

A MEMORANDUM

For

[1957]

THE COMMISSION ON PENAL AND PRISON REFORM.

We contend that much delinquency and crime in the Union, especially among juveniles and non-Europeans is due:-

(a) To lack of educational facilities.

We feel that the State has not tackled the question of education for Africans with the seriousness it deserves, and that as a result, crime and disregard for law and order are rife.

(b) To economic pressure.

The economic position of many African families is such, that it has perforce turned both fathers and mothers into breadwinners. In such instances, children are left at home uncared for, and therefore subjected to all sorts of evil influences. Whilst this is commoner in urban areas, its effects are not unknown in rural areas. The migratory labour has definitely a bad effect on family life. We would strongly urge that with the new mines opening up in the Free State, the Compound System be done away with, and that decent homes be put up for the labourers.

(c) To lack of employment for those out of school.

We feel that many a young man, no longer schooling, finds himself at loose ends. If opportunities of employment were made available, and his services harnessed in a way beneficial to society, the State would be saved a lot of trouble.

(d) To discriminatory laws of the country.

The sectional laws of the country are very provocative, and often lead to bad blood. The segregation policy often given out to the world as a security measure to safeguard white civilisation against forces of barbarism is nothing of the kind, but a selfish weapon in the hands of the oppressor, which he wields at will to attain his selfish ends. The use of this tool of domination can find no ethical justification, and its validity can only last as long as the oppressor has power to hold it. No people has a right to tramp on the soul of another, and certainly no people can do so for any stretch of time without being called to book for its actions.

Unfortunately, this sort of thing always results in unwholesome repercussions. As it is, offences such as theft, which in a well-ordered society would be regarded as vices, are now beginning to take on a different complexion. Because under our segregation policy a man is not paid according to his worth, but according to the colour of his skin, many Africans today are taking without any scruples things belonging to other people. They regard these as their rightful dues, which were denied them not under any moral law, but under the segregation laws. They contend therefore that if moral laws are thrown to the wind for one section of the community, they can with justice be thrown to the wind for all. In other words these people are straightening out irregularities which have an official sanction under the plea of segregation.

The prevention of crime.

As one of the aims of punishment is to deter those prone towards crime, we feel that this deterrent effect of arrest has ceased to have any meaning for Africans, who no longer regard arrest as a disgrace, since no African can easily avoid arrest under the complicated laws, that make criminals of Africans, and not of other sections of the population. Unfortunately, in the eyes of the average African the arrested man is regarded as a martyr. In order to avoid racial ill-feeling, the laws must be made simpler, and they should be made in such a way that the African can understand them.

The treatment of people awaiting trial.

We think it is a great mistake to mix people awaiting trial with hardened prisoners, and even make them work. We hold that the principle that

everybody is innocent in the eyes of the law, until he has been proved guilty, should hold good even in the case of Africans. In ordinary practice, however, we find that those Africans who refuse to work, before their guilt has been proved, get into the bad books of the police, and are called by all sorts of abusive names. We feel also that the method of arrest as applied to Africans is undesirable. The police bully the Africans. We would suggest that where Native women are involved, statements be taken from them by people of their own sex. We say the police adopt the wrong attitude when they arrest Africans. They demand the passes in a most humiliating manner. The law allows them to enter the African house, without any warrant, at any time of the day or night. Every African is a potential criminal, and the Legislature of this country, backed up by a White public opinion, which is blinded by colour prejudice, is responsible for this state of affairs.

The simplification of procedure in criminal cases.

One often hears that the African people are tried according to Native Law. Well one wonders if the procedure followed in our law courts is anything like the procedure in a Native Court. In the first place, we would suggest that the question by the prosecutor be made more explicit, "Are you guilty or not?" To the mind of the average African, the question does not convey what is expected of it. The admission of guilt does not necessarily mean that the accused admits that he has committed the offence of which he is being accused. The fact that he has been put into the dock shows that there is a case in which he is involved, but that is not sufficient proof that he particularly committed the offence. We would suggest therefore a more verbose method, viz., "A certain criminal act has been committed, and you are said to be the offender. Have you committed that act?" We say this method of putting the question must come from the prosecutor, and not from the interpreter, for some magistrates who have a smattering of the Native languages often pull up the interpreters for not translating what is being said. Another point which leads more to confusion than to clarity on the part of the accused is the question of dates, and times of the day. The accused is often pestered with such questions as, "Do you remember on such and such a day such an incident happening? What time of the day was it? Was it after four o'clock? etc." We feel also that the accused must be told quite clearly that the court attaches much importance to a statement made upon oath in a witness box, and very little importance to a certain statement made from the dock. We mention that because we have often heard the question in our law courts, addressed to the accused, "Do you prefer to give your evidence from there (the dock) or from here (pointing to the witness-box)?" The accused seeing no difference in this business, generally answers, "I am quite alright, even if I am here."

We feel further that many accused people are thrown into a state of confusion by the procedure of the court, and in this particular case it is quite different from that of the Native court. In a Native court, the accused is allowed to say all he wishes to say, to question and be questioned as he goes on. It is not so in the ordinary court of law. In the first place, there is much impatience shown. "Never mind all this story of yours, Answer the question, 'Yes or No.'" These are statements usually heard. Then after a certain witness has given evidence, a question is put to the accused, "Have you any question to put to the witness?" He answers, "Yes, I have a question." When the witness answers that question, then the accused instead of going on with his cross-examination, wants to argue the point. He is then checked and told to go on with the cross-examination, for he will be given a chance later on, to give his own explanation. So this kind of procedure throws him right off. If therefore the courts could afford the time, and we feel they should if they want to get at the truth, lower courts should be established for sifting purposes, and be run the same way as Native courts.

The general objects of punishments.

Punishment is inflicted with certain objects in view. The first and lowest object is retaliation. The days of the Mosaic law, of "an eye for an eye, and a tooth for a tooth" are fast disappearing, and yet where an African is involved, we cannot help but feel that the retaliative idea is behind the punishment inflicted. The offender is dragged to justice. Indeed even such forms of punishment as decapitation, which are viewed with abhorrence by all civilised people, are accepted without question, when they are applied to Africans. It is an accepted fact in this country, that where an African man rapes a White woman, that man must expect the capital punishment, and yet it is not the case, where a White man rapes an African woman. Another aim of punishment is to deter the culprit from committing that offence again, and to prevent other people from emulating his bad example. Here again, we are quite

familiar with these remarks from the bench, when a sentence is being imposed on an educated African, "You ought to know better.", and we look in vain for similar remarks when a sentence is being imposed on a White person, who not only has a good education, but boasts of a high cultural background.

The last and highest form of punishment is to reform. The conception behind this form of punishment is that the accused is not wholly to blame for the position in which he finds himself. He is a victim of the social conditions, and as such the society must bear its own share of the responsibility in attempting to rehabilitate that man, and give him a new mental outlook on life. We question it however, if this aim can ever be realised where an African is concerned. Prison life to him is a real torture. It is a torture not only to himself but to his family as well. For this convict is paraded about public places, and his family sees him in this state, and he loses all sense of self-respect. He is ostracised by his fellowmen. He belongs to the underworld. Even when out of prison, many official documents he must sign for other purposes, have amongst other questions, "Have you ever been convicted?" This stigma sticks to him like a leech.

The use of convict labour by people other than the Government.

We are very much opposed to hiring out convict labour to private people and authorities other than the Government. In the first place, the prisoner has disturbed the peace of society by his offence, and the Government as a custodian of social sanctions, must make use of his services. Secondly, we are much opposed to use being made of convict labour by private persons, because in a country like ours whose population consists of a multi-racial society, with strong racial prejudices, it is not too much to say that pressure can be brought upon the legislators by that racial group, which has civic rights to make laws that would be detrimental to the interests of the disfranchised groups --- laws that would aim at solving labour troubles. We had an example of this kind of pressure, quite recently. There has been a shortage of Native labour on the farms, for the farmers failed to put their own house in order. They paid their servants poor wages, and they made farm life quite unattractive to the Natives. Then when their servants left them for more remunerative jobs, they made a strong appeal to the Minister of Native Affairs to introduce legislation that would curb this influx of Natives to town. We are therefore strongly opposed to the idea of using convict labour to supply cheap labour where voluntary labour is unobtainable, owing to economic laws being disregarded by those who employ Native labour.