People's courts and people's justice in South Africa

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OPSOMMING

Volkshowe en Volksgeregtigheid in Suid-Afrika

Die skepping van alternatiewe nie-amptelike volksinstellings dui op 'n algemene ontevredenheid met 'n bestaande regsisteem. *Makgotla* en volkshowe is voorbeelde van sulke alternatiewe volksinstellings. Volkshowe word van *makgotla* onderskei deur breër politieke oogmerke. Die inhoud van die substantiewe volksreg of *folk law* wat toegepas word in hierdie howe is onseker, maar dit wil voorkom of die proses- en bewysreg ooreenkomste toon met die nie-gespesialiseerde inheemsregtelike posisie. Sanksies is gerig op versoening, vergoeding, restitusie en voorligting.

1 INTRODUCTION[1]

Folk law or unofficial law and legal institutions are phenomena commonly encountered not only in Africa, but also in many Western countries today.[2] "Folk law", "people's law", "indigenous law", "unofficial law" and "customary law" are terms used to denote "unofficial 'laws' and codes within state systems . . . viz. bodies of rules and modes of settlement at best tolerated and at worst prohibited by the official state power".[3] Folk law includes law which is not state law, but does not of necessity exclude all state law, for folk institutions have, to an extent, been incorporated into state institutions.[4] The creation of alternative folk institutions is regarded as an indication of a general dissatisfaction with an existing legal system.[5]

1 Very little has been written on the people's courts to date. Use was made of all the material available on the subject up until June 1987 and includes the following unpublished writings: Bapela "The People's Courts in a Customary Perspective", Motshekga "Alternative Legal Institutions in Southern Africa" and Thomashausen "People's Courts in Mozambique" (papers read at a workshop on "New Approaches in respect of the Administration of Justice" held on 1987-06-05 UNISA). Sanders unpublished paper on people's courts; Suttner "Popular Justice in South Africa Today" (paper read at a conference on "Law in a State of Emergency - A Focus on Law and Repression in South Africa" held on 1986-04-11-14 UCT).

2 Allott and Woodman "Introduction" in *People's Law and State Law – The Bellagio Papers* (eds Allot and Woodman) (1985) 2; Schott "Introduction" on "Folk Law in State Courts" in *People's Law and State Law* 76.

3 Allott and Woodman *People's Law and State Law* 2.

4 Von Benda-Beckman "Some Comparative Generalizations about the Differential Use of State and Folk Institutions of Dispute Settlement" in *People's Law and State Law* 189; Woodman "Customary Law, State Courts and the Notion of Institutionalization of Norms in Ghana and Nigeria" in *People's Law and State Law* 143-163.

5 Schott *People's Law and State Law* 786.

The folk-law debate centres around the position that folk law and institutions should occupy within the legal order and with regard to state law and institutions: Should it be approved, should it be given preference to state law or should it be rejected out of hand? Experience has shown that repression of folk law and institutions will inevitably lead to the creation of alternative structures or merely the illegal continuation of formerly recognised institutions.[6]

In Ghana, for example, Kwame Nkrumah gradually removed all judicial powers of the chiefs, who nevertheless (illegally) continued with their judicial activities.[7] The reasons for this continuation were, amongst others, the strangeness of Western dispute-settlement procedures and differences in the concept of law and justice as applied in specialised and non-specialised courts or court-like institutions.[8]

In South Africa, many of the peculiar problems facing the cosmopolitan black urban community today stem from the largely ineffective administration of criminal justice in black areas.[9] The lack of confidence in the present legal system is particularly important in this regard. Western dispute-settlement procedures are, in the final instance, unsuited to solve legal problems as well as problems of social adjustment encountered by urban blacks.[10] The justice meted out under the present legal system is distrusted and this distrust is perceived to be exacerbated by police action or inaction when assistance is required.[11] It is therefore only natural that urban blacks had to resort to self-help in the form of unofficial or folk institutions such as, first, the *makgotla*[12] and, later, the people's courts. The role of the *makgotla,* however, has now largely dwindled and the people's courts are forced, due to political circumstances, to function underground. Without any assessment of their merit, the phenomenon of unofficial judicial folk institutions and more specifically people's courts will be discussed.

2 *MAKGOTLA*[13]

The *makgotla* are markedly different from the traditional or chiefs' courts which applied unwritten indigenous law. These *makgotla* originated in

6 Woodman "Introduction" on "Legal Policy" *People's Law and State Law* 279.

7 Schott "Justice against the Law: Traditional and Modern Jurisdiction in Northern Ghana" in *People's Law and State Law* 230-231.

8 *ibid.*

9 See also Van der Vyver "Human Rights Aspects of the Dual System Applying to Blacks in South Africa" 1982 *CILSA* 316.

10 See also Smith "Man and Law in Urban Africa: A Role for Customary Courts in the Urbanization Process" 1972 *American Journal of Comparative Law* (*Am J of Comp Law*) 237-246.

11 De Coning and Fick "Menslike Verbrandings: 'n Sosiopolitieke Ondersoek na die Aard en Impak van Kataklismiese Geweld in Suid-Afrika" 1986 *Politikon* 25; see also Suttner n 1; Motshekga n 1; Haysom "The Courts and the Emergency" paper read at the conference on "Law in a State of Emergency - A Focus on Law and Repression in South Africa" 63.

12 See generally Hund and Kotu-Rammopo "Justice in a South African Township: The Sociology of *Makgotla*" 1983 *CILSA* 179.

13 This section is based on Van Niekerk *A Comparative Study of the Application of Indigenous Law in the Administration of Criminal Justice in Southern Africa* (LLM dissertation 1986 UNISA).

Soweto. The term "*makgotla*" is used to denote various bodies involved in peace-keeping activities and the settling of disputes, and includes unofficial courts operating under the authority of tribal or national state representatives in the townships appointed by chiefs and headmen in rural areas;[14] informal courts and vigilante groups working with community councils or ward committees; as well as cultural movements, welfare services and even gangs whose only aim is the furtherance of their own criminal activities.[15]

Generally speaking, the rules of procedure and evidence applied in these courts are closely related, although not identical, to indigenous law. The legal process is generally characterized by simplicity and an absence of the strict impersonal and technical rules intrinsic to Western legal procedure. Conciliation plays an important part in the proceedings. The *audi alteram partem* principle is strictly observed and the presence of all parties concerned is required at hearings. Criminal and civil matters arising from the same facts are dealt with in a single set of proceedings and criminal sanctions are sometimes imposed, even though the matter is ostensibly purely civil. As a rule, corporal punishment is not a competent sentence, although flogging was found to be a most important coercive means of sanction in some courts. It is difficult to ascertain the exact content of the law applied in these courts because court records are not only incomplete, but also largely inaccessible. It seems, however, that the applicable law has features of both indigenous and Western law.

The *makgotla* associated with the Vukani Vulimehlo Peoples' Party, a cultural movement in Mamelodi, differs from the courts discussed above. The interests of the youth are their main concern. Procedure is semi-private and shows features of *in camera* hearings, and corporal punishment forms an important sanction. Presumably fear has thus far prevented anyone from laying a charge against these "*makgotla*" and the authorities have consequently not interfered in their activities.[16] Other forces at work in the township of Mamelodi are informal patrols, hostel police and gangs, often functioning under the guise of *makgotla*. These bodies cannot, however, be compared to courts or court-like institutions.

At the height of the operation of the *makgotla*, a dramatic drop in the crime rate was experienced. However, intervention by the authorities reduced the powers of most of the *makgotla* to such an extent that they became almost totally ineffective, and the crime rate soured again.[17] Basic facilities

14 Labuschagne and Swanepoel unpublished research report on the *Makgotla*; Hund and Kotu-Rammopo 1983 *CILSA* 184.

15 Hund and Kotu-Rammopo 1983 *CILSA* 184.

16 Hund and Kotu-Rammopo 1983 *CILSA* 181; see also Ndaki "What Is to Be Said for Makgotla?" in *Southern Africa in Need of Law Reform* (ed Sanders) (1981) 178; Prinsloo "Stedelike Inheemsregtelike Howe" 1977 *Tydskrif vir Rasseaangeleenthede* 51.

17 See Hund and Kotu-Rammopo 1983 *CILSA* 184–186; see also Motshekga n 1:· Not only were members of the *makgotla* charged with criminal offences for their part in the activities of these institutions, but the community started losing confidence in them because of their association with community councils and national states which were regarded as "organs of the policy of separate development".

in the townships continued to be inadequate, and the people's distrust of the police[18] and the administration of criminal justice remained. In 1983, apparently fewer than two percent of urban blacks took their grievances to the official courts and indications are that this situation has deteriorated rather than improved.[19] The fact that magistrate's courts (formerly commissioners' courts) stopped functioning in certain black urban areas during the recent state of unrest, also contributed to the rising crime rate and the general lawlessness prevailing in these areas.[20] The concomitant emergence of a more active implementation of the Freedom Charter, and the African National Congress' summons to make the country ungovernable, as well as the consequent realisation of people's power in the mid-1985's, have led to the take-over of certain institutions and organisations once under state control, and the formation of unofficial alternative popular organs or civic authorities. These civic authorities include street communities, section committees, area committees, and, at the top of the hierarchy, the civic association, which dates back to the mid-seventies. People's courts, in close association with the civic authorities, have now started coming to the fore. An additional broader political objective distinguishes these people's courts from the *makgotla*: "Time spent on crime, people are urged, should instead be spent in liberating themselves."[21]

Police services were taken up by so-called "patrolling squads" consisting of adults and youths alike. In line with the traditional situation, all members of the community are also expected to report criminal activities to the committees.

3 PEOPLE'S COURTS

By 1985 and 1986 the authorities appeared to have lost, to a large extent, control in black urban areas. The state police and the state courts alike were (and still are) distrusted and ultimately considered instruments in the hands of the apartheid regime.[22] These sentiments were voiced as follows:

> "There is no chance of going back to White courts. People now want to govern themselves. Going back to the White courts will be going back to being governed by a White government we do not want. We have not had justice from them."[23]

It is moreover evident that the people's courts are inseparably committed to the black majority's freedom struggle. People's justice is described as

18 Suttner n 1; Motshekga n 1; Haysom 63; see also De Coning and Fick 1986 *Politikon* 25 28 35 40 on the role of police action in the present escalation of violence in black urban areas.

19 Hund and Kotu-Rammopo 1983 *CILSA* 183; Suttner n 1.

20 Sanders n 1.

21 Suttner n 1.

22 Suttner n 1; Motshekga n 1; Haysom 63.

23 "Neighbouring Communities – But Their Worlds Are Still Miles Apart" *Pretoria News* (1986-05-21).

> "a system created by the community in which the community participates and whose operation is mandated and accountable to them. The people see their control of a system of justice as part of the struggle to control their own country".[24]

The aim of these courts is therefore to unite the people in their struggle and to educate them about their political objectives. Their approach is accordingly conciliatory, and violence, being the tools of the government they oppose, is strongly renounced. The fact, however, that brutal mass actions such as "necklacing" and "hacking" have been ascribed to these courts, and more importantly, the effect of various emergency regulations, have forced the people's courts to function underground.

3 1 Procedure and Evidence

> "[T]he party at fault must be brought to see how his behaviour has fallen short of the standard set for his particular role as involved in the dispute, and he must come to accept that the decision of the court is a fair one. On his side he wants an assurance that once he has admitted his error and made recompense for it he will be re-integrated into the community."[25]

This *dictum* of Allott in connection with traditional indigenous legal procedures may well be applied to the position in the people's courts where, as indicated, offenders are educated about political objectives and taught to involve themselves in the freedom struggle and community organisations. Rehabilitation is emphasised, as is illustrated by sentences which involve performing community service such as working in parks or sweeping the streets, prohibition of hard liquor, monitoring of an offender's savings, or even sitting as adjudicating officer in a trial with facts similar to the offender's own.[26] The importance of reconciliation was illustrated when black local authorities in Port Alfred conducted an investigation with a view to the return of stolen goods, after the culprit had served a sentence of imprisonment handed down by the ordinary courts.

Procedure[27] shows a strong similarity to the indigenous law as well as to *makgotla* procedures. Hearings are informal, free of technicalities and inquisitorial in nature. The impartial adjudicating officer plays an active part in eliciting evidence. It is interesting to note that females may also act as presiding officers.[28] The accused is thoroughly examined as an important source of evidence and he is informed of his rights throughout the trial. Persons present at the hearing may adduce additional evidence, or ask further questions, and they play an important part in the final verdict.

24 Suttner n 1.
25 Excerpt taken from Cotran "African Law" *International Encyclopaedia of Comparative Law* 2 (1975) 160.
26 Bapela n 1; "Justice Inside a Comrades 'Peoples' Court" *Business Day* (1986-05-12); " 'People's Courts' Fight Bogus Comrades" *Hit* June 1986.
27 See generally Bapela n 1; Sanders n 1; see also Van der Merwe "Accusatorial and Inquisitorial Procedures and Restricted and Free Systems of Evidence" in *Southern Africa in Need of Law Reform* 144-145.
28 Bapela n 1.

Hearsay and circumstantial evidence do not seem to carry much weight unless corroborated, and evidence of character is admissible. Trials are not conducted under oath. The accused in a criminal trial is warned to speak the truth and asked to plead. Interpreters are used where necessary. It is difficult to establish what the measure and burden of proof is. Trials are conducted orally, but records are kept of the proceedings and used as precedents. Civil and criminal cases are furthermore dealt with in the same set of proceedings. Civil matters may, and often are, settled out of court. This does not, however, apply to criminal matters. The *audi alteram partem* rule is strictly adhered to as in indigenous law, as well as in *makgotla* procedures. Participation in court proceedings is not restricted and, in this sense, proceedings differ greatly from the indigenous law position where court hearings were restricted to adult males who took part in the hearings by way of questioning, exclamation and comment.

In Mamelodi, for example, courts are divided into courts dealing with adults, youths, general matters and civil matters concerning the community as a whole, such as rents and taxes.[29] Appeals apparently lie from the court at street committee level to the section court and from there to the disciplinary committee. This disciplinary committee consists of members of the various sections. The highest court of appeal is the people's committee, made up of youths, together with the executive committee of the civic association.[30]

3 2 Substantive Law

According to Suttner, the people's courts are totally opposed to so-called "apartheid-law" and are therefore creating their own law. Sanders maintains that there is a strong indigenous-law element discernable in the law applied by the people's courts. It is, however, difficult if not impossible to ascertain from the available material what the exact content of the applicable substantive law is. Crimes heard by the people's court in Mamelodi resemble those to be found in indigenous law and include *inter alia* assault, theft, robbery, witchcraft and rape.[31] In cases of witchcraft, concrete evidence is required and hearsay is only accepted in so far as it can be corroborated.[32] Rape is regarded in a very serious light and punishment (lashes), as well as compensation, are ordered along traditional lines. Compensation is awarded in accordance with the victim's status. In the traditional indigenous law, the punishment for rape was a fine or thrashing, and where the victim was a dignitary, the death sentence.[33] It seems that adultery is also regarded as a crime and corporal punishment is apparently a common sentence in such cases.

29 Bapela n 1.
30 Motshekga n 1.
31 Bapela n 1.
32 See also Myburgh *Indigenous Criminal Law in Bophuthatswana* (1980) 99 on the indigenous law position.
33 Myburgh 84.

3 3 Sanctions

As indicated above, sanctions are conciliatory and governed by a distinct political overtone.[34] Compensation, restitution and education instead of punishment will therefore rather be ordered. Violence, and hence corporal punishment, is as a rule discouraged as being the instruments of police brutality. The court's aim, as indicated, is political and the creation of fear is seen as a deterrent which will drive people away rather than unite them in their liberation struggle. Corporal punishment may, however, be ordered as an alternative to another sentence, such as community service. In certain instances, the accused will not be subjected to corporal punishment, for example where the accused is ill or old.

However, it cannot be disputed that violence still occurs in some organisations, notably those where the more responsible leaders are detained and over-enthusiastic youths have taken over.[35] It is further unfortunate that the criminal activities of gangs, or so-called "bogus comrades", who operate in the name of people's courts, are often ascribed to these courts.[36] As has been indicated above, the *makgotla* also had to contend with a similar phenomenon where young gangsters furthered their own criminal activities in the name of the *makgotla*.

It is nevertheless evident that, in view of the court's conciliatory nature and broad political objective, "necklacing" and "hacking" do not form part of their sanctions and it is widely disclaimed that these sanctions have ever been ordered by a people's court. These brutal acts should rather be seen as a consequence of mass anger:

> "It is the result of an inward turning aggression, an aggression that ignores the real enemy and looks inward to find the roots of weakness, deceit, disloyalty and disunity within the oppressed community itself."[37]

These acts are, as such, directed at those who are beyond the legal process[38] and should thus be seen as summary action by an outraged community, to obtain satisfaction:

> "Threats of violence and injury to persons are not simply criminal actions; All are ways of expressing outrage against injustice of sufficient magnitude and duration to render the resort of such exceptional means of communication understandable to the observer."[39]

34 Sanders n 1; Suttner n 1; *Business Day* (1986-05-12).
35 De Coning and Fick 1986 *Politikon* 39 40; Suttner n 1; Sanders n 1.
36 See "Die 'Hof' van die Halssnoermoorde" *Huisgenoot* (1985-11-07); "Specs Squabble Lands 5 in Court" *New Nation* (1986-01-8-14); *Business Day* (1986-05-12); "Serious View Taken of Illegal Courts - SAP" *Pretoria News* (1986-05-12); "Woman Flogged in Barbaric 'Court'" *Sunday Times* (1986-09-21); "So Sterf die 'Vyand' in Vlamme" *Rapport* (1987-04-19).
37 "The Flaming Circle that Engulfs Our Country" *City Press* (1987-04-08).
38 De Coning and Fick 1986 *Politikon* 34; Sanders n 1; see also Myburgh *Papers on Indigenous Law in Southern Africa* (1985) 54 for instances in indigenous law where sanctions were brought about without a lawful court order.
39 Excerpt taken from De Coning and Fick 1986 *Politikon* 40.

The psychological inclination to burn people was not only experienced in indigenous law, but also, notoriously so, in Christianity.[40] In the traditional indigenous law, witches and traitors alike were often summarily dealt with. There is, however, no record of the burning of traitors.[41] The killing of a witch or traitor, sometimes along with their families, and the characteristic burning of the family home together with its contents, were either seen as action in necessity or as self-help to obtain satisfaction for the outraged community.[42] In other instances, theft of public resources, a very serious crime in terms of traditional law, was punished by burning the thief alive, while he was incarcerated in his family home. This crime was, in addition, regarded as a defilement of the community, so that people were forbidden to gather the remnants of the burnt hut of such a thief for firewood. The reaction of one of the relatives of a victim of the "necklace" may serve as illustration of the strong community feeling against traitors: "[W]e are all for the struggle, even if we lost one of our sisters . . . I don't know if she was right or wrong. We feel for the people who did this and we feel for ourselves, too."[43]

De Coning and Fick[44] take this a step further when they describe the process of so-called "scapegoating" which is the punishment of one guilty or innocent party in order to displace the "aggression for the benefit of the group". A structural, social tension within the community, which is created by political frustration and has built up over a period of time, is thus relieved by the punishment of a single person. The burnings mostly appear to be spontaneous mass action which may be compared to the summary action against, *inter alia*, traitors and witches in traditional law, but they show no connection with the people's courts. Where burnings were ordered, this was done by the abovementioned "bogus comrades" acting under the guise of people's courts. It is, however, debatable whether this summary action should really be regarded as so-called "instant justice". The phenomenon of "instant justice" is also to be seen in the turn-of-the-century practice of "lynching" in the United States of America, and in the revolutionary struggle in the Phillipines. De Coning and Fick contend that these human burnings are no more than the "rule of fear" – a violation of the legal process and justice.

4 CONCLUSION

"What is nevertheless true, however, is that where a system is deeply rooted and enjoys mass participation, it has enjoyed popular support and confidence."[45] What is also true, is that the institution of unofficial alternative structures, which serve an important role in securing peace in black urban

40 De Coning and Fick 1986 *Politikon* 29 32.
41 De Coning and Fick 1986 *Politikon* 30; Myburgh *Indigenous Criminal Law* 62-64.
42 Myburgh *Indigenous Criminal Law* 21 59.
43 *Washington Post* (1985-08-19) excerpt taken from De Coning and Fick 1986 *Politikon* 28.
44 De Coning and Fick 1986 *Politikon* 28 31-32 37 41-42.
45 Suttner n 1.

areas and respond to the social needs of the urban community, is not a new phenomenon in urban Africa. Smith[46] discusses the activities of various unofficial courts or other dispute-settlement institutions during the urbanisation process of blacks in Africa – institutions which were created because the official courts failed to fulfil the needs of the black urban community. These alternative structures or folk institutions include voluntary associations assuming judicial functions in West Africa and Kenya in the mid-sixties; unofficial courts in the towns of Kano, Zaria and Kaduna in southern Nigeria which were initially closed down, but eventually gave rise to the so-called "mixed courts"; and in Freetown in the late fifties, unofficial (albeit tribal-orientated) courts "which [were] strictly illegal but which are supported by the people because they feel the need for some means of settling disputes in the manner to which they have become accustomed".[47]

The unofficial courts, which functioned during the Zimbabwe liberation war and became known as "kangaroo courts", are a more recent example of such alternative structures. These courts were instituted by revolutionaries and local political committees and filled the vacuum left by the disruption of the indigenous rural courts. They were later substituted by village and community courts instituted by the *Customary and Primary Courts Act* 6 of 1981.[48] The village courts have restricted civil jurisdiction and apply indigenous law only. The community courts have both civil and criminal jurisdiction, apply indigenous law and function as courts of appeal or review for the village courts. In both of these primary courts, procedure is in accordance with indigenous law and the emphasis is on conciliation. Further, appeals lie to the district (magistrates') courts and from there to the supreme court.[49] It is interesting to note that women are also elected as presiding officers in village courts.[50]

In Mozambique people's courts, which operated during the liberation war, were substituted in 1978 by local people's courts.[51] The presiding officers of these courts are not legally trained and the emphasis is, once again, placed on conciliation.[52]

The Indian counterpart of the people's courts, known as the Lok Adalat, has been in operation for well over 25 years, and covers about 1000 villages. Baxi[53] concludes an article on this institution as follows:

> "Recognition of people's law does not necessarily mean denial of state law but rather an acceptance of a plurality of legal systems and the underlying systems of power and authority . . . [P]eople's law and people's power can be used to reinforce the positive (for the people) values of state law as well as to combat its negative aspects."

46 Smith 1972 *Am J of Comp Law* 233–237.
47 Smith 1972 *Am J of Comp Law* 236.
48 Redgement *Introduction the the Legal System of Zimbabwe* (1981) 29; Ladley "Changing the Courts in Zimbabwe: The Customary Law and Primary Courts Act" 1982 *Journal of African Law* (*J of Afr Law*) 95 101; Motshekga n 1.
49 Ladley 1982 *J of Afr Law* 102–105.
50 Ladley 1982 *J of Afr Law* 109–110.
51 Thomashausen n 1; Decreto-Lei 12/1978.
52 Thomashausen n 1.
53 Upendra Baxi "Popular Justice, Participatory Development and Power Politics: *The Lok Adalat* in Turmoil" in *People's Law and State Law* 184.

It should be borne in mind that folk institutions have an indispensable role to play in the urbanisation process in black urban areas, not only because of the need for legal problems being dealt with by familiar institutions, applying familiar law, but also because of the distrust of the Western legal machinery. Moreover, indigenous law and dispute-settlement procedures are far more suitable than Western law for solving legal problems as well as problems of social adjustment encountered in these communities. The African examples, highlighted above, show that the unofficial courts were seldom closed down without investigating their merits and replacing them with a viable alternative. The clampdown on the people's courts has already caused a rise in the crime rate in the black urban areas and, although neither time nor space allows a detailed exposition, it seems imperative that the merits of these courts be specifically and thoroughly investigated with a possible view to their replacement or legalisation by taking into account their present constitution and goals.

5 CASE STUDY

The case study which follows, represents Sipho Ngcobo's perception of the informal conciliatory proceedings in the people's courts. It appeared in *Business Day*.[54] It is reproduced here with the kind permission of the newspaper:

> "It is 2,30 pm on a cold May Saturday afternoon in strifetorn Alexandra township, north of Johannesburg. Nine men, most of them young, in their 20s and 30s, are sitting around the table, in a tiny but spotlessly clean room.
>
> The silence is deafening. Uneasy, frightening tension grips the venue. This room serves as Alexandra's own 'people's court,' where cases of all kinds – rape, theft, housebreaking, family disputes, you name it – are dealt with by local political activists – 'the comrades.'
>
> Four of the men, sitting on one side of the room, are wearing their red, black and white caps bearing the slogan: 'Aluta Continua' (The struggle continues).
>
> They are prosecutors, ready to cross-examine the accused and do the normal routine court tasks, just like in any other court of law.
>
> On the other side of the room is another, a more relaxed, calm man, about 32 years old. He is not wearing a cap. His smile shows his strong set of white teeth. He is the presiding magistrate of the day.
>
> All five men are members of the Alexandra Action Committee (AAC), a group responsible for the running of the township's affairs after the en bloc resignation of the unpopular local town council.
>
> The group monitors and co-ordinates day-to-day activities of the yard and street committees it has formed to create a barrier between the police and residents.

54 (1986-05-12).

In Alex hardly anybody goes to the police these days. They report their cases to the 'comrades.'

Next to the magistrate is an angry-looking old man, about 64, a typical manual worker, in a blue overall. He is staring intently at another young man in front of him as if to pounce and strangle him.

The old man is a complainant and the young man is the accused, facing five counts of housebreaking and theft.

The young man turns and looks down at the pine table. He is shabby and shaking like a leaf. He has on a light V-neck jersey, no vest, no shirt underneath. His hair is uncombed and his bloodshot eyes are restless.

Looking at him, I suddenly wondered whether his shaking had to do with fear of being about to be tried by the 'comrades' who in township circles, are associated with 'the necklace' (a burning tyre around the neck) by anyone who offends 'the oppressed, the nation.'

Next to the shaking man are two others, sitting quietly with their hands folded. They are both witnesses called by the angry old man.

There was I, in one corner of the 'people's courtroom,' pen and my shorthand notebook ready. To find the 'people's court' I had been passed along a shadowy chain of unknown people. Some talked to me in the dark, some I could barely see.

At one stage I thought I would never get anywhere near the 'people's court.'

At last I found myself before a young man. 'Comrade!' He was smiling. 'The masses think you are an agent of the system. That is why they won't give you any information. That is the reality of our situation,' he said, flashing another smile.

After a long and friendly discussion he gave me permission to visit a 'people's court.'

So here I was, in the corner of the tiny courtroom with nine other men and the frightening, uneasy tension still gripping it.

Although a certain degree of flexibility marks the proceedings, the atmosphere in this 'court' is astonishingly formal.

The old man's angry stare at the scruffy looking accused and the deafening silence is interrupted by the stern voice of the 'magistrate,' speaking in English.

'Comrades. Before the court starts, I would like to remind the accused, the two witnesses and the complainant that the people's court functions in such a way that every one of us here has got a right to talk and defend himself as much as he can.'

'You all know of the misconceptions and ridiculous talk about us, the comrades. We are said, in misinformed quarters, to be the most ruthless, bloodthirsty, uncompromising and always ready to kill or even burn alive without flicking an eye.'

Silence grew heavier.

The 'magistrate' cleared his throat and looked at the accused, whose eyes were wide open by now.

He continued: 'I can assure you that all these beliefs are not true. They are all flimsy, malicious rumours spread by the system to discredit us and tarnish the integrity of those committed to fighting the oppressive policies of the country's ruling government.'

'We are committed to positive and constructive change and not destruction. We want to rebuild Alexandra and engender a spirit of trust among its residents. We want to live as a united and civilised people, free of crime.'

'We must solve our problems amongst ourselves and not go to the Boers, who have no love for us, who begrudge us, who molest and kill us for reasons even unknown to them and the world over. So, be free comrade. But please tell the truth, because through it we can hope to build Alexandra and the whole nation of South Africa. Now, we shall start,' he said.

MAGISTRATE: 'The accused is facing five charges of housebreaking and theft committed on different occasions at the house belonging to 'ntate' (Southern Sotho for daddy). A total of five shirts and hardware tools were stolen during this period.'

'We also note that the accused used to stay in the same yard as 'ntate' before he (the accused) was expelled by his own nephews. Do you plead guilty or not?'

ACCUSED: 'I admit that I broke into the old man's house, but only thrice and my intention was not to steal. I broke in because I had no place to sleep after I had been dismissed by my two nephews and . . .'
'He is lying! He is lying!' interjects the old man.

The magistrate intervenes and politely admonishes the complainant to give the accused a chance to talk.

ACCUSED: 'I had nowhere to sleep and a stoep of one of the houses in the yard served as my refuge every night. But as there were too many soldiers patrolling the streets I became scared and decided to break in.'

MAGISTRATE: 'Now, can we hear from you 'ntate.' Tell us what happened as much as you can.'

COMPLAINANT: 'This boy was lying when he said he broke into my house only on three times. He first broke into my house on December 7 and then every end of the month from January till April. Five of my most beautiful shirts, my witchdoctors' bones and tools were stolen and I want them back! Do you hear me?'

'I have a family in Pietersburg and I go there every end of the month and this boy knows it. He waits for the end of the month when I am away and then breaks in and steals.'

'It seems the boy has got something against me. I cannot understand why he must keep stealing from me when there are so many other houses and so many people in Alexandra. Why me?'

The magistrate turns to the four prosecutors:

'Comrades . . . if you wish to ask questions or make any comments . . .'

PROSECUTOR (number one) turns to the accused: 'Do you admit that you broke into 'ntate's' house five times and stole the tools, the bones and five shirts?'

ACCUSED: 'No, I only broke in and stole three times.'

PROSECUTOR: 'What did you steal?'

ACCUSED (hesitates): 'I cannot remember . . . eh . . . e . . . h, I was drunk.'

PROSECUTOR: 'Were you drunk on the three occasions you broke in and stole?'

ACCUSED: 'Yes. I was drunk and do not remember what happened.'

PROSECUTOR: 'Oh! If I understand you well, you cannot remember anything you have done or do under influence of alcohol?'

ACCUSED: 'Yes.'

PROSECUTOR: 'Then how do you remember that you broke into 'ntate's' house three times and not five times, as he claims? How do you remember

that you broke into the house because you had no place to sleep? And if you were drunk how could you have remembered that there were soldiers patrolling the streets on those nights and that you were scared of them?'
(The accused keeps quiet.)

PROSECUTOR: 'Comrade, talk! You are wasting our time. You should remember that the time you are wasting is significant to us. People are oppressed and the time you are wasting, we freedom fighters could be utilising to contribute to the liberation of our people. Now talk!'
(The accused still keeps quiet).

MAGISTRATE intervenes: 'Is that clear, comrade?'

ACCUSED: 'E . . . h . . . eh . . . I do not understand SeSotho. I speak Se Tsonga (Shangaan).'

MAGISTRATE: 'Do you need an interpreter?'

ACCUSED: 'Yes.'

(The interpreter is brought into court. Same questions, asked in Se Tsonga, but, like before, the accused keeps quiet.)

PROSECUTOR (number two) cross-examines the accused: 'Comrade, you say when you broke into 'ntate's' house you only wanted to sleep. Then why did you steal?'

ACCUSED: 'I did not steal.'

PROSECUTOR (number three): 'Comrades! This man is wasting our time. He has just told us that he broke in three times and stole three times. He also says he only broke in because he had no place to sleep.'

'He tells us he was drunk and he loses his memory when he is drunk. But surprisingly, he recalls that there were soldiers patrolling the streets. All of a sudden he did not steal. What is all this? What must we believe?'

'I am left with one impression, and that this man is a liar.'

PROSECUTOR (number four, the youngest of them all in court): 'I want you to tell me the truth, comrade. Where are the goods you stole?'

ACCUSED: 'I have still got some of them.'

PROSECUTOR: 'So you did steal them?'

The accused admits the thefts. The young prosecutor goes on.

'Now, comrade, I am going to ask you the last question, and this is very important to you and all the people of Alexandra. Are you prepared to live peacefully with the people of Alexandra?'

ACCUSED: 'Yes! Yes!'

MAGISTRATE turns to the old man: 'Ntate, it is clear that the accused is guilty of the five charges. What do you say to that? What must we do with him?'

THE OLD MAN, still fuming: 'My child! Thupa ya lukisha! (sjamboking is the best medicine). The boy must be sjamboked.'

The MAGISTRATE ignores the old man and turns to the two witnesses, who are both nephews of the accused: 'Why did you dismiss your uncle from your house? Relate briefly.'

WITNESS (number one): 'This man is our uncle and we like him a lot. But on pay days he would misuse all his wages on liquor and when he is broke he starts stealing. He steals from us, from everyone, and this has been going on for years. He is just too much of a thief. He is an embarrassment to the whole family.'

WITNESS (number two): 'It is true; our uncle's problem is liquor. He does not even have a bank book because of alcohol.'

MAGISTRATE: 'Let us say your uncle gives up liquor. Would you accept him back home?'

WITNESSES: 'Yes.'

MAGISTRATE (addresses the four prosecutors): 'Comrades, will one of you give some political education?'

PROSECUTOR (number four) starts: ' 'Ntate,' one of the Alexandra Action Committee's major objectives is to build the community, and you will notice that crime has decreased considerably since we started running our own affairs after the fall of the local town council and our resolution to build the wall separating us from the police.'

'We do not believe the accused is beyond redemption. He can be rehabilitated and then join the struggle for freedom of the oppressed people and contribute in rebuilding and reorganising Alexandra and the whole of our land.'

'He may be a potential freedom fighter who will one day free you and me from the chains of oppression, but provided he is converted into a sober-minded human being.'

'Sjamboking a man does not necessarily mean he will change. However, we do not imply that the method we contemplate using to convert the accused, will definitely work. We are only hoping it will work. It has worked before.

'We will work hard to make the accused a good person and we will also ask you to help us change this man. What do you say? Can you help us?'

OLD MAN: 'My children, I am very pleased. If only that was possible and if he could give up liquor. You know, I like this boy.'

The magistrate, the prosecutors, the complainant and the accused's nephews, after a brief deliberation, resolved that the accused should be allowed to stay with his nephews while undergoing rehabilitation.

'You cannot hope to rehabilitate a renegade, a vagabond who does not even have a place to stay.'

They resolved:

- He would never be allowed to take liquor;
- A selected committee of AAC members, the complainant, the accused's nephews will monitor how he progresses;
- Though he will not be told how to use his money, his savings would nevertheless be monitored by the old man, the nephews and the special committee.

The Magistrate declares an end to the people's court proceedings.

Everybody rises. There is laughter and shaking of hands. All faces are bright and radiant. Even the young, scruffy accused is no longer shaking. His eyes are no longer restless, he shares a joke with his nephews. The old man joins in. They all laugh.

About 600m away, an army Buffel of the South African Defence Force was moving slowly, still patrolling the troubled township.

Where I was, some of the nine men were still laughing, others smiling broadly.

'Oh! The African people. They are never without their smiles,' I thought and left."