 2 of Forced Labour Convention
- 9b. Outline of a proposed Bill
- 9c. Memorandum

*Eastwood
14.12.31
(after discussion)*

This is one of several despatches which it was thought necessary to hold up owing to ministerial changes and pending consideration of the Report of the Joint Select Committee which included observations (para.106) on this question of forced labour. In that paragraph the Committee expressed the opinion that communal unpaid labour in the Reserves is no longer in accordance with the ideas of modern civilisation and should be discontinued, and in this connection the Committee referred to the Forced Labour Convention. Mr. Eastwood assumes that this amounts to a recommendation that the communal labour should be abolished forthwith, but it is obviously impracticable to do so by a stroke of the pen and insist on an

Sri S. Wilson

I think this is correct - to show the Governor clearly what he has to do, without making him liable to charges which it would be impossible to finance at present.

G.S.B.
8.1.32

B.H. 6
8.1.32

Agree

M.H.
10.1.32

To Gov. Conf. (w/c G.A.) cons 12/1/32
(8 + 9 Annul.)

Gov. 77. Conf. Duplicate. 4/6/32
(Original kept here on 17/3/32/1/1/32/1/32)

12 15 for 499 - 13/7/32.
(Extract from despatch as sent to Gov. on 2/10/32 E.A. Chauhara)

13 N.A. Circular No 16 - 18/3/32
Ref to record

immediate substitution of paid voluntary labour for these services. As a matter of fact certain of them in so far as they represent minor village services are deliberately left outside the scope of the Convention. The Convention itself does not insist on abolition in any definite period, and it is clearly not necessary to be more royalist than the King. The main point seems to be to ensure that the Kenya Government appreciates that the whole of the present communal labour is not necessarily, as they appear to think, exempted from the provisions of the Forced Labour Convention and it will help to do this if we send to the Governor a copy of the very useful note which Mr. Eastwood has put up as 9(a). This matter was dealt with in the Secretary of State's recent Conf. despatch on the report of the Joint Select Committee as a whole, and I have for convenience of reference reproduced the remarks made in that despatch in the accompanying draft which I submit for consideration, and which I hope is sufficiently self-explanatory.

Even as regards labour covered by the Convention, the

shows of course that to be considered in the General Dept. I should like to discuss it with Mr. Packer. J.V. Allen
2/1/31

I have discussed with Mr. Allen & we have revised the Gov. Dep. & the Gov. memo (No 9 A) which is to be sent out to Kenya.

J.V. Varman J.P. Packer

By Gov. Mail 10
12/1/32

N.B. to G. & A. Secretary of State's Conf. of Foreign Affairs

E.A. Dept. 11/12
See Nos 11 & 12
The Packer to be on return

35

1707/81. 13. 8
NATIVE AFFAIRS DEPARTMENT,
Nairobi,

18th March 1932.

Pages.
Ref. No. NLAB. 2.

CIRCULAR NO. 16.

All Provincial Commissioners (with sufficient copies for District Commissioners).

COMPULSORY LABOUR FOR COMMUNAL PURPOSES IN
NATIVE RESERVES.

In paragraph 106 of the Closer Union in East Africa Report a recommendation is made with reference to the employment of unpaid communal labour that the "practice is no longer in accordance with the ideas of modern civilisation and should be discontinued".

2. In replying to the Secretary of State His Excellency the Governor commented as follows:-

"I will bear in mind the necessity for giving effect to the Committee's recommendations that compulsory communal labour in Native Reserves should be discontinued. I recommend, however, that the discontinuance should be gradual.

"The system by facilitating production and development has proved of the greatest benefit to the natives concerned and its immediate abolition would not in all cases be in their best interests. Alternative arrangements must be made for the maintenance of local tracks, bridges, and irrigation works and although such arrangements in some areas will present no particular difficulty

2 9

in other less developed areas they cannot be completed summarily. I do not therefore recommend the immediate repeal of Section 8 (h) of the Native Authority Ordinance, the sub-section authorising compulsory communal work for the benefit of the communities concerned, but I propose to issue instructions that recourse be made to this sub-section in a decreasing degree until the time comes for its repeal."

3. You are asked especially to note the undertaking that recourse is to be made to this sub-section in a decreasing degree until the time comes for its repeal and you are requested to issue instructions accordingly.

4. This means of course, that if local tracks, bridges and other works are to be maintained in that degree of efficiency which is at present reached by means of unpaid communal labour financial provision for the payment of the necessary labour must be made in Local Native Council Estimates. This is already done by some Councils and the number of such Councils is gradually increasing. It is the duty of Presidents of Councils to bring to the notice of the native members of Councils this approved policy of Government and to advise them where possible, to make the necessary financial provision.

A. DE V. WADE.

ACT. CHIEF NATIVE COMMISSIONER.

VGG/EL.

10.72
Extract from S. of S's despatch to Governor, Kenya
No. 499 dated 13th July, 1932
sent on 27001/32 E.A. Closer Union.

Paragraph 106. Forced Labour.

It may, I think, be assumed from the reference to the International Labour Convention concerning forced labour that the Joint Committee had particularly in mind the abolition of such labour as defined in Article 2 of the Convention. "Forced Labour" as defined in that Article does not include any work or services exacted in cases of emergency nor certain minor communal services: but any forms of communal labour in the Native Reserves, which the Committee specifically mention, not covered by the exemption in Article 2 (e) are subject to the stipulations of the Convention, that is they are to be abolished "within the shortest possible period and in the meantime are to be subject to regulations laid down in the Convention".

Copy

*Original report sent on
17523/1/31. Native Affairs Dept
Report 1930
-11*

77
KENYA NO.

CONFIDENTIAL.

H
JUNE, 1932.

Sir,

*No 6
17523/1/31.*

I have the honour to refer to your despatch No. 281 of 12th April 1932, on the subject of the inclusion of certain statistical information in the future Native Affairs Department Reports and to say that a table showing the current rates of wages and the average number of natives employed will be included in future reports.

*No 8
17497/31*

2. With regard to the incidence of communal paid labour, I have already explained in paragraphs 5, 6 and 7 of my Confidential despatch No. 103 of 23rd July, 1931, the reasons why the preparation of figures showing its incidence is impracticable.

I have the honour to be,

Sir,

Your most obedient, humble servant,

J. BYRNE.

BRIGADIER-GENERAL,
GOVERNOR.

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.M., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

10 12 ml 88

C. O.

Mr. Allen. 27/12

Mr. Peshin (on return) 57/1/32

Mr. Allen

Mr. Forde (on return) 5/1

* Sir O. Bottomley. 6-1

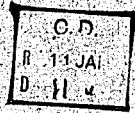
Sir J. Shuckburgh.

Sir G. Grindle.

Permit. U.S. of S. 1.32.

Parly. U.S. of S. 10.1.32 M
Secretary of State.

By Air mail



Downing Street.

12 Jan 1932

December 1931.

DRAFT for consen.
v. minutes.

KENYA.

CONFIDENTIAL

GOV. BYRNE.

Sir,

I have the honour to

acknowledge the receipt of your Confidential despatch No.103 of the 23rd July on the subject of forced labour.

2. I note with satisfaction the assurance in the ^{first} paragraph of your despatch that the Government of Kenya will do everything in its power to

suppress the use of forced or compulsory labour (as defined by Article 2 of the Forced Labour Convention) in all its forms within the shortest possible period.

3. I appreciate the reasons for which you suggest that it is improbable that human transport will have entirely disappeared by the time, roughly five years hence, when the governing body of the

Notes.

(9A)
[Handwritten scribbles]

International Labour Office are to consider whether the complete suppression of forced labour is possible. ~~It however it is to~~

~~continue it is necessary for regulations to be specified as in Article 18 of the Convention.~~

4. With regard to the 6 days a quarter unpaid compulsory labour, called out under Section 8(h) of the Native Authority Ordinance you express the opinion in paragraph 7 of your despatch that such labour is specifically exempted from the definition of Article 2 of the Convention.

It follows therefore that such labour is not covered by the assurance in the first paragraph of your despatch.

5. The argument that labour under Section 8 (h) is outside the scope of the Convention involves two assumptions:-

(1) that all such work is a "minor communal service of a kind which being performed by the members of the community in the direct interest of the said community can therefore be considered as a normal civic obligation incumbent upon the members of the community."

(2) that "the members of the community or their direct

C. O.

- Mr.
- Mr.
- Mr.
- Mr. Tomlinson.
- Sir O. Bottomley.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Permi. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

DRAFT.

12
26/10/41
L. A. C. W.

direct representatives", "have the right to be consulted in regard to the need for such service." (The quotations are from the text of ~~the~~ exemption ^(c) of question; Article 2)

In this connection it will be recalled that

6. ~~I would also point out that~~ Select Committee in paragraph 106 of their report the Joint/ expressed the opinion that the practice of employing compulsory labour for communal purposes in Native Reserves is no longer in accordance with the ideas of modern civilisation and should be discontinued. I have dealt with the Committee's report generally in my confidential despatch of the 22nd December and it may be convenient to reproduce here the observations which I have made in paragraph 22 of that despatch regarding the remarks of the Committee on this subject.

"It may, I think, be assumed from the reference to the International Labour Convention concerning Forced Labour that the Committee had

particularly in mind the abolition of such labour as defined in Article 2 of the Convention. "Forced Labour" as defined in that Article does not include any work or service exacted in cases of emergency nor certain minor communal services. It is, however, necessary to bear in mind the fact that the communal labour in the native reserves, which the Committee specifically mention, apparently at present includes certain forms of labour not covered by the exemption in Article 2(e), and which are therefore subject to the stipulations of the Convention. That is, they are to be abolished "within the shortest possible period" and in the meantime are to be subject to regulations as laid down in the Convention. I anticipate that with the development of native institutions even the use of compulsory labour for the minor communal services covered by exemption (e) will in course of time naturally disappear.

7. The accompanying note regarding the origin of exemption (e) in the Convention will, I hope, serve to make clear the scope of that exemption. You will see that it was the clear intention of the International Labour Conference and

O. O.

Mr.

Mr.

Mr.

Mr. Tomlinson.

Sir O. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

that it should be of very limited scope.

It was for instance not the intention that the exemption should cover the construction of roads or bridges, but it seems clear from your despatch that labour under Section 8(h) has at any rate in the past been employed for

this purpose. Again the term "community" was intended to be roughly equivalent to the term "village"; ^{compulsory services performed} work done by natives of one village ^{is not only to be covered by the exemption if they were} in the interests of natives of another village ^{directly} ~~concerned~~ ^{to} would therefore not be covered, but it would be probable that communal labour is in some cases employed for this purpose. It is thus difficult to avoid the conclusion that communal labour is employed for wider purposes than the exemption covers.

8. As regards the second assumption, I understand that ^{in general} ~~it is the normal practice~~ that "the members of the community or their direct representatives" ^{are} ~~should be~~ consulted in regard to the work to be done by communal labour. There is however no express provision

(Mr. Home has in that his greater part of the work under 8(h) is called out {handover after taraja})

(referred to in para 5)

modifications will be necessary in the Kenya
 shall be glad if you will
 legislation and I review the whole question
 in the light of this despatch. I enclose for
 your information copies of Ordinances which
 have recently been passed in Sierra Leone
 and Nyasaland together with a copy of a
 despatch which I am addressing to the
 Governor of Nyasaland.

11. I note with satisfaction from
 paragraphs 9 and 10 of your despatch that there
 was actually in 1929 a decrease (and not an
 increase, as shown in the report of the Native
 Affairs Department) in the amount of unpaid
 labour called out under Sections 8 (m) and (n)
 of the Native Authority Ordinance and that the
 statistics for 1930 show a further substantial
 decrease.

12. I have also to acknowledge the receipt
 of your confidential despatch No.107 of the
 4th August and to express my thanks for the
 full reply which you have furnished to the points
 raised in the memorandum submitted by the London
 Group of African Affairs.
 I have, etc.

9c

1. In May last, Lord Passfield addressed the Governor of Kenya at length on the subject of the continued existence of forced labour in Kenya. No. 8 on this file is the Governor's reply to this despatch, and further information is contained in No. 9 which is a commentary on a memorandum submitted by the "London Group on African Affairs".

No action is required on No. 9 except an acknowledgment with thanks for the full manner in which the criticisms are dealt with. A full reply is however required to No. 8. Consideration of this has been purposely delayed by the Department until the despatch could be considered in connection with the Joint Committee's Report.

2. The Joint Committee's Report.

The following is the relevant paragraph of the Report:-

"Forced Labour. 106. While the evidence was conclusive that no forced labour is employed by European settlers, or for the purposes of private enterprise, it is not denied that forced labour is occasionally made use of in all three territories on Government work, and further that on still rarer occasions such labour is unpaid. It is still employed for communal purposes in the native reserves. While not denying that such labour is almost invariably in the interest of the natives themselves, the Committee are of opinion that the practice is no longer in accordance with the ideas of modern civilisation and should be discontinued. In this connection the

17

Committee note ^{that} the International Convention on Forced Labour has been recently ratified by His Majesty's Government in the United Kingdom without reservation."

3. It is now necessary to review the whole question in the light of:-

- (a) The Governor's despatch
- (b) The Joint Committee's recommendation
- (c) The Forced Labour Convention.

4. Types of Forced Labour regarding which no difficulty arises.

(a) In the first paragraph of his despatch the Governor gives an assurance that his Government will do everything in its power to suppress the use of forced labour as defined by Article 2 of the Forced Labour Convention in all its forms, within the shortest possible period. In paragraph 7, however, he argues that this ~~distinction~~ ^{definition} does not cover labour called out under section 8^(h) of the Native Authority Ordinance. His assurance therefore covers:-

- (i) Paid labour by able-bodied adult males for urgent repairs in case of sudden or unforeseen ~~cases~~ ^{occurrences}: (Section 8(m) of the Native Authority Ordinance).
- (ii) Porters by paid adult able-bodied males for Government ^{servants} service on tour and for the transport of urgent Government stores. (Section 8(n)).
- (iii) Paid labour by able-bodied adult males with

the prior sanction of the Secretary of State for ~~works and~~^{the} construction or maintenance of major public works. (Section 8(o)).

(iv) Labour for any other purpose approved by the Governor in writing (section 8(r)). No such purpose may be approved without the prior sanction of the Secretary of State (see paragraph 5 of No.7 on 16127/30).

(v) Labour called out under the Roads in Native Reserves Ordinance.

Labour of the types mentioned in (iii) and (v) above is, in practice, abolished already, and need not therefore be further considered. As regards the other types, the following remarks may be made:-

(1) Paid labour in case of emergency.

It was not, I think, the intention of the Joint Committee that their recommendation should cover this type of forced labour. Article 2(d) of the Forced Labour Convention specially exempts it from the operation of the Convention and it would seem obvious that ~~the~~ provision for it must remain on the Statute Book for the present. Emergencies do not frequently arise, e.g., a year or two ago there was a famine in certain parts of Kenya, and at present there is a locust invasion. But it is to be hoped that recourse to forced labour in emergency should in course of time become necessary only on rare occasions.

(ii) Paid Porterage.

In paragraph 2 of his despatch the Governor says that he cannot regard it as probable that this form of forced labour will have entirely disappeared within the next five years. Despite the progress which is being made with the road system of the Colony, there are, he says, some areas which are not likely to be so far developed as to permit of the entire elimination of human porterage within that period. It is, however, the policy of his Government to abandon human porterage at the first possible moment, and this policy has the full sympathy of the Administration.

Article 18 of the Forced Labour Convention lays down that this form of forced labour should be abolished within the shortest possible period and that meanwhile certain safeguards are to be employed.

The recommendation of the Joint Committee does not make specific reference to it and it must therefore be regarded as included in the general recommendation for abolition.

From the figures given in paragraph 10 of the Governor's despatch it is clear that the number of men-days of forced porterage has been declining and it is quite obvious that every effort is being made to eliminate it as soon as possible. It seems however equally obvious that immediate total abolition might in some instances dislocate the Administration and that it is necessary to retain provision for it in the same way as it is necessary to retain provision for

for

for forced labour in the case of emergency. The conclusion is therefore that nothing more can be done in regard to this labour than is being done already. So long as it continues, however, the safeguards specified in Article 18 of the Forced Labour Convention should, of course, be applied.

(iv) Labour for any other purpose approved by the Governor and the Secretary of State.

The use of such labour would only be approved in case of emergency, and this may therefore be regarded as covered by (i) above.

5. Communal Labour.

A. It is now necessary to consider ~~the~~ a much more difficult question, namely, that of forced labour called out under section 8(b) of the Native Authority Ordinance. This section reads as follows:-

" 8. Any head-man may from time to time issue orders to be obeyed by the natives residing within the local limits of his jurisdiction for any of the purposes following:-

..... "(h) requiring able-bodied men to work in the making or maintaining of any water-course or other work constructed or to be constructed or maintained for the benefit of the community to which such able-bodied men belong: provided that no person shall be ordered ~~to~~ or required to work as afore-



Under the authority of this sub-section the Administration employs an extensive system of labour which is known as "communal labour" or "traditional labour" (though the critics of the Government say that it is often used for purposes which are by no means traditional)

(4)

The Governor states in paragraph 3 of his despatch that he has no hesitation in saying that this labour has been productive and still is productive of the greatest benefit to the natives concerned. In particular he says that it has resulted in the construction of a network of native roads with rough and ready bridges ~~for~~ⁱⁿ native reserves all over the Colony. As a result, vehicles of all descriptions from heavy motor lorries to two wheeled carts may now be seen transporting to market native grown produce which before their construction was carried on the bent backs of women and children toiling in long lines in single file up and down the steep hillsides. He argues that there is very little force about this kind of labour and it is not normally regarded as more of a hardship than a village haymaking in England. Nevertheless he admits that abuses have occurred in the past, and that it is in some cases felt to be a burden as proved by the fact that in North Kavirondo, Machakos and Kiambu (three of the most progressive districts in the Colony) the local Native Councils have made provision for paid labour to take the place of

the



the unpaid compulsory labour: (Kiambu have, it is true subsequently abandoned this provision.) As the native becomes more sophisticated no doubt communal labour will become less and less of a haymaking and more and more of a burden.

The immediate point, however, is not whether or not the labour is a burden but how far it is or is not exempted from the scope of the Forced Labour Convention and how far in either case its continuance can be reconciled with the recommendation in paragraph 106 of the Joint Committee's Report.

B. The Governor argues that this communal labour is specifically exempted from the scope of the Forced Labour Convention under Exemption (e) to Article 2. This argument requires a little more examination. It implies two assumptions:-

- (i) That all such work is a "minor communal service of a kind, which being performed by the members of the community in the direct interest of the said community can therefore be considered as a normal civic obligation incumbent on the members of the community."
- (ii) That "the members of the community or their direct representatives have the right to be consulted in regard to the need for such service". (The quotations are from the text of the exemption in question).

In the light of the ^{information} opinion given in the Governor's despatch it would seem very doubtful whether the first assumption is altogether justified.

(9A)

I attach a note in which I have gone in some detail into the origin of exemption (e) and it will be seen from this note that it was the clear intention both of the International Labour Conference and of the Colonial Office Forced Labour Committee (whose recommendations formed the basis of the instructions to the British delegates to the Conference and may therefore be taken as embodying the policy of His Majesty's Government in the United Kingdom), that the exemption should be of very limited scope. It was, for instance, not the intention that it should cover the construction of roads or bridges, but it seems clear from the Governor's two despatches that communal labour has, at any rate in the past, been employed for this purpose. Again the term "community" was intended to be roughly equivalent to the term "village"; work done by natives of one village in the interests of natives of another village would therefore not be covered, but it would seem probable that communal labour is in some cases employed for such a purpose.

If these interpretations of the facts are correct, it is difficult to escape the conclusion that communal labour is employed for considerably wider purposes than the exemption was intended to cover.

As regards the second assumption, the Department understand that it is the normal practice, (at any rate in the more advanced districts) that "the members of the community or their direct representatives" should be consulted in regard to the work to be done by communal labour. There is, however,



however, no express provision to this effect in the legislation of the Colony, nor so far as the Department is aware, has any circular on the subject been issued to Administrative Officers. It is not therefore possible to produce to Geneva, or in Parliament, any documentary evidence that such consultation is the normal practice.

C. This discussion of the interpretation of Exemption (e) is, however, merely academic, if the recommendation in the Joint Committee's Report that the employment of communal labour should be discontinued is accepted literally. It is, however, very much for consideration whether in the present circumstances it would be at all possible to abolish all communal labour at one blow, and at the same time to make ~~definite~~ financial provision, whether in the central budget or in the budget of the Local Native Councils, for the continuance of the work, which has so far been done by such labour, Statistics regarding the use of it ~~which~~ are not kept - the Governor says that they cannot be kept - and the Governor can give no estimate of the cost of the increased financial provision that would be necessary if it were abolished. Archdeacon Owen has mentioned a figure of £50,000 a year, and I believe that Dr. Norman Leye puts it at three times this amount. In present circumstances this money simply cannot be found and immediate abolition would simply mean that much ^{more} work remained undone.

It has already been seen that the Governor does not regard the existence of this labour as anything



however, no express provision to this effect in the legislation of the Colony, nor so far as the Department is aware, has any circular on the subject been issued to Administrative Officers. It is not therefore possible to produce to Geneva, or in Parliament, any documentary evidence that such consultation is the normal practice.

C. This discussion of the interpretation of Exemption (e) is, however, merely academic, if the recommendation in the Joint Committee's Report that the employment of communal labour should be discontinued is accepted literally. It is, however, very much for consideration whether in the present circumstances it would be at all possible to abolish all communal labour at one blow, and at the same time to make ~~definite~~ financial provision, whether in the central budget or in the budget of the Local Native Council, for the continuance of the work, which has so far been done by such labour. Statistics regarding the use of ~~it~~ ^{it} are not kept - the Governor says that they cannot be kept - and the Governor can give no estimate of the cost of the increased financial provision that would be necessary if it were abolished. Archdeacon Owen has mentioned a figure of £50,000 a year, and I believe that Dr. Norman Lyles puts it at three times this amount. In present circumstances this money simply cannot be found and immediate abolition would simply mean that much ^{necessary} work remained undone.

It has already been seen that the Governor does not regard the existence of this labour as anything



anything of a burden upon the native community and while the critics of the Kenya Administration by no means share this view, it is the considered opinion of the Department that at the present moment the Governor should not be pressed to abolish it altogether. The Department suggest that it would suffice for the moment if the recommendation were taken as applying to only such part of the communal labour as is not exempted from the scope of the Forced Labour Convention by exemption (e) to Article 2. At the same time the Governor should be told that every effort should be made to reduce the amount of such communal labour; that recourse should never be had to it when it would be practicable to employ voluntary labour; and that the complete abolition of all forced ~~and~~ communal labour at the earliest possible moment should be the definite aim.

It is suggested that one of the two following courses should be adopted; either that a decision should be taken as suggested above at once and communicated to the Governor, or that it should be submitted to the Governor as a suggestion for his consideration ~~that the~~ request for further information ^{with a} as to how much of the communal labour should be regarded as falling within the scope of exemption (e), interpreted as indicated above.

My personal view is that a decision could well be taken without asking for further information. I think that in view of the Joint Committee's recommendation the Secretary of State could hardly do less than ask for this ^{restriction} of the ~~substance~~ of communal labour.



6. The changes necessary to implement this decision.

(98)

In the first place it would seem desirable (as a piece of window dressing if nothing else) that a Force) Labour (Abolition) Ordinance should be passed at an early date. I attach an outline of a possible draft ordinance. In the second place, (assuming that the suggestion made above is accepted), it would seem desirable that there should be definite provision in the Native Authority Ordinance for consultation with the Native Authorities as laid down in the Forced Labour Convention, before recourse is had to communal labour. Considerable modification of the Native Authority Ordinance, especially of such sections as section 8, will, however, no doubt be necessary in order to give effect to the recommendations of the Joint Committee regarding the devolution of greater powers to native authorities, and it would hardly seem necessary for this particular point to be dealt with in advance of the general revision.

Advantage of ^{the} general revision would also be taken to repeal other sub-sections of section 8 which would be ^{repealed} otiose by the proposed Forced Labour (Abolition) Ordinance.



In the meanwhile it would be desirable that a non-Confidential circular should be issued to all Administrative Officers explaining that the abolition of all communal labour at the earliest possible date is the definite aim of Government; that while immediate abolition is not considered practicable recourse to communal labour should be reduced to the barest.

of the kind indicated

barest minimum; that it may only be employed for the purposes [specified] in exemption (e); that a very strict interpretation is to be placed upon this exemption; and that it should be made clear to all natives that they or their direct representatives have the right to be consulted in regard to the need for such services.

It would be desirable that the draft of the Forced Labour (Abolition) Bill and the proposed circular should be submitted to the Secretary of State for approval.

7. There is one other point which has not been referred to in this minute. It is sometimes argued that communal labour has in the past been used in Native Reserves for purposes which in non-native areas are regularly carried out with moneys provided out of central revenue. There is no doubt truth in this criticism. The subject is, however, dealt with in connection with a separate despatch on 17066/31.

J. G. Garton

14-12-31

OUTLINE OF A PROPOSED BILL.

An Ordinance to provide for the abolition of Forced Labour ~~and~~ for the regulation of minor communal services.

Short Title.

1. This Ordinance may be cited as "The Forced Labour" (Abolition) Ordinance 1932."

Definition.

2. For the purposes of this Ordinance "Forced Labour" means all work or service which is exacted from any person under the menace of any penalty - and for which the said person has not offered himself voluntarily, with the following exceptions:-

(a) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(b) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(c) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic, or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(d)

(d) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community; provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services; provided further that such services shall not include the construction of roads or bridges for wheeled traffic nor the maintenance of metalled roads.

Abolition of
Forged Labour.

3. Notwithstanding anything contained in any other Ordinance, as from the date of this Ordinance, no forced labour as defined in the previous Section shall be exacted, in the Colony or Protectorate of Kenya. Provided however that where no other means of transport is available recourse may be had to forced portorage.

(Here should follow provisions on the lines of Article 18 of the Forced Labour Convention, and provision for the keeping of statistics in regard to such labour).

Provided however that every effort shall be made to abolish this form of forced labour as soon as possible.

Penalties.

4. The penalty for any infringement of this Ordinance shall be.....

No. 1000
1.6.41
M.C.

9A
30

Note on the Origin of exemption (a) to Article 2
of the Forced Labour Convention.

It will be remembered that the discussions which ended in the drawing up of the Forced Labour Convention began with the publication by the International Labour Office of a "Grey Book" reviewing the whole subject. At the end of this Grey Book there appeared a draft Questionnaire which was to be discussed at the next session of the International Labour Conference and, if adopted, to be circulated for reply to the members of the Organization.

Question 12 of this draft Questionnaire was as follows:-

Copy to Gov. (10)

"Do you agree that minor services connected with village cleanliness, sanitation, the maintenance of paths and tracks, of watering places, latrines, and cemeteries in the immediate vicinity of the communities concerned, village night-watching, and the clearance of silt in small irrigation channels and streams of purely local interest, may be considered to be normal obligations incumbent upon the members of such communities and not constituting forced or compulsory labour within the sense of the definition given above?"

The Colonial Office Committee which considered this Questionnaire and the observations on it of Colonial Governments commented on this draft question as follows:-

"It is certainly desirable that all minor services should be excluded from a Convention, but the list of such services given in this question must not be regarded as exhaustive.

For



3

"For instance, we think that the maintenance of any road which exists solely for the benefit of the local native community should be a normal communal obligation, even though the road could not properly be classed as a path or track. We suggest therefore that the following words should be added after the words "purely local interest" -

"and any other services of a similar character the satisfactory performance of which is for the benefit of the local community"."

Considerable discussion took place regarding this question at the 1929 session of the Conference, and objection was taken to it by the Workers' Delegates. The question finally adopted to ~~which members had to~~ ~~reply~~, read as follows (the question was now No.5 not No.12):-

"Do you consider that village services of a kind which have been traditional and customary amongst the local inhabitants, and which are performed within the close proximity of the village by the people who live in it, may be considered to be normal ^{obligations} incumbent upon the members of the community and not constituting forced or compulsory labour within the sense of the definition given in Question 3 above?"

The answer sent by His Majesty's Government in the United Kingdom was as follows:-

"His Majesty's Government in the United Kingdom consider that minor communal services of a kind which have been traditional and customary among the local inhabitants, or which, though not traditional or customary, are imposed with the general approval of the village or tribal community by its own authorised representatives

"representatives for the purpose of meeting new communal needs arising as the result of social and economic progress, should be considered to be outside the scope of the Convention, provided that they do not necessitate the workers sleeping away from their homes."

The reasons for the variations proposed were

- (1) that "minor communal services" was a slightly ^{more elastic} ~~rigid~~ term than "village services" ~~in some parts of the Empire the natives do not live in villages.~~
- (2) that it was desirable to make provision for new communal needs (e.g. of a sanitary nature) arising from social and economic progress.

In commenting on these proposals the International Labour Office wrote as follows:-

"In examining these proposals, it is necessary to bear in mind the nature of the village services which the question was intended to cover. These were described in some detail in the original text of the question submitted to the 1929 Conference and included: cleanliness, sanitation, the maintenance of paths and tracks, watering places, latrines and cemeteries in the immediate vicinity of the village, night-watching, clearance of small irrigation canals and local streams. This enumeration was apparently omitted in the final text of the Questionnaire with the object of limiting the works or services here mentioned to those which are traditional and customary among the peoples concerned and excluding new impositions on the part of the authorities, which, it was suggested, should be included in the kinds of forced labour elsewhere treated in the Questionnaire" (Report of the Committee on Forced Labour)



*Possibly last of
1932 Conference
for the service
force*

To extend the exception to cover works and services which, though not traditional and customary, meet new communal needs arising as the result of social and economic progress, would therefore be to go considerably beyond the intentions of the 1929 Conference.

"It appears also to the Office that there would be a real danger, if the British Government's proposal were accepted in the terms proposed, that the effect would be to exclude most forced or compulsory labour for local purposes from the operation of the Convention. The words "new communal needs arising as the result of social and economic progress" are very wide. Taken together with the possibility of employing workers within any radius which does not necessitate their sleeping away from their homes, these works would cover almost any kind of local labour, including even road construction and maintenance. The safeguard proposed in the British Government's reply, that the labour should be imposed not by any command of a chief or public officer but with the general approval of the village or tribal community, can hardly be regarded as adequate in the circumstances of native life. It is generally known that the wish of a chief or a public officer is equivalent to a command. Moreover, in the inevitable absence of constant and vigilant supervision on the part of the European authority, the incidence of the labour falls most heavily on the weaker members of the community, including women and children.

In

"In so far as the works and services required by new communal needs are of the kind which have been traditional and customary (e.g. connected with sanitation), they appear to the Office, to be covered by the form of words in the Questionnaire. Within the limits of the kind of labour contemplated in the question, therefore, it does not seem necessary to make any amendment in order to secure to that extent the elasticity desired by the British Government."

The draft of the Convention ^(prepared in the I.L.O. as a basis for discussion at the 1930 Session of the Conference) therefore proposed to exempt the following (Article 4) :-

(a) "minor village services of a kind which, being traditional and customary amongst the members of any community, and being performed by the members of the community in the direct interest of the said community, are therefore a part of the normal civic obligations incumbent upon the members of the community."

^{It will be seen that the ~~draft~~ ^{draft} differed from the ~~final form~~ ^{draft} in two particulars. These are explained in the Report of the Committee of the ~~1930~~ ¹⁹³⁰ Session of the Conference:-}

"This clause was amended by the deletion, at the instance of the Workers' Group, of the words, "being traditional and customary amongst the members of any community", and the insertion at the end of the words "provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services" (i.e. minor communal services). This important amendment removes the idea of tradition and custom as a criterion of legitimacy of such communal services, and substitutes



"the idea of the consent of the members of the community expressed directly or through their own representatives. An amendment by the Workers' Group to fix the number of days to be devoted to minor communal services was withdrawn in view of the adoption of the amendment explained above."

The text in its final form is thus:-

"(a) minor communal services of a kind which being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

~~occurs. It therefore appears that:-~~

1. The criterion whether or not the services were traditional or customary was thus purposely discarded by the Conference.
2. The "minor communal services" were regarded by the Conference as practically identical with "minor village services" performed by the members of the village in the direct interest of the village.
3. The kinds of services which the International Labour Office intended that the exemption should cover were:- cleanliness and sanitation, the maintenance of paths and tracks, watering places, latrines and cemeteries in the immediate vicinity of the village, night-watching, the clearance of small irrigation canals and local streams.
4. It was always intended to exempt only labour

No limit time, but it doesn't matter in the context what the office intended.

AVO



labour in close proximity of the home.

5. The Colonial Office Committee at an early stage (May 1929) desired that "the maintenance of any road which exists solely for the benefit of the local native community" should be exempted "even though the road could not properly be classed as a path or track". There are no later references to maintenance of roads, but subsequent events had the result of narrowing rather than widening the scope of the exemptions. The exemption ^{in its final form} may perhaps be regarded as covering the maintenance of minor non-metalled roads, existing solely for the benefit of the local community doing the work, but it clearly does not cover the construction of roads or bridges, nor was it ever intended that it should.

6. The members of the community or their direct representatives must have the right to be consulted in regard to the need for such services.

P.T.O



To sum up:

1. While, in deference mainly to the wishes of His Majesty's Government, the term "communal services" was substituted for "village services", it was generally understood that the scope of the two terms was to be similar; e.g. in territories where the normal unit of community life is a village, the meaning of the terms would be practically identical.

2. The criterion whether or not the services were traditional or customary was purposely discarded by the Conference in favour of the criterion of the consent of the members of the community concerned.

3. The object of the authors of this amendment (though not of His Majesty's Government by whom the proposal was originally made) was undoubtedly to enable native communities (e.g. the inhabitants of a village) to escape traditional obligations which were distasteful to them, rather than to authorise the exaction of new forms of compulsory labour, even with the consent of the "direct representatives" of the communities concerned.

4. Nevertheless the form of the Article as finally adopted clearly authorises a reasonable latitude in considering whether a particular service, even though not traditional, can be regarded as covered by the exemption.

5. On the other hand, the criterion that the "minor communal services" were to be in the direct interest of the community concerned, was not called in question at any stage of the discussion. Moreover it was always understood that the services to be exempted were of the kind which are performed in close proximity to the home.

38

6. The Colonial Office Committee at an early stage (May 1929) desired that "the maintenance of any road which exists solely for the benefit of the local native community" should be exempted "even though the road could not properly be classed as a path or track". There are no later references to maintenance of roads, but subsequent events had the result of narrowing rather than widening the scope of the exemption. The exemption in its final form may perhaps be regarded as covering the maintenance of minor non-metalled roads, existing solely for the benefit of the local community doing the work, but it clearly does not cover the construction of roads or bridges, nor was it ever intended that it should.

39
9



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 107

CONFIDENTIAL.

RECEIVED
24 AUG 1931
COL. OFFICE

22-
4 August, 1931.

My Lord,

No 6

I have the honour to acknowledge the receipt of Your Lordship's despatch No.415 of the 17th June transmitting a memorandum on Forced Labour in Kenya from the London Group on Native Affairs and asking me for a brief report upon the representations made therein together with my observations on the detailed recommendations submitted.

No. 8
Amund (10)

2. I have recently addressed to Your Lordship a despatch, ^{Confidential} No.105 of the 23rd July, on the general subject of forced labour in Kenya with particular reference to the "Convention". In this despatch, therefore, I propose to confine myself to specific points in the London Group's memorandum.

3. On the first page of that memorandum is a statement of the purposes for which as the law now stands in Kenya compulsory native labour may be called upon. This statement is approximately true but calls for certain qualifications, viz.-

- (a) -

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON.

(a) work on Railway construction and other public works can only be requisitioned with the previous sanction of the Secretary of State. Since 1925 no such labour has in fact been requisitioned nor has sanction for such labour been applied for, and this particular provision may be regarded virtually as a dead letter.

*2/10/29
1/10
H.M. Wilson*

(b) Compulsory labour for making and up-keep of roads is limited by section 8 (h) of the Native Authority Ordinance, Chapter 129 of the Laws of Kenya, to such roads as are for the benefit of the community to which the labourers belong. In practice such labour is used for the maintenance of local tracks which are subsidiary to the main road system and are definitely in the direct interests of the natives who are called upon to construct and maintain them. The Colony's main roads are constructed and maintained by paid voluntary labour. Compulsory labour on these local tracks is further limited to 6 days in every quarter.

(c) Labour may be called out in cases of emergency calling for urgent repairs or for preventing loss of life or damage to property. It is not limited to cases of national emergency.

4. While I am prepared to agree that the suggestion that any or all of these forms of forced labour are definitely sanctioned by native custom cannot be sustained, I am not prepared to subscribe for a moment to the suggestion that they are "applied oppressively and in such a manner as to foster grave unrest and distrust".

Further I would point out that there is no suggestion in the law that compulsory labour is sanctioned by native custom, nor is there, in my view, any reason to rely on any such suggestion in order to justify the policy of having recourse to compulsory labour. The guiding principle is that compulsory labour should only be resorted to in the interests of the community to which the labourers belong or occasionally and at the demands of necessity in the interests of Government.

5. In our endeavours to develop native societies from savagery to civilisation it is not always in their best interests to venerate native custom as something inviolably sacred. Native custom sees nothing wrong whatever in compulsory labour for women and children and under that custom, before the construction of roads and bridges, native women and children were compelled to spend a great part of their lives carrying to market loads which the average man would lift with difficulty, if at all. Compulsory labour for able-bodied men with a maximum of 2 days a month has introduced a custom which seems to me to be a better one, that is to say, the custom of transporting produce by wheeled vehicles.

6. While, therefore, it may be argued with truth that this form of compulsory labour has no definite sanction in Native custom it is equally true that it is not repugnant to Native custom. As is conceded in the Memorandum the construction of light bridges was formerly a customary obligation. The construction of more permanent bridges with the necessary serviceable roads is surely a not unreasonable development.

7. The transport of Administrative Officers and others is of course an innovation. Before the advent of the British administration Native custom ordained.

Government by witchcraft and raiding. Native communities have certainly been the gainers by the innovation. It is admitted by everyone that in these days human portorage is an anachronism and must be superseded by wheeled transport at the earliest possible moment.

No. 8

In the despatch, to which I referred in paragraph 2, I have explained that the officers of the Administration are fully alive to this but that there are parts of the country in which roads capable of carrying wheeled traffic have not yet been constructed and that consequently human portorage cannot at the present be entirely eliminated. I have also explained that the amount of human portorage is rapidly decreasing.

8. I am not prepared to admit that there has been prolonged grave abuse of powers under the Native Authority Ordinance. In particular I cannot admit that work has been done greatly in excess of anything which could be regarded as "for the benefit of the community to which such able-bodied men belong". The Memorandum cites as instances of such excesses "motor roads and strong timber bridges for European traffic". This statement, if seriously made, reveals misunderstanding of the actual facts. Such "motor roads and strong timber bridges" as have been built by unpaid communal labour have been built for the benefit of the communities which supply the labour. They were built not for European traffic but for any kind of traffic that would convey the persons or the produce of the local native inhabitants, and no other administrative development has been productive of such far-reaching benefit to the Native communities. Famines are no longer the deadly tragedies that they were, for food can now be transported, and is regularly transported, in times

of shortage to the population that needs it over these very roads and bridges, which the compilers of the Memorandum apparently consider to be of no benefit to the communities. Your Lordship will recall how the absence of proper communications in the Meru District greatly aggravated famine conditions in that area. Over these same roads and bridges can now be sent doctors, dispensers and medicines to any locality from which an epidemic may be reported, while formerly remote and isolated villages are now readily accessible to missionaries, administrators, teachers and everyone concerned with the advancement of native welfare. In addition to the above considerations the economic value of these roads and bridges would seem to be so obvious as to require no emphasis.

9. I am prepared to admit that the limit of 6 days in any quarter has on occasions probably been exceeded. Both the headmen who give orders and the natives who obey them are generally illiterate and do not regularly keep count of the days on which work is performed. Moreover a great deal of the work is performed not by regular full days' work but at odd times to suit the convenience of the worker, and it is not impossible that in the aggregate some natives do more than six days a quarter.

10. I am also prepared to admit that it may on occasions happen that natives who would wish to be fully engaged in some other occupation have been conscripted but a native's occupation is not commonly dictated by the pressing social or economic obligations to which a member of a European community is ordinarily subject. If he is prevented from working in his fields one day it normally does not make a great deal of difference to him if he does that work the next day. But as a matter of fact if the Ordinance is reasonably administered by a reasonable headman

the actual abuses should be very rare.

11. There seems to be a prevalent belief that a native headman must be a sort of petty tyrant, whose main object in life is to oppress the people over whom he is allowed to exercise authority. This belief has little, if any, foundation in fact. The headman is almost invariably a member of the community which he represents and is the best representative obtainable. He is ordinarily chosen by the people concerned, or at least he is appointed with their full approval. It is most unlikely that he is going out of his way wantonly to oppress his own kinsmen and neighbours. Some sort of headmanship is inherent in the customs of almost every tribe.

12. The employment of women on road work or bridge building has never been recognised by Government. It is true, however, that they sometimes voluntarily join their husbands and brothers, and it is difficult to prevent them doing this. As regards the suggestion that "women feel very heavily the burden of compulsory labour for it is upon them that much additional work falls when the men from the villages have been conscripted" I submit that the additional work thrown upon women by their husbands' absence for two days a month cannot be considerable.

13. The Roads in Native Reserves Ordinance has been in effect a dead letter since the promulgation of the Native Authority Ordinance. It is retained merely for the sake of the provisions contained therein for the upkeep of boundaries. It is never used for road construction and I have never before heard it suggested that it could be used to compel work for 6 days in every quarter in addition to the 6 days under the Native Authority Ordinance. It certainly never is so used.

14. The conception of the Collective Punishment Law evinced in the Memorandum is quite at variance with the facts. The essence of that Law is that proved communal guilt is visited by a communal penalty and the law contains the most elaborate safeguards to ensure that the community has ample opportunity of proving its innocence, if it can, before it is sentenced.

+ 15. There is little if any truth in the criticism that Africans experience difficulty in understanding the laws. Their rights and obligations are assiduously explained to them by their administrative officers and cases in which natives have been punished for offences committed in ignorance of the law must be so few as to be negligible if indeed such cases exist at all. Proposals to translate laws and ordinances into Swahili have been discussed and debated on many occasions and have always been negated, partly because the vernacular and not Swahili would be the proper medium and partly because any adequate translation into pure Swahili would be so technical and esoteric as to be incomprehensible to the common people to whom a sort of pidgin Swahili is the lingua franca.

+ 16. My observations on the specific recommendations of the Memorandum are as follows:-

(1) As I have already assured Your Lordship in the despatch above referred to I quite agree that all forms of forced labour as defined by the "Convention" should be suppressed as soon as possible.

(2) I entirely agree with this recommendation with the reservation that natives, not being always the best judges of their own interests, cannot always be expected to recognise the communal value of the work performed.

(3) The system of Local Native Councils is being greatly extended and developed. My only fear is that the extension and development may be proceeding at a rate more rapid than is commensurate with their advance in administrative capacity and comprehension.

(4) For reasons given above I cannot agree that there is anything to be gained by translating the laws into Swahili, nor can I agree that any definition of communal service is required other than that appearing in the Native Authority Ordinance.

(5) I agree that in no circumstances should women or children be conscripted: they never are in Kenya. I agree also that compelled Native labour should not be invoked at a time or in a manner which dislocates normal life. This is a matter of able and sympathetic administration which is the rule in Kenya.

(6) Records of communal labour are impracticable. Such labour is commonly performed at odd times to suit the convenience of the labourers.

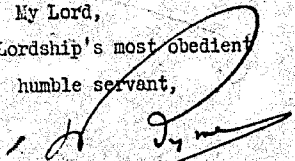
I have dealt with this point fully in my previous despatch. Records of paid labour for transport are regularly kept and are published in the Native Affairs Department annual report.

(7) I cannot agree to the proposal for a separate Native budget. I have dealt with this proposal elsewhere.

I have the honour to be,

My Lord,

Your Lordship's most obedient
humble servant,



BRIGADIER GENERAL.

GOVERNOR.



847

KENYA.

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 103

CONFIDENTIAL.

23rd. July, 1931.

RECEIVED
15 AUG 1931
COL. OFFICE

My Lord,

NO. 3

I have the honour to refer to Your Lordship's confidential despatch of the 16th May on the subject of forced labour. I can unreservedly assure Your Lordship that my Government will do everything in its power to suppress the use of forced or compulsory labour as defined by Article 2 in all its forms within the shortest possible period.

Amend (10)

2. I cannot, however, regard it as probable that one form of forced labour, that is to say compulsory labour for transport purposes, will have entirely disappeared in Kenya within the next five years. It is true that the Colony's road system is being very rapidly developed in all directions and human portorage is in consequence decreasing, but there are some areas in the Colony which are not likely to be developed to the extent of permitting the entire elimination of human portorage within that period. That the policy of abandoning human portorage at the first possible moment is fully endorsed by officers of the Administration is clearly shown by the following Resolution which was unanimously

- passed -

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W.

passed by the Provincial Commissioners at their last meeting,

viz. "That in no circumstances should head portage be used except where no other transport is possible."

5. With regard to the 6 days a quarter unpaid compulsory labour which may be exacted under section 8 (h) of the Native Authority Ordinance, Chapter 129, I agree that not even the greatest care on the part of the Administration can prevent abuses occurring from time to time. Such abuses, however, are seldom of a serious nature, and when all is said that can be said against the existence of the system I have no hesitation whatever in saying that it has been productive and still is productive of the greatest benefit to Native communities. In particular, it has resulted in the construction of a network of local roads, furnished with rough and ready bridges through native reserves all over the Colony. These roads and bridges have been constructed with infinitesimal expense and a minimum of inconvenience by the cooperation of the native populations and their administrative officers assisted as occasion demands and as funds permit by officers of the Public Works Department. Along these roads may now be seen vehicles of all descriptions from heavy motor lorries to two wheeled ox-carts transporting to market, trade centre or township native grown produce which before their construction was carried on the bent backs of women and children toiling in long lines of single file up and down the steep hill sides. Although the labour by which these works have been constructed and maintained is often spoken of as forced labour there is in fact very little force about it: the majority of the workers frequently regard it as at least no more of a hardship than a village hay-making in England. A great deal has on occasions been made of the fact that women and children sometimes take part in this communal work.

3.

There is of course no legal obligation on women and children to do this, and this is known by everyone concerned in all the Reserves. It is, however, sometimes difficult to stop them. They wish to join their husbands and fathers and to help according to their capacity and there is seldom any real reason why they should not do so, just as women and children assist in hay-making and harvesting operations in England.

4. It is often argued that all such work should be paid for. Quite apart from the practical difficulties I am not prepared to admit that this argument is right in principle. Among primitive native societies I think that it is probably good for the members that such minor communal responsibilities should exist and should be generally recognised. A day in the life of a native in his village is not like the day of a working man in England. A great deal of his time is spent in sheer idleness. He has no business or profession to make demands on his activities and though at certain seasons he does far more work in his fields than his detractors commonly believe still for the greater part of the year the greater part of the agricultural work of a village is performed by the women and children. Before the era of British administration the social obligations of the able-bodied male consisted mainly of defending his community and raiding others, and of keeping himself active and fit for these duties. He has now been relieved of these duties and is apt to find time heavy on his hands, and occupies himself largely in going to drinking parties, dances and markets. It does him no harm to spend an

4.

average of two such days a month on work which is beneficial to himself and to his people.

5. The practical difficulties of paying for this labour in the past have been insuperable and are probably so to-day. In the early days there certainly was not enough coin in circulation in the country to pay all the labourers engaged. Such payment would have meant additional taxation and the people would have been hard put to it to find the necessary money. The headmen who give the orders are still for the most part illiterate and few of them would be able to say what was owing to any particular individual.

It is true that native clerks are obtainable now, some of whom are efficient and fairly reliable, but this was not so formerly, and I should be reluctant to leave the accounting for such labour entirely in the hands of native clerks.

But the real difficulty is that, although different systems obtain in different districts, it is probably true that the greater part of this communal work is done at odd times at the convenience of the workers themselves, very often even without the knowledge of the local headman. It may happen that it will suit one man to do a few minutes weeding on a road in the morning on his way to work in his own fields and a few minutes in the evening on his way back. Several groups may agree to join together and work for the morning and go off to play football in the afternoon.

It is obviously impossible to estimate the value of such work in term of wages. If all such work must be paid for it will be necessary to stop this method of doing it and to have recourse to stricter methods of compulsion by insisting that the men shall do the work on specified days, and shall do a whole day's work when clerks can be present to count them and enter up the amounts due to them. I feel sure that Your Lordship will agree that the former method is preferable.

6. In addition to the general provision under Section 8 (h), there is also provision under section 8 (k) for orders to prevent the spread of infectious disease whether of human beings or animals, and under sub-section (r) "the destruction of locusts in any stage of development", was approved in 1928 as a purpose for which orders may be issued. Such purposes naturally demand labour. In the past two months almost the entire able-bodied populations in some locations of the districts of the Nyanza Province have been occupied together with Government officers, Missionaries and any others who could help in unceasing efforts to protect their magnificent crops from the present locust invasion. Their energy has been beyond praise and the results of their efforts have justified the expenditure of that energy. It would be lamentable if because there were no legal sanction for the calling out of this labour one or two idle or disaffected individuals were in a position to deride the rest of the population in its strenuous efforts to save the community. In short the compulsory provisions, in a well administered area at least, are wanted not for the majority but for a small minority.

7. In the light of what has been said above, Your Lordship will see that unless the system of communal labour is to be radically altered and to be made far more oppressive it will not be possible to keep statistics as is suggested in paragraph 6 of Your Lordship's despatch. Such labour is specifically exempt from the definition in Article 2 of the Convention and therefore statistics of such labour are not required by Article 22.

as full info
as possible
Art. 22

8. I do not see how it is possible to give any estimate of the cost of abolishing unpaid labour under section 8 (h) as Your Lordship desires. As I have endeavoured

to explain some men work 10 minutes a day, others for an hour or two and others for a whole day; frequently at times only known to themselves. An estimate therefore of the value of the labour employed on a basis of the current rate of wages is out of the question.

9. Your Lordship has drawn my attention to pages 156 - 157 of the Native Affairs Department annual report for 1929, in which a total of 108,115 men days of forced labour is shown, and Your Lordship has asked for an explanation of the apparent increase of 21,526 men days over the figure for 1928. Your Lordship is correct in supposing that this is paid labour called out under section 8 (m) and (n) of the Native Authority Ordinance. I have caused an exhaustive enquiry to be made into these figures and I find that the figure 108,115 is entirely incorrect and that the correct figure is 64,657. The figure 108,115 includes in the first place a return from one district showing 1,205 men days on paid road work on voluntary contract, the return of which was by some mistake included in the compulsory labour returns, and also no less than 42,251 men days unpaid labour in two districts (Baringo and Teita) in connection with the locust campaign. The error is much regretted and is being corrected in the Native Affairs Department report for 1930.

10. The total of this paid compulsory labour for 1930 is 57,465 men days, nearly a 50% reduction on 1929. The totals for the last six years are as follows:-

1925	...	...	...	76,284.
1926	...	...	...	56,781.
1927	..	..	...	95,975.
1928	..	..	...	86,587.
1929	..	..	...	64,657.
1930	..	..	...	57,465.

From these Your Lordship will see that a real effort is being made to reduce compulsory human transport.

11. I have instructed the Chief Native Commissioner to add as an appendix to his report for 1950 the relative sub-sections of the Native Authority Ordinance, as Your Lordship has requested.

12. Your Lordship has referred to the imposition of an extra rate by the North Kavirondo Local Native Council to pay for all labour on native roads. A somewhat similar arrangement obtains in the Machakos district where provision is also made in the Local Native Council estimates for payment of road gangs for maintenance of local roads. Kiambu Local Native Council also had a similar arrangement but have abandoned it. After making the experiment they have come to the conclusion that the money voted is largely wasted and would be better spent on buying materials for bridges and that there is no reason why the local roads should not be maintained as formerly by unpaid labour.

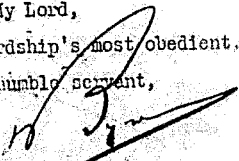
15. I have under consideration the relation between expenditure from central funds and expenditure from local funds on roads and other services in European and Native areas respectively and in another despatch I am reviewing the principles which govern such expenditure.

See note
no 7 on
17066/31

I have the honour to be,

My Lord,

Your Lordship's most obedient,
humble servant,



BRIGADIER GENERAL.

GOVERNOR.

O. O.

Mr. E. S. [Signature]

Mr. Allen

Mr. Parkinson [Signature]

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

S/S

14th June 1911

Sir

I am sorry to ask the rest of your letter of the 30th May ~~reference~~ in which you forwarded a memo^m on "forced labour in Kenya".

2. The S/S has read the full statement which the Group have been good enough to prepare, but ~~is~~ while he appreciates the suggestion, he thinks it unnecessary that the statement should be further elucidated by a deputation, especially on the matters dealt with in the recommendations ~~are~~ ^{are} in fact already being ~~the~~ ^{his} ~~S/S~~ attention.

3. Copies of your letter & the memorandum are being forwarded to the Govt. of Kenya, & the Group.

DRAFTS

The Secretary

The London Group on Native African Affairs

Copy to Sec. 4/5 - 17/6.

may not assured that their
representations will receive
most careful conon.

It is noted that:

the main points in the memo^s are

~~have~~ ~~been~~ being intimated

to the Press

(Signed) A. G. O. PARKINSON

THE LONDON GROUP ON AFRICAN NATIVE AFFAIRS,

Founded on the principles and policies of the South African Joint Councils of European and African Peoples
to assist the improvement of
Race Relationship in Africa

ED
2 JUN 1931
COL. OFFICE

55 Extra 116
H

TELEGRAMS & TELEPHONE:
VICTORIA (LONDON) 0794

SECRETARY - F. S. LIVIE-NOBLE

R

5c

83, ST. GEORGE'S ROAD,
WESTMINSTER,
LONDON, S.W.1.

May 30th, 1931

The Right Honorable The Lord Passfield, P.C.
H.M. Secretary of State for the Colonies,
Whitehall, S.W.1

My Lord;

I am instructed by the London Group on African Native Affairs to convey to Your Lordship the enclosed memorandum on "Forced Labour in Kenya", and to express the hope that full consideration might be given thereto. My Committee feels very strongly upon this matter and is particularly concerned at the many misrepresentations which have been made. I am also directed to state that, should you so desire, my Committee will place a deputation at your disposal at any time in order to give further elucidation to the points contained in our memorandum.

In view of the fact that wide publicity has already been given to mis-statements on this subject, I have been instructed to intimate to the Press the main points upon which we have written you; but I sincerely hope that this step -- upon which our hands have been somewhat forced -- will neither be interpreted as discourtesy, nor prejudice our representations.

I have the honour to be,

My Lord,

Your obedient servant,

F. S. Livie-Noble
Secretary

Copy 9 sent to Gov. 4/11/31
Ans. 17 JUN 1931

FOR PRIVATE INFORMATION

List of MEMBERS

Hubert Pest, Esq.	Alfred F. Fox, Esq.
Rt. Hon. Lord Sanderson.	The Lady Sanderson.
Professor Malinowski.	Miss Gibson (International Missionary Council)
O. Roden Buxton Esq., M.P.	Miss Winifred Holtby.
Mrs J. McGregor Ross.	J. McGregor Ross Esq.
A. Orzech Jones Esq.	Professor Manning (Lond. Sch. Economics)
Prof. J. MacMurray.	Percy A. Moltano Esq.
Malcolm MacDonald Esq., M.P.	XXXXXXXXXXXXXXXXXXXX
Revd. Edwin W Smith.	O. Victor Murray Esq.
H. S. L. Polak Esq.	Leonard Woolf Esq.
Dr Norman Leys.	Miss A. Ruth Fry.
Dr Alice Warner.	Miss M. Werner.
Mrs Pethwick Lawrence.	Miss M. Wrong.
James Oable Esq.,	Miss E. Waring.
Revd W. H. C. Malton.	Miss D. Wobdman. (U.D.C.)
J. F. Horrabin Esq., M.P.	Maurice Rowntree Esq.
Mrs Clifton Roberts.	Miss Johnstone Scott.
Mrs Murray Parker.	John Pletcher Esq. (Society of Friends)
Warren Scott Esq. (Secretary for non-European work, S.C.M.)	
Dr A. Harold Moody (Chairman, League of Coloured People)	
Fredk S. Livie-Noble (Secretary).	

Together with a number of Associate Members.

THE LONDON GROUP ON AFRICAN NATIVE AFFAIRS respectfully begs to draw attention to the system of forced Native labour as applied in Kenya, and to deny the oft-repeated justification that such forced labour is merely a continuance of communal labour based upon tribal customs and tribal sanctions. It is the opinion of this Group that forced labour as applied in Kenya is entirely alien to tribal customs and practices, and that it is applied oppressively and in such a manner as to foster grave unrest and distrust.

As the system stands at present in Kenya, compulsory Native labour can be called upon for:-

- (1) work on railway construction and other large public utility undertakings,
- (2) the transportation of District Officers and others in the Native Reserves,
- (3) the making and upkeep of roads, and
- (4) in certain cases of national emergency.

The suggestion that any or all of these forms of forced labour are sanctioned by Native Custom is entirely untenable. Work on railways and other large undertakings was obviously not known to tribal systems; whilst the penalty of imprisonment for non-compliance is completely foreign to these tribes, by far the greatest number of whom knew no prison system at all.

The transport of administrative Officers and others is similarly an innovation. Such short journeys as a tribal Chief would take in olden days bear no resemblance to the safaris of Administrative Officers with their tents and other impedimenta of Western civilisation. Also foreign to tribal custom is the construction of the very numerous rest-camps which have to be built for the administrative officers: for a Chief, visiting away from his home, would naturally find accommodation in the village of his clan friends.

Forced labour on the roads is the type of compulsion most frequently excused by appeal to old Native Custom; and yet it is patently a modern requirement without precedent in tribal life. Prior to our administration roads were conspicuous by their absence. It was of the essence of tribal life that there should be no easy path by which one tribe could attack another. Such communications therefore as existed (except in a small area in the kingdom of Buganda) were narrow foot-paths twelve to eighteen inches wide. The plea that Forced Labour on the roads or in extensive bush-clearing is in accordance with Native custom of tributary service to the chief is entirely at variance with fact; historically there is no relation between the two systems, and, in the mind of the Natives, present day forced labour assumes no resemblance to anything in his traditions.

The kind of labour contributed under the tribal systems was almost entirely restricted to the clearance of water-courses and the construction of light bridges over streams. Further, it was on a scale which made no large demands on the community, and in no way dislocated the normal life and activities of the clan. It was done at times most convenient to the villagers, and in a spirit of communal goodwill. There was no system of oppressive fines or tyrannous imprisonment to enforce the orders of their chosen Elders, and no armed police to enforce the strange demands of alien authorities. Every man knew what was the communal value of the labour he was required to give to the tribe.

It was in accordance with the above conditions of tribal labour that the provisions of section 8 (h) of the Native Authority Ordinance were framed. That Ordinance states that able-bodied males may be required "to work in the making or maintaining of any watercourse or other work constructed or about to be constructed"

able-bodied men belong; provided that no person shall be required to work as aforesaid for more than six days in any quarter".

A Senior Commissioner or District Commissioner may order a Headman (also a salaried government Native Official) to issue and enforce orders; and in the event of failure to comply a punishable offence for the Headman - he may issue the orders himself. The penalty for non-compliance is a fine of 150/- and (since 1928) two months' rigorous imprisonment.

There has been prolonged grave abuse of powers under this section

(a) Work has been done greatly in excess of anything which could be regarded as "for the benefit of the community to which such able-bodied (Native) men belong"; e.g. motor-roads and strong timber bridges for European traffic.

(b) The limit of "six days in any quarter" has been exceeded.

(c) Africans fully engaged in other occupations have been conscripted.

(d) Women have been employed regardless of the insistence of the Law upon "able-bodied males". It should also be borne in mind that, although they are specifically exempted from forced labour either paid or unpaid, women feel very heavily the burden of compulsory labour for it is upon them that much additional work falls when the men from the villages have been conscripted.

*not in order
out of order
amend*

Yet a further demand for compulsory labour can be made under the Roads in Native Reserves Ordinance (Cap 114, "Laws of Kenya", 1926) which provides that Natives can be conscripted for another six days in every quarter for work on roads in their own reserves. The penalty for non-compliance under this Ordinance is a fine of 30/- or a month's imprisonment.

The most objectionable and reprehensible factors in the forced unpaid labour conscripted under these Ordinances are that labourers are frequently not fed and not provided with blankets. Often no tools are supplied and no notice is given to the men thus called out. They frequently have to walk many miles to get food. This tyrannical application of the provisions of the Ordinances cited is substantiated by many reliable witnesses.

The penalties inflicted for non-compliance with demands for forced labour are extremely oppressive. In 1928 the Governor of Kenya (Sir Edward Grigg) complained that a fine of 150/- was ineffective as a deterrent; and he asked to be allowed to impose "peremptory imprisonment" in addition to the fine, for disobedience to the lawful orders of an Administrative Officer or Headman. Sanction for this was given in the Native Authority Amendment Ordinance 1928, which made offenders liable to a term of two months' simple or rigorous imprisonment in addition to a fine of 150/- - this sum representing an unskilled worker's wages for one-and-a-quarter years. The same Amendment proceeded to reinvest authority to compel unpaid labour in the hands of Assistant District Officers, thus increasing four-fold the number of those who could make these heavy demands upon the Native community. In a manner wholly ultra vires certain other officers not of the Administrative staff (e.g. medical, etc.) repeatedly make similar demands for unpaid labour.

In the present deplorable state of legislation in Kenya, the worst that might happen to Native men would be that they had to work for 48 days a year unpaid and unfed, work for 60 days a year paid and fed, pay both direct and indirect taxation which are alike heavy, & (under Collective Punishment Law) pay heavy fines for misdemeanours committed by some other member of the tribe without their knowledge and which they had no power to prevent.

It is further urged that insufficient attention is paid

[Handwritten signature]

to the real difficulty which Africans have in understanding the Laws, Ordinances and Regulations which affect them, and that no adequate steps are taken (such, for example, as the publication and dissemination of laws and regulations in Kiswahili) to make them aware of the obligations put upon them by an apparently arbitrary legal system against which they have no protection.

THE LONDON GROUP ON AFRICAN NATIVE AFFAIRS is strongly of opinion that these conditions would not be tolerated by His Majesty's Secretary of State for the Colonies if he were aware of the burden thus thrown upon African members of the Empire, and of the oppressive way in which these provisions are applied.

WE THEREFORE HUMBLY RECOMMEND:-

- (1) That the existing Laws, Regulations and Ordinances governing forced or compulsory labour in Kenya be revised and amended in accordance with the spirit of Article 1 of the Draft Convention concerning Forced Labour, adopted by the xivth Session of the International Labour Conference and now receiving wide ratification, so as to provide for the suppression of all forms of compulsory labour as soon as possible, and permitting recourse thereto only in the event of grave national calamities threatening life and subsistence;
- (2) That, until such complete suppression of forced labour is practicable the application of regulations governing this form of labour be strictly confined to work directly "for the benefit of the community" from which the workers are drawn, and that the communal value of such work be recognised by the workers thus conscripted. No compelled labour should ever be used for portage, the transport of Administrative Officers and others, when mechanical transport could be used.
- (3) That, in order to provide for the consultation of the Natives before labour for "communal benefits" is conscripted, the system of Local (Native) Councils be greatly extended and developed.
- (4) That the Laws, Regulations and Ordinances governing forced or compulsory labour, in force at the time, shall strictly define such terms as "minor services", "communal responsibilities", "community" etc., and shall definitely state the authority upon which calls for conscripted labour may be made. All such regulations and Ordinances shall be published in Kiswahili, and steps taken to ensure that the workers affected understand their import.
- (5) That, except in the gravest national emergencies, compelled Native labour shall not be invoked at a time and in a manner which dislocates the normal life and work of the Native villages involved; and that in no circumstances shall women and children be conscripted.
- (6) That strict records be kept of the numbers of men employed on each form of forced labour in each Administrative District and a report thereon showing the urgency of the work and the locality from which the labour is drawn be made quarterly to the Governor and be subsequently published in the Native Affairs annual report.
- (7) That a separate Native Revenue Account be kept to which all direct Native Taxation shall be credited and from which work of public utility within the Reserves shall be paid; and that all forms of unpaid compulsory labour be abolished forthwith.

On Behalf of THE LONDON GROUP ON AFRICAN NATIVE AFFAIRS:

Signed: SANDERSON
F. A. Lewis-Noble (Secretary)

SanderSON
F. A. Lewis-Noble

C. O.

260

X 17097/31 Kenya

Mr. Eastwood 23/4

Mr. Allen 28/4

Mr. Parkinson 5/5/31

Mr. Vernon 6/5/31

X Sir C. Bottomley 6-5

Sir J. Shuckburgh

Sir G. Grindle

+ Permt. U.S. of S. 7/5/31

+ Parly. U.S. of S. 11-5-31

+ Secretary of State 11/5

Handwritten signature



DRAFT for conson.

Downing Street,

16 May, 1931.

KENYA.

CONFIDENTIAL.

Sir,

Gov.

I have the honour to address

- S. of S's tel.No. 298 of 28.11.30. ✓
- O.A.G.'s tel.No. 412 of 1.12.30. ✓
- S. of S's tel.No. 320 of 10.12.30. ✓
- O.A.G.'s tel.No. 433 of 11.12.30. ✓
- S of S. desp.No. 977 of 11.12.30. ✓
- S. of S's desp.No. 104 of 9.2.31. ✓

you regarding the continued existence of forced labour in Kenya. You will be aware from our conversations before you left this country and from the enclosure to my despatch M/3 of the 19th March, as well as from correspondence (such as that noted in the margin) which may have been brought to your notice since your arrival that this is a subject to which I attach considerable importance and one which exercises not a little the minds of many in this country who take an interest in native

(See 16303/30 & 16301/30 for above read)

native affairs.

2. His Majesty's Government in the United Kingdom hope shortly to be in a position to ratify without modification the Convention adopted at the 14th Session of the International Labour Conference^{held} at Geneva in June 1930 (copies of the text of the Convention were enclosed in my confidential circular despatch of the 13th August, 1930.) Under the terms of this Convention each State ratifying it undertakes to suppress the use of forced or compulsory labour, as defined by Article 2, in all its forms within the shortest possible period. After five years, the Governing Body of the International Labour Office is to consider whether the complete suppression of forced labour is possible, and I have already, in my confidential circular despatch of the 13th August, 1930, expressed the hope that Colonial Governments will be able to make such dispositions as will place His Majesty's Government in the United Kingdom in a position

at that date to enter into a definite obligation for the final abolition of all forms of forced labour covered by the Convention within a definite period. At the time when the Draft Convention was under consideration I felt that in the special circumstances existing in certain Colonial Dependencies it was impossible for me to agree at present to a precise term within which all forms of forced labour should be abolished, but it is the desire of His Majesty's Government in the United Kingdom, quite apart from any international obligations, that forced labour should disappear as soon as possible in all the Colonies etc. for which they are responsible.

3. I do not wish to be taken as implying that forced labour in Kenya leads to greater abuses than forced labour in other countries, as I am persuaded that

this

this is not the case. But you will, I am sure, agree that forced labour of any type is capable of abuse (especially when it is unpaid and when it is necessary to work through native headmen) and that not even the greatest care on the part of the Administration can prevent these abuses occurring from time to time. The mere existence of the system affords opportunities for serious misrepresentation, which, whatever the safeguards in actual working, are hard to correct. Moreover, the employment of forced labour on road work of a type which in European areas is paid for out of general revenue, gives rise to the allegation of unfair racial discrimination.

I have therefore to request that you will send me a report on the possibility of dispensing with all forced labour at an early date.

4. Much has already been done in Kenya in this direction, and, looking back over the

records

see No.6 on 16303/30.

records of the few years since the war, I am impressed by the progress which has been made; I consider that it reflects credit on all concerned. Forced labour has not now been called out for several years under Section 8 (o) of the Native Authority Ordinance for the construction and maintenance of public works; it has not been necessary to have recourse to it for the purposes of the Roads in Native Reserves Ordinance; and it is no longer employed as a form of collective punishment. Nevertheless much remains to be done before forced labour is abolished entirely.

5. Appendix C. to the Labour Section Report of the Native Affairs Department Report for 1929 (pages 136- shows a total of 108,113 men-days of forced labour. I take it that this is paid labour called out under Section 8 and

No.6.on 16303/30)

and (n) of the Native Authority Ordinance
in cases of emergency or to provide paid
porterage for Government servants on
tour and for the transport of urgent
Government stores. This figure of
108,113 men-days is actually an increase
of 21,526 men-days on the comparable
figure for 1928 and is considerably in
excess of the figures for the three previous
years. I am not clear why there should
have been this increase and I shall be
glad if you will deal with the point in your
report.

6. I believe also that very considerable
recourse is still had to forced labour called
out under Section 8 (h) of the Native Authority
Ordinance, that is, labour by adult able-bodied
males employed for periods up to six days a quarter
on work of benefit to the natives. I have no
precise information regarding the use made of
this labour, and Mr. Moore informed me in his

telegram

telegram No. 412 of the 1st December
1930, that statistics regarding its
use are not kept. I think it
desirable that such statistics should
be kept in future: indeed, for the
purpose of the annual reports required
under Article 22 of the International
Convention it would in any case be
necessary to have such information as
regards any part of the labour which
comes within the definition of "forced
or compulsory labour" in Article 2.
But it is unnecessary for my present
purpose to consider how far the labour
exacted under Section 8 (h) is covered
by exemption (e) to the definition in
Article 2 of the Convention, and it will
suffice, at any rate for the present,
if future issues of the Native Affairs

Department

Department Report contain figures showing the extent to which forced labour has been called out under section 8 (h) as well as under section 8 (m) and (n) of the Native Authority Ordinance, and it should be made clear how much of such labour has been used without payment. It would be desirable that the subsections should themselves be printed in the appendix. I shall be glad if arrangements can be made for this to be done.

7. I am aware that the chief obstacle in the way of abolishing unpaid labour under Section 8 (h) is finance: and were it not for this practical difficulty, I should have wished to press for its immediate abolition. But I think that the financial aspect needs closer examination, and as a first step I should be glad to have an estimate of the cost based upon the data obtainable in the Colony. If the cost were likely to be anything in the neighbourhood of 250,000, as I have

Copy herewith.

64
have heard suggested, it would evidently be very difficult for your Government to find the necessary sum in a period of financial stringency like the present; but I reserve further consideration pending the receipt of the estimate. The suggestion has been made in some quarters that this labour should be replaced by voluntary labour paid from the proceeds of local rates. I was interested in this connection to read in paragraph 15 (j) of Chapter III of the Native Affairs Department Report for 1929 (p.33) that the North Kavirondo Local Native Council have imposed an extra rate of Sh.1/- to pay for all labour on native roads and thus avoid the necessity for forced labour altogether. While I regard such an arrangement as preferable to the continuance of compulsory unpaid labour, there

there is, as I have already indicated, considerable objection to the levying of special rates by Local Native Councils for this purpose so long as similar expenditure on roads in European areas falls on general revenue.

The question is clearly bound up with that of the relations between expenditure from central funds and expenditure from local funds on roads in European and native areas respectively. I have already in paragraph 3 (a) of my despatch No.204 (Reserved) of the 19th March asked you to review the principles which govern the relationship between expenditure from central funds and expenditure from local native funds, generally, and have also referred to the particular question of expenditure on roads in paragraph 3 (c) of the same despatch as well as in my despatch No. 965 of the 8th December, 1930.

I have etc.,

(Signed) PASSFIELD

(No.4 on 17066/31 K.)

(No.7 on 16262/30)

Manchester 7/3/30

FORCED LABOUR IN KENYA
The Editor of the Manchester Guardian.
Sir—Mr. Joyce's letter, dated February 24, on the subject of forced labour in Kenya calls for comment. The Report of the Native Affairs Department, Kenya, 1929, just issued, the pages 124, 125, contains a Schedule of Summary of Labour ordered under the Native Authority Amendment Ordinance, 1929. For 1929 the number of men ordered to work for various public departments amounted to 11,437, and these men worked a total of 108,113 days. This does not include men called out for roads and other so-called communal purposes in the reserves. No records are kept of these. It is a very large number. The answer given in the Legislative Council, to which Mr. Joyce refers, does not, curiously enough, allude to the figures now available in the 1929 report. No doubt by this time Mr. Joyce has seen the editorial in the issue of the "East African Standard" of February 5. It is on forced labour. I quote:
The burden of forced labour is rarely equally distributed, and it is difficult, if not impossible, to prevent serious abuses when powers of selection are in the hands of petty native authorities. There is also created a sense of insecurity which may affect adversely the growth of confidence in the Administration. Corruption and bribery are encouraged in the desire to escape service. Forced labour is rarely economically used, and its incidence allows of unthinking interference in the home and economic life of the community.
Mr. Joyce corrects Dr. Leys and writes that "practically all the work in native fields is done by their womenfolk, and not by the men," as suggested. Mr. Joyce is wrong. In only a few tribes do the men leave practically all the work in the fields to the women. It is most definitely not so amongst the Kavirondo, the largest native reserves in Kenya. The most potent factor, since our rule in Kenya, which has increased the burden imposed upon the women, has been the demand for the labour of the men on the part of non-African employers. These men leave home to seek for the tax money in large numbers, and of course, this throws a very heavy burden on the women who remain behind to keep the home going.
Yours etc.
W. E. OWEN, Archdeacon of Kavirondo, Kenya Colony,
Sticks Green, Hildenborough,
Tonbridge, March 3.

FORCED LABOUR IN KENYA.

To the Editor of the Manchester Guardian.

Sir, - In view of the interest shown in the subject of forced labour in Kenya and with especial reference to Dr. Norman Ley's letter in your issue of the 16th, I enclose herewith a cutting from the "East African Standard" of January 31, giving the answers made by Government to questions put in Legislative Council of Kenya by one of the elected members on this subject.

The answers are summarised in the paper as followed:- No forced labour for private employers has been called in Kenya during the last five years. The number of natives ordered to work for tribal requirements is not known as no records are kept. No labour has been called out by Government ^{for public work.} during the past five years.

Perhaps you will allow me also to correct two inaccuracies in Dr. Ley's letter. Practically all the work in natives' fields is done by their women folk and not by the men as suggested. Secondly, Dr. Ley states that all land outside the native reserves is owned by Europeans. This is not even approximately correct. - Yours, etc.,

F. de V. Joyce.

10, Victoria Bank Ltd., 6, Pall Mall, London, S.W., Feb. 24.

1A

Extract from Record of discussion with
Lionel Leakey, on 13 February 1951.

6. As regards forced labour he was very angry with people in this country who attempted to draw a comparison between Kenya and modern Russia. The improvement during the 25 years which he has lived in Kenya is, he says, immense. Like Archdeacon Owen he would be glad to see the remnants of compulsory labour disappear, but he takes a very moderate view of this, as indeed of every subject with which he deals, and he certainly does not like Archdeacon Owen's scheme of the Local Native Councils raising a special cess to pay for labour as a means of getting rid of the traditional six days a quarter unpaid compulsory labour for adult males. In point of fact in his own area, i.e. Kikuyu, ^{Reserve or at least a part of it} this compulsory labour works without hardship. He has himself got it arranged that no native who is properly engaged in work, whether for himself or for others, is called out. He said that he had been disposed to move a resolution in the Legislative Council that the time had now come when all compulsory labour should cease, and that the Unofficial Europeans would have been entirely with him. But he was told that it would be rather embarrassing to the Government, seeing that nowadays the only compulsory labour is that called out by Government, and so he did not move the resolution. He realises that it is the policy to dispense with all forms of compulsory labour as soon as practicable, and he realises also that you cannot do this in a moment of time, especially in the present difficult financial situation.