



ATHLONE ADVICE OFFICE

ANNUAL REPORT

OCTOBER 1980 — DECEMBER 1981

UNDER THE AUSPICES OF THE BLACK SASH AND THE S.A. INSTITUTE OF
RACE RELATIONS

Price 50c



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Part of the crowd scrambling for safety after police fired tear-gas outside the Langa Commissioner's Court in July 1981. (The Argus)

Cover: Nawandile Ngongo crouches against a rock in Nyanga — all she has left to protect her from the elements is a blanket. (The Argus)

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Women and children prepare for another night in the open at the Nyanga site. (The Argus)



INTRODUCTION

This year has seen a dramatic intensification in the official response to the presence of so-called illegal Black people in the Western Cape. Dr Koornhof's promised bills to ameliorate the lot of Blacks in "White South Africa" never materialised. Instead there has been increasing pressure on "illegals", and amidst great publicity, an official escalation in the steps taken against them.

In March temporary residents of the Langa barracks were evicted and arrested in a series of dawn raids. In April some 55 women and their young children were repatriated under Section 14 of the Urban Areas Act. In July, in freezing winter weather, further Langa evictions culminated in the Nyanga site crisis, during the course of which the authorities invoked the Admission of Persons to the Republic Regulation Act 59 of 1972 thereby circumventing the courts completely and administratively deporting over 3000 people.

Thus influx control is being mercilessly maintained, with no hope for the inclusion of those outsiders deemed to belong to the "national states". Official policy refuses to recognise the inevitability of increased Black urbanisation. With the "independence" of the Ciskei in December 1981, almost all of the Cape's Black population is now made up of "foreigners", and only those with Section 10 rights under the Urban Areas Act have any security at all.

In Hansard (no. 4, August 1981, col. 231) Dr Koornhof quotes the de facto Black population of Cape Town as 199 600, and the de jure population as 114 164. Thus, over 84 000 or approximately 42% of the Black population in Cape Town is here without permits.

PERMIT PROBLEMS

The bulk of our work is concerned with the permits Black people require in order to live and work in 'white' or 'prescribed' areas of South Africa. These permits are granted in terms of Section 10 of the Black (Urban Areas) Consolidation Act no. 25 of 1945 as amended (see Box p.3).

This legislation is designed to control the influx of Blacks into 'white' areas and has a dramatic impact on their family life and employment opportunities.

Family Life

The rigorous application of the requirements of Section 10 causes extreme disruption of normal family life. These restrictions cause daily and tragic frustrations to decent people trying against often insuperable odds to lead the sort of life that most people take for granted.

Mr F.M.D. was born in Cape Town in 1955. His parents separated and he was sent to live with his paternal grandmother in Mount Fletcher when he was 8 years old. His grandmother died in 1976 and the only

way in which he was able to rejoin his father in Cape Town was to come down on contract. His father has remarried and now has a house of his own in Cape Town. Mr D. has been refused permission to live officially in his father's house. He is supposed to live in the single quarters. He married a woman qualified to live in Cape Town in 1977, and they have two children, both born in Cape Town. His wife has thus far not been allowed to place her name on the waiting list for a house in Cape Town and he, as a contract worker, can never apply for a house. Mr D. has no relatives left in Mount Fletcher, and tells us that when he goes up to renew his contract annually, he stays in a hotel in Umtata.

Miss G.N.L. was born in Cape Town in 1954. Her mother had a residence permit, and she and her brothers and sisters all lived in Cape Town. In 1970 her mother was resettled at Sada at her own wish because she is a bad asthmatic. Miss G. accompanied her mother, having been assured that she could return to Cape Town when she was old enough to take out a reference book. She returned in 1972, was endorsed out and has been here illegally ever since. Her brothers and sisters all live here. Miss G.N.L. came to us in 1978. Finally, after appealing to Dr Koornhof, she is to be allowed to apply for a reference book here in Cape Town.

The right of the wife of a qualified man to a 10 (1) (c) permit, established by the Komani decision in August 1980, was further reinforced this year by the Cape Supreme Court decision in the case of Virginia Yapi. This will be dealt with in the legal section. Wives are now being granted the permits to which they are legally entitled, but housing remains a major problem. Many wives tell us of a lengthy series of visits to the Administration Board offices in an attempt to provide an address which the housing officials consider not overcrowded. Only when their housing has been judged satisfactory, does the wife finally receive her permit.

Florence Silwana has been granted a 10 (1) (c) permit to reside in Cape Town with her qualified husband. The refusal of her permit was reported in our annual report for 1979—1980. The Silwanas have been trying to get permission to live together since 1965. Mr Silwana has worked in Cape Town since 1939 and married Florence Silwana in 1955. After 25 years of marriage they can now finally live together legally in the area where Mr Silwana lives and works.

Once the wife has her permit, the next obstacle is to get all the children accepted as residents of Cape Town. This is possible for unmarried daughters or sons under the age of 18, but if the daughter is married or the son over 18, they will not be allowed to live legally with their parents unless they can establish that they themselves fulfill the requirements of Section 10.

Section 10 of the Blacks (Urban Areas) Consolidation Act no. 25 of 1945, as amended, states that 'No Black shall remain for more than 72 hours in a prescribed area' unless he has a permit to do so. This permission is granted if the individual can prove (and the onus is on him to do so) that:

- #10 (1) (a) he has since birth, resided continuously in such area; or
(b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding five hundred rand or to imprisonment for a period exceeding six months; or
(c) such Black is the wife, the unmarried daughter, or the son after the age of eighteen years, of any Black mentioned in paragraph (a) or (b) or this subsection and, after lawful entry into such prescribed area, ordinarily resides with that Black in such area; or
(d) in the case of any other Black, permission to so remain has been granted by an officer appointed to manage a labour bureau . . . due regard being had to the availability of accommodation in a Black residential area.'

Employment

A second area of permit difficulties involves those wanting permits to work in Cape Town. Many have found jobs, but have been refused permission to take them as they are illegally in Cape Town. Only qualified people or those who have a 10 (1) (d) permit to work in a prescribed area may take up employment. Permits granted under 10 (1) (d) are usually contract labour permits valid for one employer for one year, and only renewable in the homeland magisterial district of the worker. We advise the men of contract labour procedures, as it is only as a contract worker that a man from outside the prescribed area can be permitted to take up employment in Cape Town. For women the situation is hopeless as there is no recognized contract procedure for them.

This situation is the direct result of the Coloured labour preference area policy and any would-be employer of Black workers has to have a permit from the Department of Manpower Utilisation to employ Blacks, having satisfied the Department that 'Coloured' labour is not available.

The Nyanga Site crisis provided an interesting perspective on the question of permits for those already in employment. As the statistics in the section describing the Nyanga Site crisis reveal, 95% of the men and 84% of the single women interviewed at the office were employed. Once those who

had been deported had returned, most employers were delighted to have their illegal workers back and went eagerly to the Langa office in the hope of registering them. When this proved impossible many expressed great frustration and disappointment. We heard the same story many times. Trusted workers and law-abiding employers forced into an impossible situation by the web of regulations which keeps such tight control on the provision of labour.

One employer had previously attempted to legalise some of his workers only to be told that they could come in on contract only if the employer provided accommodation. He agreed to build single-quarter housing in the township but was told that there was no land available.

Mr A.N.M. was arrested at Nyanga site and deported to Transkei on 19th August. He spent 7 weeks waiting for permission to return to Cape Town. He returned on 7th October and immediately reported to his employer of 2½ years standing. His employer, a small contractor, anxious to resume employing him, took him to Langa. He was told he could only employ Mr M. on contract and no new contracts were being granted. Mr M. was given 14 days to return to his local labour office in the Transkei.

Mrs N.P.N. was deported to Umtata on 19th August. She returned on 7th October. She had been working as a live-in domestic worker for three years prior to her deportation. During her 7 week absence her employer had to replace her, but is now eager to re-employ her.

The desperate lengths to which people go to obtain employment in Cape Town was again illustrated for us by the following example.

Three men had been illegally employed at the docks and each paid R25 a month for the use of a card enabling them to work. The bribery was uncovered late last year and a police docket opened. The men were given temporary contracts to enable them to work legally while awaiting the expected court case in which they were to be state witnesses. The case never materialised and they have now all been endorsed out.

Domestic Workers

The position of domestic workers in employment remains unchanged from last year. The employers of illegal full-time live-in domestic workers of long standing may appeal to the Chief Commissioner for permits. These permits, if granted, are six monthly or annual contracts, renewable only by the original employer. If a domestic who has been granted such a contract loses her job, for whatever reason, permission is not granted for her to transfer the contract to a new employer. The unfortunate woman is then totally illegal once more, but with no prospect whatever of being able to legalise herself, and with reduced prospects of finding a new job, as employers are increasingly reluctant to engage illegal workers.

This year we have kept separate statistics for illegal domestic workers in full-time live-in employment. They account for 34% of our permit problems. These are women who are housed, employed and almost always the sole support of the families they have had to leave.

Mrs V.N.V. is a 44 year old woman. She is the sole support of 4 children who live in Willowvale with her 83 year old widowed mother. The mother receives an old age pension. Mrs V.N.V. came to Cape Town in 1972 and has worked as a full-time live-in domestic for the same employer for the last 4 years. She earns R80 a month and states that there is no employment available in Willowvale. She is now attempting to apply for a permit.

The application procedure for such permits has now been formalised. Applicants are given a sheet 'Guidelines to a person wishing to note an appeal' and are asked to make out two affidavits in duplicate.

SQUATTERS

The necessity for a change in government policy towards increasing Black urbanisation was again highlighted this year by problems with three different squatter communities. Crossroads, ex Hout Bay and Table View, and Nyanga Site are different aspects of the same problem. They have been dealt with in drastically different ways.

Crossroads

The survey which we undertook in 1980 at the request of Crossroads residents finally bore fruit in November of this year. We compiled an alphabetical list of over 900 Crossroads residents who had missed the Administration Board survey of July 1979. This list was handed to the Crossroads committee and the Chief Commissioner's Office as the basis for requesting further permits. The hearings started in November 1980 but ended when only two of the four sections of Crossroads had been dealt with. This left a great many people in limbo. Finally, lists compiled by the two divisions within the Crossroads committee and our lists were used in November 1981 in order to grant a promised further 6 000 permits. This seems to have proceeded smoothly but is not yet completed.

The second fundamental problem in Crossroads is that of housing. Conventional housing has been provided in New Crossroads at astronomical expense. About 700 new units have been completed and occupied, and rentals are high. They range from R18,20 to R23,50 per month, excluding water, depending on income. A rent increase of R6,00 is proposed for this year, which has greatly distressed the Crossroads community. In Old Crossroads the rental is R7,00 per month, including water and rubbish disposal and sewage collection. The new increases make for an enormous

leap in rental for those moving from Old to New Crossroads, and residents feel discouraged from doing so. Expensive conventional housing is not a feasible way of housing poorly-paid communities.

Ex-Hout Bay and Table View

In March some residents of the Langa barracks were evicted as their accommodation was scheduled for renovation by a private company. Many of those living there had been given permission to move there from the squatter camps in Table View or Hout Bay which had been cleared in 1980. Those who did not move were subjected to a series of dawn raids. Our panel of lawyers defended some 91 of those arrested. Most had the charges withdrawn or were cautioned and discharged.

In April the continuation of the Langa barracks evictions resulted in so much action in the Langa Commissioner's Court against women with young children that the publicity drove Dr Koornhof to announce at a National Party election meeting in the Gardens on 23rd April that 'those who come for medical treatment or to visit relatives, and would otherwise be illegally in the area, could stay provided they found their own accommodation and notified administration boards of their addresses' (Cape Times, 24.4.81). Dr Koornhof said 'I don't want to read in the newspapers about bad and hurtful cases. We are a civilised country.' (Ibid.) However, the arrests continued.

On Friday 22nd May, about 50 women from the old Hout Bay and Table View squatter communities (who had been moved to the Langa Barracks and then evicted and had then moved to Crossroads after being temporarily housed in local church halls) went at the request of Administration Board inspectors to the Langa office. They hoped that their papers would be put in order. Instead, they were arrested and appeared in the Langa Commissioner's Court on charges under Section 10 (4) of the Urban Areas Act. Most of them were then found guilty, cautioned and discharged, and referred to a second commissioner for a repatriation hearing under Section 14 of the Act. Attorneys acting on their behalf were refused admission to the hearing and all the women were ordered to be repatriated to the Transkei. Railway buses which had been standing ready since early morning were then loaded and the women with their children were driven off to the Transkei. They returned by bus a few days later, and after lengthy negotiations involving Church and Community organisations, permission was granted for about 160 shacks to be erected on the Nyanga border of Crossroads.

Mrs R.D. came to Cape Town in 1944 with her parents as a child of 11 and has lived here ever since. It has taken 17 years, dozens of interviews and several court appearances to obtain permission to live and work here. She was homeless in 1964 when we first met her; later was arrested several times in Crossroads in 1975 and finally evicted. She then lived in Table View squatter camp until last year and was evicted many times from there. She has 7 children all born in Cape

Town between 1955 and 1975 and is their sole support. Had she gone back to her birth place Mount Fletcher as ordered in 1979 she and her seven children would have starved. She has now been given permission to build a shack on the edge of Crossroads and to work and support her family.

Nyanga Site

In July all the residents of single quarters due for conversion in Langa were evicted. Those men legally there were accommodated in employer-built quarters, or offered beds in other single quarters. Those illegally there, which included the families of legal and illegal workers, were left with nowhere to go. The conversion of old single quarters over the last year had resulted in a compression of the illegal residents from other single quarters. A surprising number of people were affected by these final evictions, and went to the Administration Board offices to ask for permission to remain in Cape Town and for some form of housing. This refused, they converged on a piece of vacant ground between the Nyanga Administration Board offices and Crossroads. They then started to compile a list of all those who slept out in the open on the site. This list was later found to consist of 2 500 names.

On July 16th the Administration Board raided what was to become known as the Nyanga Site, and arrested over 600 people. The Advice Office was asked to provide legal defence for all those arrested. The first 200 who started appearing in court on the 16th in Langa and Manenberg were unrepresented and given little chance of defending themselves. Some enormous fines of R120 per accused were handed down. By that afternoon our legal panel was able to act and 60 cases were remanded with bail set at R30 each. This marked the start of our continuing defence of the eventual total of over 1 500 people arrested during continuing raids at Nyanga site. Four courts sat at Langa (2), Observatory and Pollsmoor. The legal panel with the assistance of other attorneys and advocates were able to provide pro amico defence for those accused, who were given varying sentences from not guilty to fines of R10, R20, or R30, or R60 suspended. The provision of adequate defence resulted in long remand lists stretching into September. Most accused chose to plead not guilty, arguing that necessity compelled their presence in Cape Town, where they were able to find work.

On Wednesday August 19th the authorities acted again and arrested over 1 000 people at Nyanga Site. The Transkeians and Ciskeians were separated at Pollsmoor prison. Transkeians, as foreign nationals, were deported under Section 40(4) of the Admission of Persons to the Republic Regulation Act 59 of 1972. The courts were thus bypassed, and those out on bail were forced to estreat bail. The legal panel continued to appear for the Ciskeians all of whom were charged in court.

On Wednesday August 25th there was a final raid at Holy Cross Church in Nyanga. The remaining Nyanga site people had moved there on the afternoon of the 19th, and the Red Cross had set up an emergency camp there at Dr Koornhof's request. This time 349 Transkeians were deported

and the Ciskeians again appeared in court. By this time some people had appeared in court 4 or 5 times.

By 11th September the legal panel had appeared for the last of the Nyanga squatters who were still to be dealt with in court. The following table of sentences handed down on those represented in September demonstrates the dramatic reduction in sentences which occurs when individuals are represented.

Of 50 cases, there were:

- 4 not guilty
- 8 cases withdrawn
- 3 cautioned and discharged
- 1 fined R10
- 3 fined R30
- 1 fined R40
- 27 fined R60 or 60 days suspended and given 14 days in which to get the necessary permission to be in the area
- 2 fined R80 suspended
- 1 fined R90 suspended

Unfortunately it proved impossible to make similar records for July and August.

Deportations under the Admissions of Persons to the Republic Regulation Act caused untold misery. Some of those deported were legally in Cape Town, others had left children and belongings behind and the office was besieged by people who claimed that relatives or employees had disappeared. Transkeians arrested in raids were held incommunicado at Pollsmoor Prison until deportation. Only after the fact of deportation was it possible to confirm that individuals had been so dealt with.

Mrs N.Z., the wife of a contract worker, came to Cape Town with her child because the child was ill. She obtained a medical visiting permit and the child was treated at hospital and recovered. Her permit expired and she was arrested in a raid. Her husband made frantic efforts to contact her at Pollsmoor, wishing only to give her clothes and money for her return home, but he was not allowed to see her. She has now been deported with her baby, leaving behind all her possessions and without the money her husband wished her to have.

Once the deportations had started, road blocks were set up at various points on the road from the Transkei to Cape Town. These road blocks posed a threat to all travelling to Cape Town.

Mr D.G., a young man of 20, legally resident in Cape Town, was returning from a trip to Mount Frere when his bus was stopped at Touws River on Monday 24th August. He was repatriated to Cala on

ANALYSIS OF NYANGA SITE CASES

Interviewed at the Athlone Advice Office between 21 July 1981 and 30 October 1981:

Number of cases	902 (262 men, 640 women)
Number of married women	266
Number of single women breadwinners	374
Number of children supported by the 902 cases	2 452 (an average of 2,7 children family)
* * * *	
Number of people from Transkei	787
Number of people from Ciskei	30
Number of people from R.S.A.	85
* * * *	
85 came to Cape Town less than 2 years ago	= 9,4%
186 came to Cape Town 2—5 years ago	= 20,6%
264 came to Cape Town 5—10 years ago	= 29,3%
367 came to Cape Town more than 10 years ago	= 40,7%

EMPLOYMENT

Number of cases: 902 (262 men, 374 single women)

Men	Employed	Self-Employed	Casual Labour	Unemployed
262	221	8	21	12
	84,3%	3%	7%	4,6%
TOTAL % OF MEN IN EMPLOYMENT: 95,4%				

Single Women	Employed	Self-Employed	Unemployed
374	259	55	60
	69,2%	14,7%	16,1%
TOTAL % OF SINGLE WOMEN IN EMPLOYMENT: 83,9%			

Wednesday 26th August. His mother then sent him his travel document and R22 for his fare and he again embarked for Cape Town. He was again stopped, this time at Worcester, and sent back to Umtata. This in spite of the fact that his travel document showed that he was legally resident at Crossroads and employed. On his third attempt — this time with a rail warrant — he reached home after yet another incident at Worcester during which he states that he lost his watch and was manhandled by the police.

Once in Umtata, most of the Transkeians made desperate efforts to return to Cape Town. Some of those in search of children or possessions were able to return. Seven hundred or so, however, remained in Umtata, unable to return to jobs, families or possessions.

Dr Koornhof stated in Parliament that 3 666 people were deported in August and September (Hansard no. 7, September 1981, col. 391). This figure is high because many people were deported more than once. Some of these started returning to Cape Town again on Wednesday 7th October. Almost all of those who returned at this stage came from Umtata where some 700 people had been housed in local church halls for the seven weeks since their deportation on August 19th and 26th. They came back with high hopes, having been given R60 each by the Transkeian Secretary for the Interior and Social Services stating:

'The bearer is one of the people returned from Western Cape during August 1981. Employers inside and outside Transkei are requested to give these people preference when they apply for employment for which they may be qualified. Your co-operation is appreciated.'

All of those who returned did so in the firm expectation that having established by their stand in Umtata that they had either no homes or no jobs in Transkei, they would now be allowed to register the jobs that they had in Cape Town and thus obtain permits to live and work here legally. However, after three days of anxiety we established beyond question that there was to be no special treatment afforded the returnees. No concessions regarding the registration of illegal employment had been negotiated between the Transkei and South African officials and normal registration procedures were to be followed.

This meant that men illegally in the area could only be registered on contract, after the employers had obtained 'coloured labour clearance certificates' from the Department of Manpower, and only if the employers would provide accommodation for the workers. There is a shortage of 1 000 single hostel beds in Cape Town (Hansard, v.7 1981, p.397). For women, there was to be no possibility of registration unless they were long-term live-in workers for whom there is a special appeal process.

Thus the entire exercise resulted in precisely no change in the status quo.

After vast expense (R35 000 donated by the South African government to the Transkei to help meet expenses and untold sums for transport and salaries of officials) and incredible human suffering, many of the 'squatters' were back in Cape Town, with no change whatever in their situation.

Most of the people involved in the Nyanga site debacle seem to have merged into the large illegal black population of Cape Town, but raids have continued with arrests, prosecutions and deportations of those found on the site.

On Monday 16th November the site was raided, and some 15 women and 18 men were arrested. The women were deported but it was decided that the men were to appear in court, charged under the Admission of Persons to the Republic Regulation Act No. 59 of 1972. On Tuesday 17th November the 18 men were shuttled, in custody, from the Athlone Magistrate's Court, to Langa, to Retreat and back to Langa. It was finally decided that they would appear at the Langa Commissioner's Court on Thursday 19th November, to be charged under Section 40 (5) of the Admission of Persons Act No. 59 of 1972. This charge carries a maximum sentence of 6 months imprisonment with no option of a fine. This is the first time that this Act was to be the basis of a charge in the Commissioner's court.

The 18 men appeared on the 19th, were refused bail and remanded to 26th November. The case against one man was withdrawn as he was on a valid contract. That afternoon as the prisoners were being transferred from the court cells to the van to take them back to Pollsmoor, nine of them escaped.

On Friday morning, the attorney who appeared for the 18 men was asked to submit written representation to the Attorney-General's office by that afternoon. This was done, outlining as the basis of defence the fact that the documents the men had all been given in Transkei led the men to believe that their presence in Cape Town would be legalised. That afternoon at 4 p.m. the prosecution of the remaining 8 men was stopped and they were released from Pollsmoor.

CONTRACT WORKERS

This year, 52,8% of the contract workers who have come to the office have done so in the hope that they might qualify for permanent residence. They come because they have been in continuous employment with one employer for 10 years or more, and as such should qualify under section 10 (1) (b) of the Urban Areas Act. However, ever since the Labour regulations of 1968 which stipulated that all new recruitment for the 'homelands' had to be on an annual contract basis, the officials have deemed such employment to be non-continuous. Because of an administratively-imposed break, long-service employees have thus far been denied permanent local registration. This is highly coveted because only locally qualified men can hope to have their families with them in the area where they work. Contract workers are doomed to a lifetime of separation from their families, or else the perpetual worry of 'harbouring' their families illegally. They are forced to live in single sex hostels as labour units rather than men. Many employers are also

interested in the possibility of their workers achieving local registration, as they feel that this would result in a happier and more settled work force.

The Rikhoto judgement handed down in the Transvaal Supreme Court in August conceded local qualification to contract workers with 10 years service with one employer. This caused great excitement amongst potentially qualifying workers in Cape Town, and we had a greatly increased number of inquiries. Unfortunately when several cases were referred to the Chief Commissioner, they were refused registration as the East Rand Administration Board has appealed against the Rikhoto judgement. Thus, these men must wait another year or so until the Appeal Court considers the matter.

Mr D.M. was born in Qumbu in 1947. He came to work in Cape Town in 1965, and has been on contract to the same employer ever since. He married in Qumbu in 1968 and has 4 children, 2 born in Qumbu and 2 born in Cape Town. He has worked continuously for 16 years on contract for the same employer, but his wife and 4 children must live in Qumbu.

Mr B.W.M. was born in 1945 in Peddie. He has been on contract in Cape Town for the same firm since 1965. He married a locally qualified woman in Cape Town by Christian rites in 1977 and has 4 children, all born in Cape Town. His wife is supposed to lodge in a house which is very overcrowded. As a result she lives with him in his single quarters where she says that she is more comfortable. All his ties are in Cape Town, but he is considered a foreign worker.

MISCELLANEOUS

This category comprises wage disputes, housing and pension difficulties, Unemployment Insurance Fund and Workmen's Compensation claims, and a multitude of human problems.

Housing

Increasing numbers of people with desperate housing problems are coming to the office. The housing crisis in the black townships becomes ever more serious and living conditions continue to deteriorate. There has been no significant building programme in the townships for over 10 years. The approximately 900 family units converted from single quarters during 1980 have done little to help. There are now 2 500 families officially on the waiting list for houses in the townships.

In the first six months of 1981, 250 new family housing units were provided in Langa, converted from single quarters. While 209 new family houses were built in New Crossroads, no new houses were built in Nyanga or in Guguletu. (Hansard, 1981, v.3, col. 116). One official told us that he had been keeping a

private tally to illustrate the desperate situation. He said that from January to April of this year he had received 864 urgent applications for housing, but had been able to assist only 6 families.

There is desperate need for an urgent building programme in the townships. The building of houses to accommodate residents of Crossroads can not have any effect on the township waiting lists. It can only be hoped that the Urban Foundation's announcement of a utility company to finance the construction of houses tied to a renewable 30 year leasehold, in itself revolutionary for the Western Cape, will have some effect on the housing shortage. However, this can only affect a small proportion of the people in the townships and the need for a massive state programme remains.

Mrs L. has together with her 4 children been a registered lodger in a house in Guguletu for 8 years. The registered tenant of the house decided to cancel his tenancy, but due to an administrative oversight, Mrs L. was not given notice by the housing authorities. She returned from holiday to be confronted with a demand to vacate the house immediately. She had nowhere else to go. Her belongings were thrown out onto the street by the new tenant. After legal intervention it was arranged that she should share the house with the new tenant for a month until a house became available for her family.

Mrs L. was fortunate; most lodgers are placed in a desperate predicament when the registered tenancy changes, and are usually left to fend for themselves in a totally overcrowded housing situation.

Mr N. is a young, qualified, recently married man with one young child. His parents' house is grossly overcrowded as is that of his wife's parents. He applied for a house but was told of the enormous waiting lists. He then took matters into his own hands, and after applying for permission, erected a 4 roomed shack on land at K.T.C. Permission was subsequently refused and he was served with a summons for illegally erecting a dwelling, in December 1980. He paid a fine, but remained in his shack. He made further applications for permission to erect his own home but received no answer to these. In May he was served with another summons. In spite of the housing shortage he has not been allowed to use his own initiative to solve his problems

Widow's Benefits

Many women from the rural areas experience great difficulty arranging for the widow's benefits to which they are entitled under the Unemployment Insurance Fund when their husbands die. Complex regulations and permits add to their grief and bewilderment. They must get U.I.F. forms filled in by their husband's employer, produce death certificates and marriage

certificates (difficult if they were married by customary union), and generally cope with an alien environment. They face the added hazard of arrest for illegal presence in the area if they have not had the foresight to obtain a permit to be in Cape Town.

Mrs M.N.M. came to Cape Town in February to care for her sick husband. She obtained a visiting permit valid to 31st May, and renewed it to 30th June, after which a further extension was refused. Mrs M's Husband died on 26th March. She was arrested on 16th June and fined R90. She spent 10 days in jail after which a friend paid R80 to release her. She had still not managed to complete the U.I.F. formalities. This required a further 2 visits to Langa and to her husband's employer. Finally she obtained a further extension, and completed the required forms.

Bribery

The complex system of permits and regulations which govern the lives of African people in white areas lends itself to a considerable degree of corruption. Desperate people are tempted to try to obtain permits or accommodation by means of bribes when they are unable to do so legally.

Mr P.V. and Mr W.M. are two young men from Transkei who entered the area illegally last year. In November they state that they each paid a black wardsman R40 to secure a bed in the single-quarters. They found employment and were happily settled. In mid January they were horrified to find on return from work, that all their possessions had been removed by the wardsman and their beds allocated to other men. They wanted the wardsman to refund their R40.

LEGAL WORK

The bulk of our legal work is performed on a roster basis by a panel of 20 legal firms. Most of the work is in the Langa Commissioner's Court, but our lawyers also appear in the Magistrate's Courts, work on Section 10 claims, write letters of demand, and generally advise and assist us in our daily work. Many of our cases are also referred to State Legal Aid.

Langa Commissioner's Court

Influx control is enforced through a network of Administration Board inspectors — who have draconian powers of entry and inspection without search warrants — the Department of Co-operation and Development's Commissioner's Courts, and the South African Police. The charges fall under Section 10 (4) of the Blacks (Urban Areas) Consolidation Act — remaining for more than seventy-two hours in a prescribed area without

permission, and Section 15 of the Black (Abolition of Passes and Co-ordination of Documents) Act No. 67 of 1952 — failure to produce or possess an identity document. The penalty attached to the first charge is usually R60 or 60 days for a first offence with R10 or 10 days on the second charge. This represents roughly a full month's salary for many workers.

The major contribution made by the lawyers during the Langa barracks and Nyanga Site crisis has already been noted. In addition to this truly herculean effort, our lawyers represented 115 people in the Commissioner's Courts and were successful in gaining an acquittal or a suspended sentence in 81% of the cases. In many of the others, reduced fines were imposed following pleas in mitigation. This represents a minute proportion of the cases heard, for in 1980, 16 327 people were arrested in the Cape Peninsula on charges under influx control legislation. (Hansard, 1981, February v.5, c.229, 249). In 1979 a total of R351 028 was collected in fines, R245 648 paid by individuals, and R105 380 paid by 1 177 employers charged with employing illegal workers (Hansard, 1980, v.7, c.394).

The court proceedings remain a source of extreme distress. Most people are undefended, and are shunted through the Court at the rate of one a minute. Many accused seem to prefer it that way, and do not attempt a defence, wishing rather to be dealt with as rapidly as possible so that they can pay a fine and return to their work and home. Should they attempt a defence they are remanded in custody for 2 weeks while their story and fingerprints are checked. We wish it were possible to appear on behalf of all accused, thus averting much suffering. However, the mechanics of the system makes it almost impossible for someone who has been arrested to get in touch with anyone to ask for help. We hear constantly of people not allowed to make a phone call after being arrested. Most of those arrested appear in court the day after arrest. This means that people simply vanish for a few days while distracted relatives search police stations, the courts and the prison.

Mrs D.K. Nomeva came to Cape Town in March 1981 with a sick child. She was arrested on 6th April and appeared in the Commissioner's Court where she was sentenced to a fine of R50 or 50 days. Her fine was paid, and on her release she went to the Red Cross Hospital and obtained a medical certificate stating that her child had meningitis and required hospital treatment which was only available at Red Cross and requesting a permit valid until 21st June 1981. Such a certificate means that she will be given a permit. She has therefore paid a R50 fine unnecessarily, and suffered the horror of an arrest and court appearance.

Magistrate's Court

Our lawyers appeared 4 times in various courts, defending men accused of 'harbouring' or 'illegally introducing' their wives into the area under Section 11 (1) of the Urban Areas Act. In two of the cases charges were withdrawn, and the remaining two accused were cautioned and discharged.

Supreme Court

This year we brought three cases before the Supreme Court. The first was an urgent application to reverse Mrs Mtyingizane's endorsement out of the area. The second was an appeal against Mrs Virginia Yapi's conviction in the Langa Commissioner's Court. The third arose out of the Nyanga Site prosecutions and was an appeal against Mr Phillip Mzilikazi's conviction in the Langa Commissioner's Court.

Mrs Harriet Mtyingizane

On March 18th, Harriet Mtyingizane's urgent application before the Supreme Court was made final. She was granted the right to remain in Stellenbosch, the town where she was born and has lived all her life and where all her four children were born. The court further ordered that the Administration Board should pay the costs of the application.

Mrs Mtyingizane was born in Stellenbosch and lived there continuously. In 1964 she married a man qualified to live in Stellenbosch. In 1970 she went with her husband to visit his relatives in the Transkei for 6 months. On her return she was told that her residence had been interrupted, that she was no longer legally in Stellenbosch and had to return to her husband's relatives in Transkei.

She remained in Stellenbosch and was arrested and fined in 1978. She was again arrested in October 1980, but was found not guilty of illegal presence in the area. The Administration Board however, refused to endorse her book with permission to be in the area.

On Wednesday 11th February 1981, her house was demolished and she was given four days to leave the area. She then brought the urgent application before the Supreme Court which finally succeeded — a 10 year battle to restore rights which should never have been removed.

Mrs Virginia Yapi

On 9th February 1981, Mrs Virginia Yapi was found guilty of illegal presence in the Cape Peninsula, when she appeared in the Langa Commissioner's Court. Her case was remanded for one month for sentencing. Mrs Yapi is the wife of a qualified man, and has tried for the past 14 years to gain permission to live legally with her husband in Cape Town. Mrs Yapi married Mr Yapi in 1962 and has been living in Cape Town with him since 1965. Her five children were all born in Cape Town. Mrs Yapi was granted legal aid and appealed to the Supreme Court against the Commissioner's Court finding of guilty under Section 10 (4) of the Urban Areas Act. The case was heard in the Supreme Court on August 14 and judgement reserved until December.

The obstacle in Mrs Yapi's case was that Mr Yapi was a chef at a local hotel, and had quarters on the premises of the hotel. Therefore the State argued that the Yapis did not 'ordinarily reside' together. This lack of 'ordinary residence' was held to disqualify Mrs Yapi from qualifying under



Mrs Harriet Mtyingizane in front of her demolished shack at Stellenbosch. (See Supreme Court.) (Photo: Gagiano)

Section 10 (1) (c) of the Urban Areas Act. The State argued that ordinary residence must mean lawful residence. When off duty Mr Yapi lived with his wife and children in a house in Nyanga, sharing with another family. Neither Mr Yapi or Mrs Yapi had permission from the Administration Board to live in the house. The State therefore argued that Mrs Yapi's residence was unlawful, and that she did not qualify under Section 10 (1) (c).

In the judgement, delivered on 10th December 1981, Justice Burger stated that 'for the purposes of section 10 (1) residence in a prescribed area is to be distinguished from the occupation of a particular house or site in a black residential area . . . for the purpose of section 10 . . . a (qualified) Black must be accepted as lawfully resident in the area even though he is in fact not lawfully occupying any site in the area . . . hence when Blacks qualify in terms of Section 10 (1) (a) and 10 (1) (b) and when they are deemed to be legally resident within the prescribed area then likewise their wives and dependants are to be deemed as being legally resident within the prescribed area.'

Mrs Yapi won her appeal and after 14 years is legally resident with her husband.

The significance of this judgement is that it takes the Komani judgement one step further. It is now abundantly clear that local township housing regulations may not be used to prevent the wives of locally qualified men from qualifying under Section 10 (1) (c). Section 10 rights therefore remain constant regardless of the chaos created by inadequate housing policy.

Mr Phillip Mzilikazi

Mr Mzilikazi was arrested at the Nyanga Site on 16th July. He was brought to trial at the Langa Commissioner's Court on 27th July, where he was charged with remaining for more than 72 hours in the prescribed area without permission. He pleaded not guilty to the charge, his defence based on necessity. Mr Mzilikazi stated that he was forced to come to Cape Town as there was no employment in Queenstown where he lived, and that if he did not do so his family would starve. He therefore came to Cape Town illegally in 1979 and remained until arrested. An expert witness was called and dealt with the desperate lack of employment in the Homelands. After many remands requested by the State in order to call experts to rebut this evidence (which never occurred), Mr Mzilikazi was found guilty, cautioned and discharged.

It was decided to appeal against the conviction, in order to establish the legitimacy of the defence of necessity. This defence is available to all accused, be it for crimes of murder, assault or illegally crossing a border. The appeal failed, and the conviction against Mr Mzilikazi was confirmed. The appeal failed because there was no evidence in the record as to necessity at the time of arrest, that is in July 1981. The record dealt with 1979 which was when Mr Mzilikazi was first driven to come to Cape Town in order to support his family.

Although the appeal failed, Justice Van Heerden's judgement established certain important points. Necessity can be claimed in an influx control case. Each case however, has to be judged on its specific details as to the state of necessity at the time. In a case of necessity, the onus rests on the State to prove that the offence was not committed in self-defence or necessity, once the defence has outlined a reasonable case. Thus, the judgement provides clear guidelines for the future conduct of defences of necessity.

CONCLUSION

We have changed the period covered by the annual report to that of a calendar year. As a result this report covers a longer period than usual. The statistics cover the entire 15 month period, but comparisons have been drawn between the last two calendar years. They show that our numbers have once again greatly increased, with the most dramatic increase in the permit problem category, which has increased by 58%. This accords with our impression of the increased pressure and insecurity suffered by the Black population of Cape Town.

We wish to express our great appreciation to all those who have so ably assisted us in the past year: to our interpreters and case workers, Mrs Lettie Malindi, Mr David Viti and Miss Nomahlube Nabe, who were joined in July by Miss Theodora Mokhemela; to our voluntary case workers who give so generously of their time, energy and sympathy, and to all those who assisted in many different ways during the Nyanga Site crisis and to our legal panel who this year excelled themselves in their attempt to provide those who requested it with the safeguard of due process of law.

R. N. ROBB
Director

V. L. WEST
Organiser



Deported squatters being transferred from buses to a train at Kei River. (Daily Dispatch)

ATTENDANCE

1 OCTOBER 1980 - 31 DECEMBER 1981

	Oct	Nov	Dec 1-12	Jan 12-31	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec 1-11	Totals	
																Jan-Dec 1980	Jan-Dec 1981
Permit problems	104	58	39	47	87	95	87	99	84	63	119	183	180	159	53	794	1 256
Squatters Crossroads	14	18	10	7	16	11	9	16	7	11	19	24	24	14	8	239	166
Contract workers	42	46	14	14	20	36	33	57	29	35	51	54	84	102	13	342	528
Miscellaneous	88	71	38	56	105	101	75	84	72	70	89	113	84	87	42	911	978
Old cases returned	121	118	61	94	132	175	126	123	136	129	152	241	234	160	86	1 259	1 788
Nyanga Site squatters	—	—	—	—	—	—	—	—	—	96	558	44	364 ¹	44 ²	4	903 ³	1 110
	369	311	162	218	360	418	330	379	328	404	988	659	970	566	206	4 448	5 826

- 1 243 new cases; 121 old.
- 2 5 new cases; 39-old.
- 3 Crossroads survey.

