THE BLACK SASH

NATIONAL CONFERENCE 1987

COURT MONITORING REPORT

COURT MONITORING REPORT FOR BLACK SASH CONFERENCE 12 - 14 MARCH 1987

HISTORY

Court monitoring has a long-standing history in the Black Sash in the Western Cape. For many years it served as one of the means used to oppose the iniquitous influx control system by having monitors in the court at Langa. Here people were processed on a conveyer belt system of cases - these being heard at the rate of one every two minutes - for the crimes of seeking work or wishing to live with their families in the area. The Black Sash Advice Office managed to get legal representation for some cases; and its monitors felt that when they were present they had an effect, however slight, on the court's performance.

The pass courts at Langa have ceased to function with the demise of old-style influx control. But a new dimension has arisen in the art of punishment by process since the massive arrests began in 1985 of those involved in the politics of overt opposition to the apartheid state. The charges that followed, covered by the blanket designation public violence, have filled the courts for the past 2½ years; and it is with these that the Black Sash in the Western Cape (following the pioneer venture into this field by Sash members in Grahamstown) has occupied itself since November 1985.

The project really got under way from February 1986 and then, having drawn in about 30 volunteers, it has continued to operate in all the courts in the greater Cape Town area, in the Boland, and to some extent in the Southern Cape. The wider the network becomes, the better we shall be able to assess what is happening, and it would be valuable if the operation could be extended this year.

Information which emerges from the records keeps us aware of situations which are ever less and less in the public eye, because they are subject to media restrictions. This information, the statistics derived from it, and the conclusions arrived at are not strictly "new". They have been reported on over and over again in the past two years. But they are the result of our own experiences, which has been of value to us in many ways.

VIOLENCE

It is appalling to note the number of individuals who allege brutal violence on arrest, in Casspirs, and in police cells - including incidents of torture. The assaults ranged from kicking and beating - with quirts, fists or rifles - to teargassing and close-range shooting. (In a few cases doctors' certificates, photographs and slides were offered as evidence.) There were reports of inadequate food in police cells, rudeness and obstructiveness to parents seeking their children, opposition to bail applications, and protracted detention.

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Many claimed that the statements they had made and which were used by the State as evidence, had been signed under duress. We have seen detainees brought into court manacled or in leg-irons - even before the charges against them had been framed.

Being arrested during the night and removed from home in a state of undress was highlighted in the appearance in Montague of 120 residents of the Ashton township of Zolani in May 1986. A vivid account of this was published in the Weekly Mail.

> "It was a bitterly cold morning when 120 residents of Zolani filed into the dock in nearby Montague in various stages of undress. Many women were only in their bras and panties or nighties, and some of the men had only their underpants .....
> The accused, all arrested during midnight raids two days before, had not been given a chance to wash or grab their clothing before being taken away to the nearest police cells....."

It is worth noting that, in addition, these people had suffered severe assault by the vigilantes involved in their arrest; were then detained and bail was opposed. Eventually bail was granted on appeal to the Attorney-General, and 90 had the charges against them withdrawn. The remaining 30 were acquitted in January this year for want of evidence against them.

REMANDS

The duration of the above case was eight months. This protracted process is a feature of many of the cases we have monitored, some dragging on for more than a year, through being remanded repeatedly.
The worst we have recorded went through 12 remands. Many of these were requested by the State because their witnesses, usually policemen, failed to appear. Frequently the reason given was that the charge sheet was not ready; and sometimes the defence lawyers saw the charge sheet for the first time when they arrived in court. They then requested a remand in order to be able to study the charges. Delays for many other reasons are possible; and the whole process smacks of purposeful delay, or suggests that there is a very real problem in framing charges against people arrested in random fashion.

The result is a prolonged, traumatic experience for the accused and their families. So much hardship is involved, in addition to the fundamental anxiety about the fate of the accused. There is the loss of schooling; possible loss of several days' salary, when leave has to be taken to attend court; actual loss of employment, when employers are unsympathetic;

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heavy expenses incurred in travelling (especially serious in rural cases which are often held in towns far removed from the place of domicile.) Psychological and physical strains are marked. We have heard complaints of insomnia, headaches, shingles, rashes, and of an epileptic who had a fit at each appearance.

GUILTY/NOT GUILTY

The case figures accompanying this report have been taken from the first nine months of our records. (The next four months are being updated at the moment.) The figures we had arrived at by the end of October show that 42% of those accused were juveniles; and that only 13% of adults and 17% of juveniles were found guilty. Mr Vlok's figures, given recently in Parliament, show 40% not guilty in 1984/5 and 56% not guilty in 1985/6. The greatest percentage of people found not guilty (83%) according to our records may well be due to the fact that the cases we monitor have legal defence..... we are notified by the attorneys of forthcoming cases. What is clear from our figures, where over 80% of those accused are either found not guilty or the charges against them are withdrawn, is that very large numbers of innocent people are arrested in random fashion and charged on flimsy evidence that cannot stand up to examination in court. They are thus made to endure a protracted period of punishment by process, with little hope of redress. Claims have been brought against the Minister of Law and Order, but these seem generally to be settled out of court without open admission of wrongful arrest or unwarranted assault. For most people, when the accused is acquitted or discharged, they are too weary and disoriented to want to face any further court proceedings. It is sufficient to be free.

LEGAL DEFENCE

Our information is that many cases lack legal defence, especially in the rural towns. Present legislation overides the principle that the accused is entitled to legal defence and should be made aware of this right. As Fiona McLachlan has said in her publication: Children. Their courts and institutions in South Africa.....

> "The most fundamental flaw.... is the lack of automatic legal representation for children."
>
> and
>
> "It is legally possible for children as young as seven to be arrested, detained, tried, convicted and sentenced without his/her parents knowledge."

We have had a report of one such case, although the children were older.

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We seem to be stressing particularly our concern for children, but lack of legal defence is obviously serious in all cases. We realise only too clearly the awful consequences that follow upon the detention and imprisonment of the breadwinner, and the disruption of family life when any member is summarily removed. It is also important to bear in mind that the "adults", cited in the statistics, comprised a large number of people in their late teens or early twenties. Many of these are still school-goers, since socio-economic conditions cause them to start school at a later age than is the case with white children.

BAIL

The bail situation is confused and arbitrary and often excessive. It is true that young children are generally given free bail in the custody of their parents. But we have a case of five scholars aged 15 - 17 who were refused bail for almost 3 months in 1985, released without being charged, detained again early in 1986 and refused bail for a further 4 months "because, if they are released, they will start a boycott." A 17 year-old was given bail of R200 on a charge of throwing a stone at a Casspir! Three young men, accused of being in the forefront of an unrest crowd had bail set atR1000. One student, accused of arson, could not pay the bail of R2500 and spent some time in Pollsmoor. (He was acquitted of the charge). Clearly, bail may be seen as part of the punishment process; and it is only due to assistance from the Western Province Council of Churches that bail money can be paid in very many instances, though it is often also raised through community effort.

SENTENCES

When the accused are found guilty, the sentences often seem to be shockingly inappropriate and out of proportion to the act. This is especially so in the case of minors accused of stone-throwing, who are first offenders, and who are given cuts or prison sentences without even the option of a fine. Much publicity has been given recently in Cape Town to the imposition of prison sentences on scholars involved in "public violence" during the school boycott period in 1985. One of these was sentenced to 3 years (18 months suspended), while two others were sentenced to 1 year each. Appeals have been rejected.

In one case, a petition signed by 25,000 people on behalf of the boy, was also rejected.

The latest case of this kind which we have monitored was one involving 7 pupils, including 2 girls. Six face sentences of 3 years (2 years suspended) and one, who allegedly threw a petrol bomb, was sentenced to 5 years (3 years suspended).

Sentences of 7 years were imposed on two juveniles accused of intimidation/ assault during a school boycott.

According to established legal procedure punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to thecircumstances.
The crime in most P.V. cases involving children is stone-throwing;
The criminal is a youth 15 - 17 years old, who has not committed any earlier misdemeanour;
Which society is being considered and which circumstances?
Mercy? One magistrate was reported to have said that he could not be influenced by "maudlin sympathy" although he sympathised with the children. (C T 3/9/86)
We cannot forget that all those sentenced for P.V. offences (even when no property has been damaged or persons injured) will be treated in the same way as common criminals. Added to this we have the statement made by the Minister of Justice in Parliament last month that there would be no remission or parole for people convicted of unrest-related crimes.

It seems clear that unrest-related crimes are viewed as being much more serious than even the most brutal actions against the public. Cases are reported weekly of rape and murder where sentences are less severe than some that have been mentioned on page 3. Shocking cases of unequal justice are quoted in the Human Awareness Programme - Info '85.
That "unrest" may supply the grounds for verdict and sentence rather than the misdemeanour itself is borne out by the remark made by the magistrate in a case we monitored.
"Violence cannot be tolerated. It's the violence that must be punished!"

The bitter irony of this declamation is that the accused in the dock, a small mild-mannered man, had only one arm. The other had been amputated after he was shot by a policeman during a stone-throwing episode at Crossroads. He was given a four year prison sentence (two years suspended for five years). He had no previous convictions and had a wife and young baby. He was,moreover a photographer - the magistrate said he would still be able to take pictures!

APPROACH TO MINISTER OF JUSTICE

One thing emerges from our contacts.... For most of these people there is no distinction between the departments involved in the legal process the courts are perceived as an extension of the police and prison systems. Even the Hoexter Commission has warned that most South Africans are viewing the law with increasing suspicion.

In view of our awareness of this perception, we decided in November last year to approach the Minister of Justice and request an interview in order to bring our findings to his notice. We wrote a letter and attached to it a memorandum outlining the problem areas. We received no acknowledgement of this communication. In early February, when Parliament reconvened, we phoned the Minister's office several times, but failed to get even as far as his secretary. On February 10th we wrote once more, enclosing a copy of the original memorandum. This letter was sent by registered post, but we have not yet received any acknowledgement from the Minister. As we are now in the full flood of electioneering, it is a moot point when or if we shall manage to have this interview.

CONCLUSION

Our experience has not all been in this negative tone.... We have met Prosecutors who have been co-operative. We have listened to magistrates whose summing up has been fair and impartial. On two occasions magistrates have reprimanded the police for not framing the charges more expeditiously.

We have established very cordial relationships with attorneys and advocates involved in these cases, and have learned to admire their dedication in often trying circumstances. They, in turn, have encouraged us.

For us, as monitors, the court experience is disturbing and depressing. But it can be inspiring too; and there have been those joyous moments when we have been able to share the relief and happiness of families suddenly released from months of fear and anxiety.

This is one of the few avenues still available to us for contact across the colour divide - a place for possible bridge-building. People in this beleagured situation are encouraged by our presence and the practical help we are sometimes able to offer. It has been made clear, again and again, that it has mattered to them to know that there are those who care and are concerned for them. Warm associations have developed in several cases; and we have become keenly aware of the community solidarity that may be forged in the face of trouble, and of the courage that emerges among those who are put through the trauma of arrest, detention, court appearances and the threat of imprisonment. Even more importantly, while we have these opportunities for contact, we are kept continually aware of what it is like to live in communities that are constantly patrolled, constantly under surveillance, constantly in fear of the midnight hammering on the door.

APPENDIX TO LETTER WRITTEN TO THE MINISTER OF JUSTICE THE HON. H.J. COETSEE.

ISSUES ARISING FROM SECURITY TRIALS

1. THE VERY LENGTHY DELAYS BETWEEN ARREST AND TRIAL, AND BETWEEN BEGINNING AND END OF THE TRIAL PROCESS

Many of the remands responsible for such delays are due to the non-appearance of police witnesses. Some are caused by the police simply failing to bring the accused to court, if he is in detention. Others are due to the absence of a charge sheet prior to the accused's appearance in court. We have followed cases that have been remanded up to 12 times. Virtually all accused go through multiple appearances stretching over many months.

2. PUNISHMENT BY PROCESS.

Following on No. 1 we have found that of the 483 individuals who appeared in the 141 completed cases we have monitored, over 80% have been found not guilty or the charges have been withdrawn. Further analysis shows that the number withdrawn is far greater than the number found not guilty.

We are therefore particularly disturbed by the length of time many innocent people are held in prison, and by the unwarranted trauma and anxiety to which they and their families are subjected in this protracted procedure. It suggests that the Legal process is being improperly used by the police, and is thereby being brought into disrespect in the community.

3. THE PHYSICAL CONDITION OF ACCUSED PERSONS, PARTICULARLY JUVENILES.

We question whether magistrates pay sufficient attention to this matter. The accused may originally have been detainees or may be in prison still at the time of the trial, and there have been many proven instances of assault in custody. Is sufficient use made of referral by magistrates to District Surgeons for examination, especially in view of the widespread fears in the community regarding the treatment of detainees? Is sufficient cognisance taken of obvious sequelae of damage inflicted by the police?

4. THE USE OF PROBATION OFFICERS/SOCIAL WORKERS.

Do magistrates recommend that these services be used to investigate the particulars of juvenile accused (correct age, family background, behavioural record, disabilities etc.) or that such workers might make recommendations regarding sentences, if the accused are found guilty? We have found no record of such referral.

5. THE IMPOSITION OF LENGTHY PRISON SENTENCES even on minors and even when these are first offenders. We query the correctness of the imposition of prison sentences on minors at all.

6. INEQUALITY OF SENTENCES IMPOSED.

A comparison of sentences imposed on those found guilty of public violence with those imposed for other crimes that impinge drastically on the public, seems to indicate that the latter are not regarded by the judiciary as equally serious, however heinous they may be, eg. 7 years for 17 year olds in the Zolani P.V. case as compared with 2 and 5 years for young men who were implicated in the battering to death of an unoffending black man and then burning his body

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7. APPEARANCE OF ACCUSED, ESPECIALLY JUVENILES, WITHOUT LEGAL REPRESENTATION.

8. THE POLITICAL JUDGEMENTS sometimes contained in magisterial remarks and used to justify sentences.

NOTE:

A. The much publicised early September case in Worcester affecting a large number of minors and others from Zolani Township, Ashton, incorporated many of these issues. However, in our experience these issues arise to a greater or lesser extent in other cases and other courts.

B. Consequent upon the issues listed above, there is a widespread perception of the courts as an extension of the police force. This perception has serious negative implications for the judiciary and the judicial process.

Prepared by
BLACK SASH COURT MONITORING GROUP

Statistics obtained from Black Sash Court Monitors' Reports on cases heard in the Greater Cape Town area, the Boland and Southern Cape between 1 January 86 and 21 October 1986.

FIGURES FOR TOTAL NO. OF CASES ON RECORD, LEGALLY COMPLETED OR STILL BEING HEARD.

No. of court visits : 306
No. of cases monitored : 234
No. of individuals involved: Adults - 535 (19 years and older)
Juveniles - 386 (up to and including 18 years)
Total No. of individuals involved - 921

Juveniles 42% of accused

COMPLETED CASES

No. of cases completed : 141 (93 continuing)

No. of cases withdrawn or not guilty 87

62% of cases were withdrawn or accused found not guilty

INDIVIDUALS

No. of adults charged : 257 (1 case involved 142 individuals)
No. of adults, case withdrawn: 32
No. of adults found not guilty: 192 (including 142 above)
No. of adults found guilty: 33

13% of adults found guilty

No. of Juveniles charged : 226
No. of Juveniles, case withdrawn 114
No.of Juveniles found not guilty 64
No. of Juveniles found guilty : 46

22% of Juveniles found guilty

Total of Individuals charged : 483

Total No. of convictions : 81

17% guilty : 33% not guilty