Geoffrey Bing, Ghana's first Attorney General, on PDA and Dr. Danquah's detention

The Granville Sharp Commission was, in another way, equally a watershed in Ghanaian politics. Until now the Government had been sensitive to overseas opinion and particularly of criticism on the BBC and in the British press and policy had very often been modified in the light of the effect it might have on Western opinion.

The Awhaitey Enquiry was, in a sense, a world propaganda move. It was an effort to explain why Ghana was forced to use preventive detention. In the Government's view the Tribunal's Report showed that they had attempted to examine objectively, within the accepted legal conventions of the Western world, the application of preventive detention in two key cases. It was true that the full Proceedings of the Commission were of enormous bulk but great trouble had been taken with the typography and layout. The document was readable, and in circulating it, the Government accompanied it with a summary and with a White Paper explaining its point of view. The unanimous, majority and minority Reports were each fully cross-indexed and any competent lawyer would have had no difficulty in following the argument where the majority differed from the minority and forming, on the basis of the evidence cited, his own opinion.

Despite the fact that even the paper-backed edition of the Tribunal Proceedings weighed over four pounds, they were sent individually by airmail to every jurist throughout the world who was known to have criticized the use of preventive detention in Ghana or to have expressed concern about Ghana's denial of civil liberties. So far as I know, the only reply received was from a Japanese member of the International Commission of Jurists who wrote to congratulate the Government printer on his choice of type and on his method of printing. It made the Proceedings, he said, a pleasure to read but he gave no indication of the conclusions to which reading them had led him. The Proceedings were, so their title page claimed, 'to be purchased from the Crown Agents for Overseas Governments and Administrations at 4 Millbank, London, S.W.1' but the Crown Agents, it would seem, considered it outside their duty to advertise them or send them for review even to learned journals and, so far as I can recall, they sold less than half a dozen copies.

The British and American press which had been so critical of events in Ghana scarcely referred to the Commission's findings, though all the usual steps to call their attention to salient passages of the Proceedings had been taken. A special analysis for the press was made and the issue to the public in Ghana and elsewhere of the Tribunal's report were delayed two weeks or so to provide serious journals with advance review copies so that they could make an objective study of it prior to the official publication date. None did.

The treatment of the Granville Sharp Tribunal, perhaps more than anything else, I think, convinced Dr Nkrumah and the Government generally that the attack on the absence of Civil Liberty in Ghana, was not motivated by genuine concern for the rights of the individual but was the result of a deliberate policy of denigration of everything that Ghana did, whatever it was. Preventive detention had been established in India before it was introduced into Ghana without resulting in any denunciation of the type which its establishment and use in Ghana had aroused. It was accepted in Accra that it might be mistakenly but genuinely argued that the reason for the difference was that Ghana was thought to employ the Act unjustly and India justly. The Awhaitey Tribunal Proceedings were offered to the world as an example by which it might be judged whether this was so. The world was not interested in making the adjudication. Ghana's test case was entirely ignored. This was the turning point. Thereafter, in Ghana, international

protests came more and more to be written off as biased and world press criticisms disregarded.

One final example will perhaps illustrate this feeling that we all had, that whatever we did it would be misunderstood and mis-reported. 'Amnesty International', an organization for whose work in South Africa and elsewhere everyone in Ghana had the highest respect, issued, two or three years later, a Christmas card on which they listed some twelve prisoners in various countries for whom prayers were asked since they had been 'imprisoned for their political opinions'. Among them was Modesto Apaloo. If such an organization as 'Amnesty International' misunderstood the Granville Sharp Tribunal's findings, what hope was there of obtaining sympathy or understanding elsewhere?
It could have been argued, of course, by 'Amnesty International' that Modesto Apaloo should not have been imprisoned at all, in that he had never been convicted by a Court or stood trial in the ordinary way. The organization might have contended, though it is difficult to see on what grounds, that the Tribunal was biased against him. It might have argued that the Tribunal's unanimous findings, in Apaloo's case, that he was engaged in a conspiracy to carry out an act for an unlawful purpose, revolutionary in character, and its majority Report, which held that the act in question had been a conspiracy to assassinate the Prime Minister and carry out a coup d'etat, were both insufficiently supported by evidence and could not therefore be accepted. What could not possibly be argued was that his political opinions had anything to do with the matter one way or another. Nowhere did they arise at the Commission. The reason for his detention had been advertised by the Ghana Government in every way that it could. He had been placed under detention because a quasi-judicial body had decided unanimously that he was engaging in revolutionary activities and, by a majority, that these included murdering the head of the Government.

With the 'Amnesty International' Christmas card I, for my part, abandoned any hope, even with the most liberal organization, of explaining or justifying what was being done in Ghana. Whatever evidence to the contrary might be put forward whenever someone was detained, it would, to the outside world be 'for his political opinions', no matter what effort was made to show that this was not so. **Preventive detention might be accepted as a legitimate security precaution elsewhere but it would always be a stick with which to beat the Nkrumah Government.**

As a result of this type of controversy the actual facts of Ghana's Preventive Detention Act have tended to be overlooked. It was first suggested in the National Assembly by Krobo Edusei, acting without any Cabinet authority for doing so, in December 1957 as a result of his being shown a copy of Indian legislation then being enacted in that country. Krobo Edusei, in fact, threatened to introduce a measure based on the Indian Act when Parliament resumed in February, but he was overruled in the Cabinet and at that time it seemed the Government had definitely decided against it. It was not until after the discovery that Amponsah was purchasing military accoutrement and that the Ga Shifimo Kpee had set up a secret organization, that the proposal was revived and a somewhat restricted version of the Indian Act was enacted in July 1958. As I have mentioned previously, it was then intended as a precaution only. Certainly at the time there was no intention that it would be used against leading figures in the opposition. For example, although the facts of Amponsah's purchase of accoutrement were known when the Bill was passed, there was no suggestion at the time of using it against him on this account.

The Act which was drafted and redrafted several times, in the end provided for detention up to five years. The detainee had to be served with written details of the grounds of his detention

within five days of it taking place, and was given an opportunity to appeal against them but the appeal was to the Cabinet and the machinery did not work well in practice. A detainee could also always bring his case before the courts by way of habeas corpus proceedings, and a number of such actions were taken but the courts held that they could not examine the merits of a detention and this remedy was thus of little practical value.

The Attorney General's office was only concerned with the administration of the Act, in that we advised whether, on the face of it, it appeared to us that the evidence put up by the Minister of the Interior was strong enough to warrant detention, and that what was alleged came within the provisions of the Act. Our views were annexed to the Cabinet paper proposing the particular detention or detentions and only very rarely would I, or anyone from my office, attend at the Cabinet when a particular case was being discussed. Sometimes the Government proceeded with the proposal in the Cabinet paper despite our doubts, in other cases our views were accepted and the order was not made. In all cases, the Cabinet was the final arbiter.

By the end of 1960 three hundred and eighteen detention orders had been made. In the majority of these cases the detained persons were at that time still in custody, though it was not unusual for detainees to be released after only a short period of detention. However, of these three hundred and eighteen detention orders, two hundred and fifty-five were made in 1960, after the Act had been extended, at the urgent request of the police, to cover gangsters whose activities were of course quite non-political. It can be argued, as I in fact did, that it is much worse to use preventive detention against a criminal with a long list of convictions than it is against a political offender. A political detainee will always find someone to plead his case. With a hardened criminal it is otherwise and the very fact of his many previous convictions makes it difficult for the issue to be looked at on its merits. However, the police argued that, in the same way as it was impossible to prove in court a political offence, so it was equally impossible by way of the Courts to deal with the new type of gangsters who were then, it was said, beginning to organize themselves on an American pattern.

At the time of the coup in February 1966, some seven hundred and eighty-eight detained persons were released, of whom some three hundred and fifty to four hundred seemed to have been criminal detainees and were apparently let loose for the purely propaganda purpose of increasing the total number freed. Since the police were a party to the coup and it was entirely on their responsibility and through their initiative that the 'gangsters' had been detained in the first place, it is difficult to see why else they should have been let out. As predicted by the police, when arguing the principle of using the Act to detain them in the first place, their being now at liberty has, according to the Ghanaian Government press, resulted in an increase in crime. However, whether or not 'criminal detention' was a necessity or otherwise, its existence does not enter into the general argument. World opinion was aroused by the existence of the 'political detainees'. The question is thus whether the four hundred or so of this class released after the coup, should have been imprisoned.
From details published by the National Liberation Council, it seems clear that, on grounds of age, health and changed circumstances, some at least of those detained in connection with matters in the past could have well been released earlier. No doubt also among the political detainees were a number of persons who had done nothing wrong but who were there through personal intrigue and victimization. Nevertheless, when it is considered that there had been two different attempts to assassinate the President, one by a grenade thrower and one by a police constable guarding his own office and much, presumably opposition organized, indiscriminate murder in Accra by terrorist bomb-throwing, the total number of political detainees was not large. The Act may have been used capriciously but it had not, even after the terrorist

attacks, been used wholesale. The one thousand three hundred political prisoners alleged by the opposition, before the coup, to be held under the Act was clearly an exaggeration.

The original proposal that the Act should lapse after five years was discarded in the face of the attempts on the President's life and the terrorist bomb attacks. **From time to time large batches of detainees were released and certainly before the 1961 strikes, Dr Nkrumah was in favour, if not of the repeal of the Act itself, at least of the release of all those then held under it.** In fact, however, it continued in use. From my own prison experience I do not think that any detainee would have been intentionally ill-treated by the prison staff but at Ussher Fort prison the medical facilities were bad it was, I think, possible that a prisoner seriously ill, might easily not have had proper attention. **So far as Dr J. B. Danquah, who died in prison, was concerned, no prison official with whom I spoke at Ussher Fort, suggested that he had been treated other than well and after the coup, if it had been otherwise there was no reason why these officers should not have said so**. Nevertheless without citing any evidence in support, Dr Fritz Schatten, apparently an accepted Federal German expert on Africa, has alleged that many detainees 'were tortured to death', 'in concentration camps', 'as happened to the "Grand Old Man" of Ghanaian Nationalism J. B. Danquah'.

In fact if one contrasts the attitude towards political prisoners in Ghana with that exhibited by European governments in the pre- and post-war years, what stands out is the humanity of Ghanaian behaviour as compared to that of supposedly more civilized nations. In Ghana, unlike in pre-war and war-time Germany there were no 'concentration camps', let alone any gas chambers. No detainees were beaten to death as they were in Kenya at a contemporary period nor were they 'tortured to death' as happened in the last stages of colonialism in Algeria. What is in fact remarkable is that the present military regime have been unable to dig up any authenticated case of ill-treatment or indeed any execution for treason or subversion to justify the type of allegation peddled by those of Dr Schatten's type.
When in May 1967 I made this comment in connection with the public execution by the rebel regime of two young army officers convicted of treason and said, 'During the whole period of Nkrumah rule no single political execution took place' the Information Officer of the Ghana High Commission wrote to the Manchester Guardian replying:
'This statement is simply not true. Mr. Bing, who was one of the deposed President's advisers, must have forgotten that in 1965 Ametewee, a police constable, was executed for allegedly making an attempt on Nkrumah's life. Again, among the thousands of the unfortunate Ghanaians whom Nkrumah locked up without trial not a few lost their lives in detention. I mention only two, Dr. J. B. Danquah. . . and Mr. Obetsebi-Lamptey . . . Nkrumah had them arrested and locked up in prison where they died without benefit of medical care. . . .'

It is true of course that this police constable, Ametewee, did make an attempt on the President's life but he was never tried, let alone convicted for this offence. He had admitted to the shooting of his superior officer in the police, Superintendent Salifu Dagarti, and it was with this that he was charged. Since this killing was connected with an attempt on the President's life perhaps it might be argued that it was a political crime and he should have been reprieved when convicted of the murder but, if, as alleged by detractors of Dr Nkrumah's Ghana, like Dr Schatten, many political prisoners were clone to death, it is extraordinary that, fifteen months after the rebel regime had been in power, the Ghana High Commission were still unable to produce more evidence than this. It scarcely lies in the mouth of the diplomatic representative of the present regime to complain of Ghanaians 'locked up without trial' when at the time of the Information Officer's letter to the Manchester Guardian the total of persons imprisoned without trial by the military regime far exceeded the number at any time under Dr Nkrumah's rule. This total never amounted to anything like one thousand, let alone 'thousands'.

While I cannot speak from personal knowledge about the treatment of Dr Danquah I can vouch for the expert medical attention which Obetsebi-Lamptey received. I myself visited him twice in hospital, where incidentally he was being visited by his relatives, and I talked with his doctors. At the time of his arrest he was suffering from an advanced stage of cancer of the liver. His death was inevitable and in no way connected with his imprisonment. Though at the time he had been charged with organizing terrorist bomb outrages in which thirty persons lost their lives and some three hundred others had been seriously injured, he was placed in a private ward in the best equipped civilian hospital in Accra and had all the drugs and attention possible provided for him by the Government.

The maintenance of law and order in developing countries is **a** highly complicated question. The method by which attempts were made to solve it in Ghana was unsatisfactory certainly, in the ultimate resort, in that preventive detention did not check the organization of a successful revolt. In view of the various plots afoot, the number of political detainees might be held not to be excessive but what proof was there that they were the right people?

The Ghana Courts had failed to check political conspiracy because of the rigidity of the English laws of evidence and procedure and their, perhaps, too dogmatic enforcement in circumstances for which they were never designed. However, the main trouble was not with the Courts themselves but with the legal and police preparation of cases. Police methods in a developing country of necessity are defective and, so far as Ghana was concerned, the Awhaitey Enquiry showed that while it might be possible to unearth sufficient to prove a conspiracy of some sort existed, whatever the effort made, it was impossible, with the existing machine, to establish all those small points which are essential to reach definite and final conclusions.

The trouble with preventive detention, as applied in Ghana, was that its fairness or otherwise depended upon the efficiency of the police investigation and thus the new remedy was likely to be only slightly more effective than the Courts system so far as public security was concerned and much worse so far as the rights of the individual were involved. Yet given the circumstances, what else was possible? The only basis of criticism of the expedients to which developing countries are forced, is to postulate an alternative which is workable in terms of the resources available to them, and this is exactly what Western countries have been unable to do. Far from preventive detention being condemned on principle and alternatives suggested, the British Colonial Office view was that it was not only a highly necessary but also a highly moral and reformatory instrument of government whose general use in Africa should be advocated rather than explained away or excused as due to special circumstances in some particular territory.

Almost contemporaneously with the publication of the Granville Sharp Commission Report the British House of Commons debated in June, 1959, the circumstances in which eleven Africans in preventive detention in Kenya had been beaten to death by prison warders. The Colonial Secretary, Alan Lennox-Boyd, naturally expressed the British Government's sympathy with the relatives of the deceased and its profound regret that this lamentable incident should have occurred but he strongly defended the 'rehabilitation' system in the over-zealous conduct of which the men had lost their lives. **Far from preventive detention being wrong, he told the British Parliament, it was in fact the only method by which tribal conspiracies could be stamped out and those who had mis-guidedly joined them could be trained in a way which would enable them to return to civilian life. Progress, he felt, had been enormous. At one time there had been 38,000 Africans in preventive detention in Kenya. Now, thanks to the 'rehabilitation' policy it would be possible to reform the 13,000 detainees previously pronounced incorrigible and therefore likely to be imprisoned for life. The**

British House of Commons agreed with him and the Motion condemning the Government's preventive detention policy in Kenya and calling for stern disciplinary action against those responsible for the deaths was decisively rejected.

An equally interesting explanation of the need for preventive detention had already appeared in the London Times some two weeks before the debate on the killings in the Hola concentration camps in Kenya. Explaining certain happenings in Southern Rhodesia, the Bulawayo correspondent of The Times, in a two-column centre-page article, described how '500 members of the Southern Rhodesian African National Congress were roped in for detention in a smoothly executed night roundup'. The correspondent admitted that at first sight it might seem a little arbitrary to arrest and imprison without trial the whole of the then leadership of an African Party which it appeared represented the aspirations, however mistaken, of ninety per cent of the population of the Colony particularly as it 'was the proud boast', according to him, of the European minority 'that no blood has been spilt in racial anger in their sunny land since 1896'. 'In fairness to the Government,' however, he pointed out, 'it must be conceded that political subversion, preached to and practised among illiterate and semi-literate African masses can spread like a forest fire unless subjected to the most strict police and governmental surveillance . . . The normal trappings of a democratic judicial system are ill-equipped to deal effectively with such threats to public safety.'

These views were not hastily thought-up justifications to deal with immediate situations. In 1961 the British Conservative Government presented to Parliament a four-hundred-page White Paper dealing in detail, from start to finish, with the Mau Mau rebellion in Kenya. The argument throughout is that the Mau Mau movement only became established because the British Government failed to abandon soon enough normal judicial procedure and did not detain without trial, at an early enough stage, a sufficient number of African suspects. The Times article on preventive detention in Southern Rhodesia was quoted with approval.

From "Reap the Whirlwind," By Geoffery Bing pages 268-277