

1924

KENYA

e.o. 513  
42132

Dep. Secy.  
Aerobam

1065 10th Aug, 1924

DATE

4 SEP 24

INCULCATION

Trial and discharge  
of 5 Masai prisoners

Dep. U.S. of S.

S. G. Priestley

Reports false, which  
were inaccurately  
represented in Press

Dep. U.S. of S.

Dep. U.S. of S.

Secretary of State

Previous Paper

MINUTES

4/8/24

26404

Dr. Horn

In the first place, will  
you please say if you have any  
medical comment?

C. W. S. 6-2-24

Mr. Proffers

As far as the question of medical care &  
attention while in goal is concerned, I think  
there can be no complaint. There is no evidence  
of any lack of attention. But the statement by  
the P.M.O. in para 6 of evening despatch suggests that  
the prisoners were suffering from a complaint  
similar to, or identical with Beri-Beri which is

delay possible is very uncertain,  
three months before a trial should  
be examined & it is difficult to  
see why it (case) should have  
needed yet another month.

Wed. 8/9/24

Mr. Bottger

I agree. But as Sir J. Barts is anxious  
to obviate such long delay between  
trial & appeal in criminal cases in future  
it is perhaps unnecessary to rub his  
nose in further in a deep

J.A. 13/6/24

Sir G. Curzon

I had equally in mind  
the later delay.  
I hope that Sir J. Barts  
intention to obviate  
delay between trial &  
appeal will bear fruit,  
but say that the later  
delay is the more serious  
in the long run.

KENYA.

GOVERNMENT HOUSE,

NAIROBI.

KENYA.



No. 1065

C. O.  
42132  
14th August, 1924.  
4 SEP 24

Sir,

With reference to Colonial Office despatch No. 336 of the 10th June, 1924, I have the honour to acquaint you with the actual facts of the case which was inaccurately represented in the Press, and has given rise to the question asked in the House of Commons of the 11th June, 1924, as to the discharge of the five Masai prisoners.

The Resident Magistrate, Nairobi, was specially appointed to enquire into offences committed by the MATTIAWA and N. KINYA MURANI. Amongst others 5 Masai were brought for trial on the 10th June, 1923, and were taken on 23rd June, 1923, and sentenced to imprisonment. They appealed to the Court of Appeal for Eastern Africa which did not sit till December, 1923. The appeal court judgment was delivered on 12th December quashing the convictions on the ground of misjoinder of charges and ordering re-trials; the accused were thus only awaiting trial for any period from that date. At the request of the Crown the re-trial, after being fixed for 4th March, was postponed to 7th April last, and the accused in question were ultimately dealt with on 14th April. They were again found guilty but in view of their state of health and the fact that that they had been in prison for nearly a year they were sentenced to imprisonment

during the session of the Court which amounted to release on the conclusion of the case the same day.

3. The accused were brought to Court in a sick condition on humanitarian grounds in order to dispose of their cases at the earliest possible occasion.

4. I attach a statement by Mr. Justice Sheridan together with copies of his judgment in the final trial and a chronology of the trials. It will be observed that the only long delay was between the first trial and the hearing of the appeals which was due to the fact that the first trial took place at the end of June and the Appeal Court usually sits only in early June and early December. The Chief Justice informs me that he hopes, now that he is President of the Court of Appeal, in future to obviate such long delays between the trial and the appeal in criminal cases.

5. With regard to the facilities for the medical care of prisoners and persons awaiting trial, I may state that in the three large prisons of the country there are gaol hospitals, and the sick are visited by medical officers specially detailed or by Sub-Assistant Surgeons acting under their orders. The smaller prisons in which only short term prisoners are accommodated are visited daily, or as need arises, by a Medical Officer or Sub-Assistant Surgeon if such an officer is stationed in the locality. I am satisfied that no better provision can be made with the existing staff and prison hospital accommodation.

6. With regard to the physical conditions of these Masai the Commissioner of Prisons reports "The health of these five prisoners appears to have been good during the first 8 months of their imprisonment. During this period their medical histories show that they were under medical treatment in the ..."

<u>Convict No.</u>	<u>No. of admissions to hospital.</u>	<u>Disease</u>	<u>Period in Hospital.</u>
2391/C	1	Chicken Pox	25.9.23 to 10.10.23
2392/C	1	Mumps	26.1.24 to 12.2.24
2393/C	1	Chicken Pox	5 - 20. 9. 23
2394/C	1	Mumps	31.1.24 to 16.2.24
2395/C	-	-	-

Their weights on admission and on discharge were as follows:-

<u>Convict No.</u>	<u>Weight on admission lbs.</u>	<u>Weight on discharge lbs.</u>	<u>Gain lbs.</u>	<u>Loss lbs.</u>
2391/C	119	126	7	-
2392/C	127	122	-	5
2393/C	119	123	4	-
2394/C	131	136	5	-
2395/C	128	140	14	-

Early in March 1924, at about the time originally fixed for their re-trial, all five appeared to be afflicted with some complaint which prevented them from walking. They were moved into the Prison Hospital where they remained for a month under the daily care of the resident Indian Sub-Assistant Surgeon, and were visited two or three times a week by the European Medical Officer whose duties comprise the supervision of the Prison Hospital. During this period they were visited also by the Principal Medical Officer and by a leading private medical practitioner. They had all recovered the use of their limbs prior to their discharge from prison."

The Principal Medical Officer reported on their ailment as follows:-

"The Purko Masai Prisoners who are in the gaol hospital are suffering from a form of neuritis which is usually associated with some form of deficiency disease

which is not uncommon in this country. Cases of a similar nature have been reported as far back as the latter half of the eighteenth century."

7. Special attention is now being paid to the dietary of prisoners to enable different tribes to be given as far as possible the diet to which they are usually accustomed.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*W. J. Fenwick*

GOVERNOR

Chief Justice.

The question in the House of Commons is no doubt based on the publishing of an inaccurate and malicious paragraph which appeared in the ~~Weekly~~ ~~Review~~ of the N.A. Standard of the 19th April 1924. The particular issue is attached. It had appeared in an earlier daily issue of the 15th. On the appearance of this paragraph counsel for the accused, Mr. F. Hopley indignantly protested in Court, pointing out its gross inconsistency with the true facts. As Presiding Judge I assured Mr. Hopley that the paragraph could be ignored - a misrepresentation of facts in connexion with Court cases by reporters in Kenya not being unknown. I attach a summary prepared by the Registrar showing the relevant dates. A study of these dates together with the correspondence to which they refer will show that the accusations contained in the question are baseless. The true facts of the matter are as follows:- Counsel for the accused appreciating the nature of the charge against the clients, particularly the facts that the maximum punishment under Section 144 I.P.C. was 2 years, and that they had had a sentence of transportation for life hanging over their heads prior to the conviction and sentence being quashed by the Court of Appeal on the 14th December 1923 took what was in my opinion a wise course and advised the clients to plead guilty. The hopelessness of defending the case on the merits was manifest. For the purpose of making their pleas the 5 accused persons were brought to Court, their appearance on the day in question having been arranged for at the request of their counsel. On their appearance in Court it was observed that two or three of them were unable to walk; they were allowed to be seated during the brief period they were in Court. On pleading guilty, it will be seen that they were sentenced to a day's imprisonment - the form of the order

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

Criminal Case No. 63 of 1923.

REX.....prosecutor.

versus

- 1. Kiratoti ole Lishau
  - 2. Langai ole Kisheyani
  - 3. Samon ole Keroti
  - 4. Kondai ole Ngapani
  - 5. Eko ole Peri
- } .....Accused.

JUDGMENT:-

This case arises out of an order of retrial made the Court of Appeal for Eastern Africa at the December (1923) Session. The accused had been with others convicted of waging war against the Sovereign and unlawf assembly and sentenced to transportation for life on the f charge and to 2 years R.I. on the 2nd charge with the a. pition of Ole Kisheyani who was sentenced to 1 year's R.I. on account of his youth. The convictions were quashed by the Court of Appeal and a retrial ordered on the 2nd charge only. It is seen that the accused have been in custody for at least 1 year during which time they have had a sentence of transportation for life hanging over their heads. They have furthermore incurred the expense of Counsel in the Court of Appeal and before me. The maximum punishment under Section 244 is 2 years. In all these circumstances in ~~finding them guilty~~ on their own pleas justice will be fully met by passing an order that they be released on the rising of the Court.

Bd. Joseph Sheridan.

14. 4. 24.

SUPREME COURT CRIMINAL CASE NO: 61 OF 1923.

-----

Gazette Notice appointing Resident Magistrate, Nairobi, C.S.	9. 5. 23.
Proceeded as soon as work in Nairobi permitted.	29. 5. 23.
Committed by Grean, R.M. Harok	7. 6. 23.
Tried and sentenced by Maxwell J. Nairobi.	28. 6. 23.
Appeal Court Judgment delivered and remands ordered (Appeal Court usually sits in early January early December)	14.12.23.
Ag: G.J. assigns cases to Sheridan J. and fixes dates of hearing for 4.1.24.	19. 1. 24.
Crown Counsel asks for postponement and new date is fixed 7. 4. 24.	26. 2. 24.
(Mandi re-trials commence with 61/23)	7. 4. 24.
<u>61/23 reached and Judgment delivered</u>	14. 4. 24.
(62/23 reached)	15. 4. 24.)
(Judgments in 61 and 62/23)	25. 6. 24.)

-----

18 Sept. 1923

C. D.  
17 SEP  
1923

Sir,

I have the honor to acknowledge  
of your Dep. No 1065 of  
14<sup>th</sup> August regarding on

DRAFT.

Kuala No: 980

Per. Ceylon

the trial and discharge of  
five Chinese prisoners which  
formed the subject of the  
enquiry in my Dep. No 896

MINUTE.

- Mr. Macgregor 17/9/23
- Mr. P. A. ... 17/9/23
- Mr.

- Sir C. Davis
- Sir G. Grindle
- Sir H. Bled.
- Sir J. Masterton Smith
- Lord Arnold
- Mr. Thomas

HQC  
26707

of 10<sup>th</sup> June

I take from your  
separate that the chief

facts in the case are

as follows:

Prisoners sentenced: June 28<sup>th</sup> 1923

of the Appeal Court will  
 will prevent such long  
 delays occurring in future  
 between the trial & the  
 appeal in criminal cases  
 and I trust that Sir

J. Barts will find it  
 possible to give early effect

to his instructions and

however, from the delay  
 between the first trial and  
 the hearing of the appeal  
 a serious delay of  
 months occurred in the

DRAFT.

MINUTE.

Mr.  
 Mr.  
 Mr.  
 Sir O. Davis.  
 Sir G. Grindley  
 Sir H. Road.  
 Sir J. Masteren Smith.  
 Lord Arnold.  
 Mr. Thomas.

and that there is no ground for complaint on this score. I am advised that, to judge from the report of the P. M. O., the prisoner may have been suffering from a complaint similar to "Bibi-Pici", which under the name "Goat Drops" has frequently occurred in certain goats in Tropical Africa. It is usually associated with the consumption of over-milked rice as a main

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr.
- Sir C. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Lord Arnold.
- Mr. [unclear]

