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NATIVE LAWS ENQUIRY COMMISSION.

JOHANNESBURG.

12TH MARCH, 1947.

P R E S E N T:

- THE HON. MR. JUSTICE H.A. FAGAN (CHAIRMAN)
- MR. A. S. WELSH, K.C.
- MR. A. L. BARRETT.
- MR. A. E. VON MALTITZ.

SECRETARY: MR. S. T. PARSONS.

DR. A. B. XUMA.

PRESIDENT-GENERAL, AFRICAN NATIONAL CONGRESS.

CHAIRMAN: If you do submit a memorandum we will read it very carefully, so it will be unnecessary for you to tell us everything you want to put in your memorandum, but there may be points you specially wish to refer to and you are at liberty to do so? -- <sup>Dr X</sup> Well, Mr. Chairman, and Gentlemen, I may say that the organisation that I represent has branches in the four provinces and it was established in 1912 and its aims and objects are to protect and advance the interest of the African people in all matters affecting them, to attain the freedom of the African people from all discriminatory laws whatsoever, to strive and to work for the unity and co-operation of the African people in every possible way, to strive and to work for the full participation of the African people in the Government of the country, i.e. of South Africa. We received the appointment of this Commission with a mixed feeling because, firstly, previous Commissions from time to time have enquired into and have given useful and considered recommendations on various aspects of the terms of reference of your Commission. Their recommendations have in many cases never been given effect to and, secondly,

DR. A. B. XUMA.

our organisations have made representations on some of the aspects before various Ministers with no success and it does seem to us that most of the favourable recommendations that have been given in by the previous commissions, i.e. recommendations favourable to the African people, have been disregarded and it is a fact that generally African opinion in matters that affect them have been more and more in recent years disregarded. As a matter of principle we would like to state that the African people claim it as an inherent right for them to be recognised as full citizens in South Africa with all the rights and immunities enjoyed by all other sections. The presence of African workers and their families should be governed by the same principles governing the workers and their families of the more privileged groups in South Africa. Africans are human beings with human wants and human aspirations as well as human anatomy and human physiology. As such the only right and correct way in which to treat them<sup>is</sup> as human beings and provide and afford them with all such requirements as are deemed necessary and essential for the well-being, progress and development of any and all human beings. We consider it an abuse of state authorities for any Parliament to pass discriminatory legislation based on race and/or colour. We are fully aware that the fundamental motive behind most of the Union legislation in Native Affairs is to distribute and to give African labour as cheaply as possible especially to the primary industry of agriculture and mining. It isn't possible to appreciate the problem of influx of Africans into towns and cities apart from the influx of industrialisation until one has an intelligent and good understanding of conditions in the native reserves and their effect, and the

effect of the Native Land Act of 1913 with its subsequent amendments. The Land Act of 1913 was the first major cause of vagrancy, poverty, overcrowding and overflow of the native reserves; and the downward movement of the Africans.

Before the passing of the Land Act of 1913 many Africans had been ploughing in shares with Europeans for generations, the end of the Land Act meant this long and pleasant association between the farmers and Africans, an association of mutual helpfulness and goodwill, and would constitute a criminal offence which would have the penalty of a fine and imprisonment on the part of farmers for harbouring native farm tenants. The farmers had no option and many of them had to evict their former African tenants to seek accommodation, which did not exist in many cases, for themselves and their stock. They wandered from pillar to post with their stock to find that the conditions were the same on many farms because many Africans thought that only the particular farm they were in was affected. They tried the reserves which they found, in most cases, overcrowded; as a consequence many of these people lost their stock through death from lack of grazing ground or sold them for the same reasons. The Government had not figured through this legislation to create a new class among Africans, the landless and homeless wandering blacks, who, although they squatted, have no land or home there to provide a livelihood for themselves and their families. They depend on wages earned in the urban areas for their livelihood; well, literally, the Government has made the native reserves not areas which are self-contained and self-supporting but as reservoirs of labour for chiefly the mining industries and white agriculture. I am making the last statement, Sir, because I know the conditions to be true in the Transkei and in the Ciskai,

where tens of thousands of young men become of age, get their families and have no land in which to bring them up. I was born in the Transkei and in our family it was only about five years ago that the Native Commissioner approached me to say that there was a plot available for me, which means then that many men, much younger than myself, who are remaining in the reserves giving the impression to many people who have no facts or don't know the facts, that those people have land that supports them or from which they can provide for their families. We wish that that should be carefully noted.

The statement that was made is proved by the fact that the Government which <sup>pass</sup> legislation in haste and think at leisure afterwards, decided to appoint a commission i.e. after the passing of the Land Act in 1913, to enquire into the land requirements of the African people. Its report in 1917 disclosed that seven million morgen were required for the then native population. No serious attempt was made to implement this recommendation until about twenty years later when the 1936 Acts were passed. The short-sightedness of even this attempt was that the amending Act provided for the requirements which were intended for the 1917 population and yet this was 20 years later, and we are not aware that even now, in 1947, 30 years later, that the 7 million morgen have been completely provided, whereas we have to consider the increase in population besides the requirements that were then - to provide accommodation for the dispossessed natives in 1913. The attempt of the Government has been to try to ignore the fact of over-populations of the reserves and to suggest that the main problem is overstocking. This is a wrong diagnosis, it is the application of wrong methods of treatment of the situation of overpopulation in the use of the rehabilitation methods, which can only succeed if the reserves are extended. What we wish to be understood -is-

DR. A. B. XUMA.

is that the recommendation that is made by the Government for stock limitation disguises the real problem which is scarcity of land. If a census of most native reserves were taken, of stock were taken, it would be found that most Africans have no stock, some of them one, and some of them five; there may be a number of people who have more than five. As a result of this, of course, the activity is likely to fall, because with five head of cattle, or no cattle, there are only one to two that are fit to be yoked. As a result the lands are not worked and, if worked, not properly worked, because most of the people have to get together and pool their oxen in order to make a span that is able to do the usual work of ploughing. With the small allotment of plots to Africans and with their restrictions it is impossible in many areas for Africans to produce enough for the requirements of their families; as we have indicated before, we are of opinion that the policy is deliberate in order to force the Africans out of the reserves for cheap labour in the mines and elsewhere. Our view is substantiated by the following statement which is reported to have been made by Mr. Gemmill which is quoted from the Star. Mr. Gemmill said "We believe there was plenty of land in the reserves if it was properly looked after. The improvement of productivity in the reserves should be compulsory and land should be allocated on the basis of providing a partial living, not a full living, partial living. The migrant labour system which is thought was a good one, should continue; everything possible should be done to keep the natives out of towns. In time native villages could be established in the reserves and industries be developed".

DR. A. B. XUMA.

Now when there is no partial living, I mean there is going to be partial living, how can you keep people out of towns and why should you when they can't support themselves. That is the first question we want to be asked. It was not the migrant labour, continued Mr. Gemmill, that was ruining the reserve; it was the failure to make the natives look after the land properly. How can they look after the land when most of them are in the mines. Because of the relation with the nature of this between the small size of the allotment in the reserves and the clamour to treat this aspect of the terms of reference of your Commission here, we make it bold that Mr. Gemmill's statement leaves no doubt in our mind of the motive that is behind the small land allocated to the Africans because he says that they should be enough to provide a partial living. Your question 18 in your terms of reference to us, seems to indicate your consciousness of the motive of the policy expressed above, when you asked in your terms of reference A18 "Should native workers have unrestricted right to sell their labour in the best market? What, in your opinion would be the effect of this upon labour supply for the purposes of (1) farming, (2) mining, (3) other industries, and there were other points that I have not put down here. Here is stated the complimentary relations and movements of the pass laws and migratory labour. The former we shall deal with later; we are convinced that migratory labour has far reaching unbeneficial social and economic effect on the lives of the African worker and his family. In the first place, a worker under this system is a comparatively

DR. A. B. XUMA.

young man between the ages of 18 and 45. He is the most productive period of life physiologically. Consequently most of them must be married men who have the natural instinct and love for their families and dear ones to want to be with or near them constantly. This has a tendency to make them restless even at work, so that he can only remain for 6, 9, 12 or 18 months at a time and return home. He does not go home because he has more money than he needs, that is the man I said who has not the facts. He goes home because he has family obligations as a father and a human being. This breaks his period of employment so that even if he is there, even if there was no colour bar restricting him to unskilled rent, he could not develop skill and efficiency. This would naturally affect his wage adversely because he lives away and apart from his family, these workers are treated like persons who have no responsibility and no obligations to others. They are housed, fed and hospitalised and these services, whatever their work, are charged against them. The industry boast of looking after them while their families and their dependants are often starving because many of the men have no land and therefore are not supplementing their wages with produce in the reserves. Some depend wholly and solely on wages earned in the mines and urban areas. In other words the wages remain low because the man is considered to have no relations and/or dependants and also that he has some other source of income in the reserves with which to supplement his low wages. That is the statement that you will always be told, that these people have land and that is why they should not be paid. Even where one has land, as we have pointed

DR. A. B. XUMA.

out, these areas are very small and people have become poorer and they have no spans individually to plough their fields; they have to combine so that if there is partial drought or only late rains, most people are not able to plough. This results in frequent crop failures and chronic starvation in the reserves. Worse than even this, most men are away from the reserves for longer or shorter periods during ploughing time, thus they have one foot in industry and the other in the reserve.

Consequently their earning is not sufficient for them to support themselves and their families. They leave their women and children in the reserves; the women and children are the people who seem to be expected to plough the reserves. Under the circumstances, is it a wonder that there is soil erosion and that most of the fertility of the land goes down the rivers. On this aspect of our problem

Prof. Kulter, who was one of the members - an eminent American Physiologist, who participated in the enquiry/ <sup>into the</sup> question of <sup>One</sup> the poor white in this country, had this to say: /of the main obstacles to native agricultural development is the absence of a large proportion of able-bodied men to local mines and farming in other territories. Under the prevailing conditions soil erosion and rehabilitation schemes are useless because the right people, i.e. the men who should carry them out, are away to work for the mines or elsewhere. Morally and socially these long periods of separation between husband and wife will not make marital ties any stronger. They tend to expose both husband and wife to temptations of immorality and infidelity. They produce an inclination for new illicit unions on both sides. The man thus tends to import venereal disease from towns and spread it in the

DR. A. B. XUMA.

reserves among their wives and thus creating a serious social and health problem for many innocent families and a public health problem for the whole African community. During the period of his stay in the mine the man does not play his part as a father. The wife has the full and sole responsibility of the home, ploughing, looking after livestock, if any, as well as looking after children. The man is not there to guide and to share the responsibility of bringing up the family with her. As a result in many of the homes parental control and discipline is absent or weak. Children grow up missing those little pleasures in life from happy home surroundings. Estrangement may develop between husband and wife, leading finally to a broken home because more often than not the husband may find another to whom his love is transferred and finally his money, leaving the wife and children at home destitute. Now one of the things that is done very often in the case of the wife, if a man is employed on the railways he has to bring up his family to railway quarters or even mine-workers have to do likewise. Somebody who has recruited says in "Modern Industries" on pp.303/304, in confirming the statement that was made "That the moral life of the tribal natives also suffers from the absence of the men. Group integrity is broken down, marital fidelity both of the husband in his abnormal surroundings, and the wife in the native kraal, passes into licence .... the necessary tyranny of native marital custom is ..... Moral functions have in them a large religious element. This latter under conditions of constant moral influxion, falls into .... " I think it will be in order to deal briefly now with the

DR. A. B. XUMA.

question of the compound system when these men come into town. When the man arrives on the Rand, they are housed in compounds where 20 or more occupy the same room. They are fed by the mining company which always provides hospital services for the men. The mine charge the cost of service against the African although the worker does not have to pay cash for same. The cost of these services is considered as wages in kind. The strangest thing is that, although the Chamber of Mines, buying as they do in bulk, claim that the cost of compound services to them had risen since 1939, to about 100%, from 12.6d to 2/- to .5d, yet the Chamber of Mines has not felt the need of raising the wages of the African as they are affected by the rising cost, because they buy in small quantities and therefore pay higher prices. We make that statement to say this: that the Chamber recognises the rise of cost on their part, but they don't seem to realise that the African is on the same South African market and he has to pay for those costs, so that whatever wages are paid to Africans, they are apparently what they are, but the real wages compared with the rise in the cost of living are much lower than what is paid under the present conditions. The disadvantage of the compound has been described as follows: That the compound system is semi-military, it does not cater for likes or dislikes; prevailing conditions have to be accepted with regard to food and quarters; there is no privacy; it is not conducive to religious encouragement nor personal refinement. Personal belongings are exposed to thieving because the communal rooms cannot be locked. The average compound room holds about twenty. The men come and go at different times, according to their kind of work, and in spite of the anti-vermin

DR. A. B. XUMA.

measures taken the compound is the happy hunting ground of bugs. This statement was made by <sup>two</sup> highly placed Africans in some of the compounds somewhere on the Reef. Of greater interest to us are the social and economic and health effects of the compound life. Dealing as we do with moderately young men between ages of 18 and 45, a period as I have stated before, of great physiological sexual activity, a problem is created for mostly men, and a few women, that are on the reef. The latter, i.e. the women, are at a premium, and with current starvation wages for African workers they may be tempted to let down their morals and profit with their bodies. Prostitution, if it does not develop, however limited, may be a source of spreading venereal disease. What does happen then, is that some of the men try to contact some of the women locally with consequences; there are two consequences, namely, either some of the men contract venereal diseases or become struck with the new paramour and completely forget their wives or sweethearts in the native territory. The money may also first be shared between a home and here, and finally all is spent where the man is. Some men resort to undesirable social habits and indifferent acts between men. Now that is a condition that is existing and we know it. Women have been ignored and turned away at compound gates in preference for this habit. Although it would satisfy their natural desires, there are two classes/<sup>the first being</sup> where both parties to the indifferent act agree and this is the most common and is almost a regular practice among certain groups or tribes; and the second type is where one party induces the other for gain, either financial gain, promotion or better working conditions. In this class one finds Baas boys and piccanins as the chief offenders. And the third is where one party is the victim of intimidation or of

DR. A. B. XUMA.

rape. In these points we are not just imagining; these are facts that are known by men who are in charge of all these compounds. Thus some of the men are demoralised, economically, physically, morally, and finally he becomes unfit for the purpose. Economically the compound system disregards the family requirements, wages and provisions for the worker are made on the basis of the individual. The wife and the children may be starving, but the industry does not care, does not know, and cannot feel such conditions. If a man leaves the industry at an early stage of tuberculosis or even Silicosis, the industry does not see him when symptoms of the disease become manifest and incapacitate the victims. He becomes the burden of his wife and children. The industry in many cases may thus escape liability. In support of the statement we have just made, we would like to refer with permission to the report of the Department of Native Affairs, which states "The Magistrate of Flagstaff reports that in interviewing applicants for relief he made the discovery that many of the male applicants were ex miners who were suffering from phthisis and silicosis, but who were not in receipt of a compensation. The question of compensation was taken up with the Director of Native Labour and by the end of 1936, thirty-two families had benefited to the extent of £1,650. Now this is accidental, and it is quite possible that quite a larger number of the people have never been discovered or have never applied for assistance. We wish to make two points clear: (a) the compound system disguises the real situation of ex native miners after they leave the compound; and (b) even when he has to be compensated for silicosis and/or tuberculosis, he is doomed to die from 12

DR. A. B. XUMA.

to 24 months and to leave his dependants with no pension, and with no provision for the training of his children. For self support he receives only about £15 in a lump sum; this may vary as based on what he was receiving when he was a miner - in full and final settlement. Legally the amount is correct because it is based on the starvation wages of the worker during the days of his usefulness. From the human aspect the needs of the wife and the children are overlooked, and the family is doomed to starvation without a breadwinner. If he has tuberculosis or V.D., he has the finest opportunity of taking it back to rural areas and to destroy his family, relatives and neighbours in perfect ignorance; whereas if he was in a village system, his needs could be detected and treated; in other words, the compound system meets the needs of the worker and forgets his family. Although most of the workers have no land with which to supplement their wages. We know that the native population has increased to the extent of overflowing to small reserves and tens of thousands of men and their families have no land to supplement their wages. When the African enters the mine he is bound down by other regulations. There is a question of summoning village men for mineworkers and we would like to say that the compound system and absentee or migratory labour leads to the same result and conditions. They can only be off-set by the establishment of villages where workers who choose mining as their work may remain. The benefit to be derived from such a system is that family life and morals can be developed and maintained. Children are thus brought under proper parental control. The conditions of the workers and their families are evident to the employer, and whatever

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