

(written by D. Barlin  
mid - 1961.)

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A NOTE ON THE JUDICIAL SYSTEM

It is axiomatic in British-controlled countries that the Judiciary is beyond reproach and may be criticised only in the most guarded terms. Before venturing on certain brief criticisms it is only fair to acknowledge the merits of the English legal system, particularly in respect of its underlying principles regarding presumption of innocence, the laws of evidence and those other rules which ensure for the accused person an impartial and fair trial. One of the basic principles is inadequately followed in Tanganyika, i.e. that "not only must justice be done but it must manifestly be seen to be done"; whilst by insistence on imported forms the judiciary in some respects appears to be more concerned with laws than with justice. At the present time when there is still a largely alien magistracy administering the country's laws it is imperative that the system and its implementation should be above reproach, not only as an end in itself but so that it should win the full confidence of the people who will inherit it.

It is with this in mind that the following suggestions are made:-

- (a) Reduction of pomp and formality, especially in the High Court and to a lesser extent in Resident Magistrates' courts. The atmosphere of these courts is often apt to terrify the uninitiated, whilst literal translation of seemingly meaningless English legal jargon and formulae into Swahili creates an unnecessary gulf between the courts and public. In this respect the senior courts have much to learn from the relative informality of Local and District courts in which the public generally have confidence - and which nevertheless retain the dignity necessary to a court of law. In the lower courts the magistrate is generally fluent in Swahili, and goes to some pains to put accused persons and witnesses at ease, and shows a personal interest in and consideration for the persons involved.
- (b) Associated with (a), it is perhaps too late and too much to expect all Resident Magistrates and Judges to now learn Swahili. In default, the standard of court interpretation could often be improved, whilst care should be taken to ensure that interpreters explain procedures in full to witnesses, etc. and that everything which is said in any language is fully interpreted to witnesses, accused, etc. and not merely those parts which the court thinks are relevant.

If anything occurs in court which is not understood by the parties concerned, then justice is not being seen to be done.

Connected with this is the essentially "English" attitude of the senior courts, and the fact that too little attention is paid to the African personality, attitudes, and way of life. Greater sympathy and "liberalism" on these counts need not detract from the principles on which British law is based and would do much to secure the acceptance of these principles, the law generally, and the courts administering it.



(c) It is thought that the jury system should be introduced without delay for at least the more serious offences; even now this could probably be done without difficulty in the whole range of offences dealt with by the High Court. This question has three aspects:-

i. As a matter of principle it is desirable that this "democratisation" of the courts should take place - as is the case in England, and as was often the case in African customary law. It is absurd to say that the Tanganyikan people are "not yet ready for it". The average African is as fit to serve on a jury as is the average Englishman: no legal knowledge is required, nor knowledge of the English language. Whilst in the event of error, there remains the right of appeal to a judicial court of appeal.

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ii. As a further matter of principle/expediency, the higher courts of law would not be seen to be the preserve of expatriates, and the African people would be more closely associated with the administration of justice at the higher levels.

iii. At present the Judge carries out the functions of Judge and Jury. This imposes an unfair burden on him since the accused's life may be wholly in his hands. For this reason, and by virtue of his judicial training, a higher standard of proof appears to be required than pertains in, say, U.K. (Thus in one district known to the writer where there are about a dozen murders a year, no murderer has been convicted and sentenced to death for at least 20 years. It is now well-established locally that all an intending murderer has to do is to get drunk before killing, and subsequently plead that he was drunk and did not know what he was doing; he can thus expect a sentence of 2 years or less for manslaughter. Here again, justice is not being done, and by reducing it to such a mockery the courts are actively encouraging murder, and discouraging the public from co-operating in its detection and in giving evidence. (Mr. Nicas Buhatwa M.N.A., amongst others, will confirm the veracity of these facts.)).

\* This judge assisted by 1-3 African assessors

Here again, introduction of the jury system would do much to remedy the situation without in any way prejudicing the lives or interests of accused persons who may in fact be innocent.

In conclusion it is emphasised that this brief memorandum is concerned only with minor adjustments to the existing judicial system with a view to bringing it more into line with modern and popular thought. No more should be read into it than this.

DB

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