

PRELIMINARY PAPER.

THE ORDERLY MOVEMENT AND SETTLEMENT OF BLACK PERSONS-BILL.

This Bill was published in the last days of the 1982 Parliamentary Session and was referred to a select committee. It may be amended in the months to come but will almost certainly be presented to the 1983 session of Parliament. It contains a completely new structure of influx control which will undoubtedly be more efficient. The present Black (Urban Areas) Consolidation Act is completely repealed by this new Bill and the Black Communities Development Bill.

The recommendation of the Riekert Commission that control over the influx of black people into the urban areas be removed from the streets to the places of employment and accommodation is largely put into effect.

CLAUSE 52. of the Bill is of the utmost importance. It says that the Minister may by notice in the Gazette declare that any or all of the provisions of the Act shall not be applicable in an area specified in the notice or may only be applicable in such area subject to such "adjustments" as are set out in the notice. The Minister may by notice in the Gazette declare that any or all of the provisions of the Act shall for any period, and subject to conditions which he may specify, not be applicable to a person belonging to a specified category of persons or to a person in a specified category in a specified area. He can amend or withdraw any such notice at any time, exempt any person from the provisions of the Act, or withdraw the exemption.

Here we have a situation where Parliament passes a law which gives the Minister power to alter, nullify or apply that law as he sees fit. This clause means that they might as well pass a one-clause law saying that the Minister can make up and promulgate his own regulations at will.

Imagine a situation in which a person takes a case to the Supreme Court in order to establish his rights of urban residence. He wins his case. The Minister can then exclude him and others in his category from the provisions of the law. The Minister can nullify the ruling of the Court by declaring a change in the law by notice in the Government Gazette.

Even without this provision the Bill is horrendous in its implications for black people.

The Bill deals with who may "stay" in an urban area and imposes extremely severe penalties on people found without permission in an urban area between the hours of 10 p.m and 5 a.m., on those found in employment for which they do not have permission, on those who give them illegal accommodation, and on those who give them illegal employment.

An Urban Area is defined as being the present prescribed areas and any area defined as an urban area by the Minister by notice in the Gazette (Clause 1).

To "Stay" in an urban area is defined as being to stay in the area during the hours 10 p.m on any one day to 5 a.m on the following day. (Clause 1).

Who may "stay" in an urban area? (i.e. be there between 10 p.m and 5 a.m).

- A. Black people who are Permanent Urban Residents and their dependents. (Clauses 1 and 6).
- B. Black people who have been given a permit to stay in an urban area (Clause 3).
Both groups must have approved accommodation.
- A. Permanent Urban Resident is the new term applied to those black people who will have some legal rights to be in town (Subject, of course, to the Minister's powers and to the legislation relating to foreigners residing in S.A).

They will be : /--- Page Two/

They will be :

A 1. South African citizens and citizens of independent homelands

(i) who are the registered owners of fixed property in an urban area

(I think the definition of "owner" includes Registered Tenants who have houses on a monthly lease but I must still check this with lawyers.

Also note that the Black Communities Development Bill provides that only Permanent Urban Residents and those of their descendants who are lawfully in an urban area may be granted a 99 year leasehold together with other people who are specially authorised by the Minister).

(ii) who were authorised in terms of Section 10(1)(a) or 10(1)(b) of the Urban Areas Act to be in a prescribed area at the time the new Act comes into force.

(This creates some problems as to what the words "were authorised" means. Lawyers say people are "authorised" by the legislation and not by the rubber stamp so if a person was entitled to a 10(1)(a) or (b) when the new legislation is promulgated he will be entitled to P.U.R. status even if his rights to be in the area had not been endorsed in his pass. In the Johannesburg Advice Office we have doubts about this. All 10(1)(b) applications are being delayed, obstructed or refused and one person was told that she cannot have 10(1)(b) because "there is a new law". We anticipate that legal action will have to be taken to establish the meaning of this clause for those who do not already have a 10(1)(a) or (b) endorsement).

A.2 South African citizens who have been lawfully resident in an urban area for a continuous period of at least ten years and who have applied to be recognised as a Permanent Urban Resident.

The Minister may also determine other categories of South African citizens who can apply for such recognition.

The application may not be refused if the applicant fulfills the conditions unless the Director General "is of the opinion that the applicant is not a person contemplated in the Section (Senior Counsel believes that this in practice excludes the jurisdiction of the Courts because it means that the "opinion" of the Director General would have to be challenged on the grounds of bad faith (mala fides) which is almost impossible to prove.

Note that this application may only be made by South African citizens.

This clause excludes those who are citizens of independent homelands which means that currently half the black population of South Africa is already excluded from the possibility of coming to town and acquiring the 10 years lawful and continuous residence. By the time ten years has passed from the introduction of this Act there will be few black people who can acquire P.U.R. status under this clause. The Swazi speaking S. Africans are to be given to Swaziland, Kwa Ndebele has declared its intention to take independence and Government seems quite confident that other homelands will follow suit in the near future.

Note also that some lawyers believe that the annual return of a migrant worker to his home area to renew a contract may be defined as a break in his continuous residence. I believe that it would be consistent with everything in the present policy if the Minister were to use his powers in terms of Clause 52 to exclude all contract workers from this provision altogether

A.3 Persons born in an urban area to parents both of whom are Permanent Urban Residents in terms of A 1 and A 2 above.

(Note) : I can think of many people who are born in an urban area but who will be excluded from this provision. For example, what happens to illegitimate children whose father's position is unknown? What about the children of P.U.R. mothers whose husbands are migrant workers? What about children born to a P.U.R. father and a mother from an independent homeland who cannot be a P.U.R. because she is not an owner of fixed property or a South African citizen?)

- A. 4 The dependents of Permanent Urban Residents will be allowed to stay in an urban area. Dependents are defined as the wife or one female partner in a customary union, the dependent and unmarried children, disabled and dependent children, parents and grandparents who are dependent on the P.U.R. Dependents will be able to remain in the urban area following the death of the P.U.R. until they have achieved the ten years lawful residence which will entitle them to become P.U.Rs themselves - provided that they are South African citizens. Non South African dependents will only achieve the P.U.R. status if they are citizens of independent homelands and inherit the deceased P.U.R's house.

(Permanent Urban Residents will have this status in any urban area in South Africa once they have it in one area so they will be allowed to move around as anticipated by the 13th June 1980 amendments to the Labour Regulations. All this "change" really means a return to the old "General Smuts" exemption pass).

- B. All other black people may only be present in an urban area between the hours of 10 p.m and 5 a.m if they are authorised (i.e. have a permit) to be there.

As is the case at present the permit will not be given unless the person has approved accommodation in the urban area. There is nothing to say to whom and on what grounds this permit will be granted but we can take an educated guess that the permits to work or to seek work will be as difficult to obtain as they are now and that the "privilege" of being allowed to work will increasingly be concentrated in the urban group.

Control over the presence of black people in urban areas.

In the Urban Areas Act which is now to be repealed the control of the presence of black people in urban areas is contained in Section 10(1) which begins :

"No black shall remain for more than seventy two hours in a prescribed area unless he produces proof in the manner prescribed that.....".

Clause 3 (2) of the new Bill which replaces Section 10 says :

"No unauthorised person shall at any time during the hours 22 hoo on any day to 05h00 on the following day be present in an urban area".

- (a) People who have been given permission to be in a prescribed area in terms of terms of existing legislation will be deemed to have been authorised to stay in the area under the new Act until the time period for which they have been given a work or residence permit has expired.
- (b) Permanent Urban Residents and their dependents will be deemed to be authorised to stay in an urban area.
- (c) Commuters are defined as being black people resident outside an urban area (i.e. in a rural area or in an independent or non-independent homeland) who visit an urban area without staying overnight, or who work in an urban area between 20h00 and 05hoo on the following day but after work return to their place of residence outside the urban area. They may not seek or take up employment in an urban area unless they have been given a permit to do so but, if they are given such a permit, they can be in the urban area concerned between 20hoo and 05hoo if they are working during those hours or are on their way from work to their place of residence.
(N.B. The hours for commuters are 20hoo to 05hoo in the draft and not 22hoo to 05hoo as in Clause 3 (2) above. This seems a strange and inefficient differentiation.
- (d) Patients in a hospital or medical institution and guests in a hotel will also be deemed to have been authorised to stay in an urban area overnight until they leave the establishment concerned.

- (e) Visitors to an urban area who wish to stay overnight must get a permit to do so. This permit will only be granted if they have approved accommodation and if their total number of days as a visitor in the urban area concerned does not exceed 14 days in any calendar year. Hotel guests are excluded from this restriction. (This is a particularly hard provision and will increase the separation of migrant husbands from their wives in rural areas. How it is to be policed is hard to imagine. Presumably a visitor's pass will be stamped each time with the number of days the permit is given for).
- (f) Workseekers must have a permit to seek work and a permit to stay overnight in an urban area but the permit to stay will not be granted unless the person has approved accommodation. Nor will it be granted if the designated officer considers that the person's place of residence is near enough to the urban area to enable him to return home at night, due consideration being given to the availability of public transport.

No permit to seek work may be issued in an urban area if the Minister, being of the opinion that a state of unemployment prevails in the area, has by notice in the Gazette declared that no unauthorised person may seek or take up employment in that area. This prohibition may be applied to any particular category of work in any urban area. (This provision allows the Minister to maintain the prohibition on African workseekers in Coloured Labour Preference Areas or in any other area as the Government may decide. It also allows the continuation of the present policy of what may be described as "Urban Labour Preference" in all urban areas whereby employers are not permitted to requisition labour from rural areas if urban labour is available.

So there will be three categories of black people in urban areas :

1. Permanent Urban Residents and their dependents - who will have more or less the same privileges and rights as do Section 10 qualified people now.
2. Authorised people - who have been given a permit to stay or to seek work or to work in an urban area.
3. Unauthorised people - who have no permit to work or to seek work or to stay overnight in an urban area. If these people are found working in the urban area they will be committing an offence.

If they are present anywhere in an urban area between the hours of 10 p.m and 5 a.m they will be committing an offence unless they are in some form of public transport on their way out of the urban area.

People who give employment or accommodation to an unauthorised person will also be committing an offence.

The Penalties.

- (a) On black people who are present in an urban area without permission between 10 p.m and 5 a.m - R500 or 6 months imprisonment plus an additional fine of R20 for each day during which the offence continues (or the proportionate term of imprisonment up to a maximum of three months) Present penalty : R100 or 3 months.
- (b) On black people who seek or take up employment in an urban area without permission - R500 or 6 months plus the additional fine of R20 as above.
- (c) On people who provide accommodation to an unauthorised person in an urban area between 10 p.m and 5 a.m - R500 or 6 months plus the additional fine as above. Present penalty : R20 or 2 months.
- (d) On people who introduce an unauthorised person to stay overnight in an urban area without permission - R500 or 6 months imprisonment. Present penalty R500 or 3 months.

- (e) On employers who give/---

- (e) On employers who give employment to any person who has no right to be in an urban area as a P.U.R. or who is not permitted to take up employment there - R5000 or 12 months imprisonment.
Present penalty : R500 or 3 months.

The onus of proof in prosecutions remains on the accused.

(These very severe penalties mean that influx control will be very much more efficient than it has ever been in the past. Few employers will risk a possible fine of R5000 or imprisonment for 12 months by employing an "illegal worker". The present fine of R500 which was increased from R100 in July 1979 has proved its efficacy already to a very great extent although there are still a few employers who either do not know about the penalties or who are prepared to risk an admission of guilt fine of R100.

The Johannesburg Advice Office of the Black Sash has experienced a great increase in the number of people from rural and homeland areas coming for help because they have found a job but are refused registration and therefore have lost the job at once.

Prior to July 1979 illegal jobs were not hard to find so people did not seek help to such a great extent as they do now with this particular problem. The new penalties for being found in an urban area between 10 p.m and 5 p.m and on those who give accommodation to unauthorised persons between those hours will be decisive in forcing people out of the urban areas. At the moment we believe that people who are refused registration in employment or who are endorsed out do not leave the area. They can only survive if they remain in town where they can make some money by operating in the informal sector. They will no longer be able to stay because it will become impossible for them to find anyone to give them shelter.

Everyone knows that at the moment most householders in townships like Soweto are accommodating one or more illegal people. In the future householders will not be able to risk it because who can lightly contemplate risking a fine of R500 or 6 months imprisonment.

The same applies to householders in white suburbs who have up to now turned a blind eye to husbands, relatives and friends of domestic workers living in suburban back yards.

Clause 13 makes it illegal for anyone to give accommodation to a black person in an urban area outside a black township except with a permit or licence or in the case of one legally employed domestic worker per household. As is the case at present the Minister may suspend the exceptions in any area.

Enforcement.

Such a system obviously requires constant inspection by the authorities of places of employment, and of households in both black townships and white suburbs during the hours of the night.

Clause 40 (1) re-enacts provisions which allow inspectors and policemen to enter any premises at any time of day or night without warrant and without notice to question anyone on those premises, to require information about any person who is resident or accommodated or employed on those premises.

Any inspector or peace officer may at any time call upon any black person to produce to him for examination any authority or permit granted to that black person. Failure to produce such authorisation on demand will be an offence carrying a penalty of R500 or 6 months imprisonment.

In Rural Areas.

A rural area is any area in South Africa which is outside the homelands and is not proclaimed as an urban area.

Clause 15 of the Bill says that no black person shall be resident in the rural areas unless he has been given permission and the permission will only be given for a specific place in a specific area. Permission will be deemed to have been granted to those who own land, those who live on Trust land or those who belong to a tribe which owns the land. There are other groups of people who will be considered to be authorised to stay on rural land the most important being a person who lives on the land belonging to his registered employer but the new Farm Tenement Boards (appointed by the Minister) which replace the old Labour Control Boards will decide how many resident workers a particular farmer may have. The dependents of each registered resident worker will also be allowed to live on the farm with the breadwinner. An owner of land in a rural area may also give permission to certain categories of black people to reside on his land if the "designated officer" approves. These categories include a Chief or Headman, a Minister of Religion or evangelist, and, thankfully "any other black person who is aged, chronically infirm or destitute".

There does not appear to be much major practical change in these provisions and controls over the number of black people who may reside in "white" farming areas remain.

A land-owner can be compelled to remove the "surplus" black population residing on his land and failure to do so will make him liable to a fine of R500 or 6 months imprisonment.

Other Provisions for control in Urban and Rural Areas.

Clause 29 is the only provision in the whole Bill of which I approve. It prohibits anyone other than an attorney or advocate from charging any fees or receiving any payment for any help given to a black person in connection with the pass laws. This is not new but is in the existing legislation although it does not seem to have been very successful in preventing fly-by-night "aid societies" from defrauding their customers. (Of course, if the pass laws were to be removed there would not be nearly so many opportunities for corruption, exploitation and fraud).

Clause 30 re-enacts the Minister's powers to prevent the congregation of black persons on land if they are causing a nuisance to persons living in the vicinity. Church services and functions are excepted so we see the last of the notorious "Church clause".

N.B. Clause 31 is entirely new and is clearly a response to the determined people of Crossroads and Nyanga. It empowers the Minister to order the summary removal of people who have settled on any land if he is of the opinion that their conduct is calculated to canvass support for a campaign for the repeal or amendment of any law or for the variation or the limitation of the application of any law; or if he is of the opinion that their conduct is calculated to endanger the maintenance of law and order or threatens their own health or social welfare.

The Minister must publish his order in the Government Gazette. He decides whether a person is unlawfully resident on such land. The police or anyone else designated by the Minister must carry out the order. No warrant is required and people will be removed to any place decided by the Director General of Co-operation and Development.

(Again this excludes legal action in the Courts. The Minister only needs to be of the opinion that he should act and there is no way of testing his bona fides and Clause 50 specifically excludes the power of the Court to prevent such a removal).

Assembly Points.

Clause 32 of this Bill allows a Development Board (the new name for Administration Boards in terms of the Black Communities Development Bill) to establish centres for the recruitment and selection of black workers. These centres may be established inside or outside the area of jurisdiction of the Development Board and several Development Boards may co-operate in setting up such a centre.

(The Riekert Commission suggested the establishment of "assembly points" just inside or just outside the homelands. I believe that these proposed centres will further disadvantage people who live within the homelands. Over the last few years there has already been a closing down and centralisation of labour bureaux within the homelands. As this happens fewer and fewer people have access to the possibility of recruitment because of the long distances from home to the nearest labour bureau and the lack of communication at the labour bureau. At Alice, for example, people trying to find work through the labour bureau were sleeping on the platform of the railway station because of the necessity of being present at the bureau every day to compete for the ever decreasing number of jobs being offered. Only those whose homeland place of residence is very near to a "white" industrial centre have much hope of obtaining a job).

The Officials who will carry out the functions of control outlined in this Bill will be known as Designated Officers who will be designated by the Director General from the ranks of those employed in a Government department or a Development Board.

A Designated Officer will also be a passport control officer so that he can administer the Admission of Persons to the Republic Regulation Act as it applies to foreign black people.

Certificates showing the status of black people will be issued to them by a Designated officer - that is a certificate showing that they are Permanent Urban Residents or lawfully in employment or lawfully resident in a rural area etc., This certificate may be in the form of an endorsement in the person's identity documents and the Minister may make Regulations prescribing fees for the issuing of certificates.

Appeals by any person who is aggrieved by a decision of a Designated Officer will be to the Minister. No details of the form of such appeal will be known until Regulations are published but the Bill ominously says that an appeal "shall be accompanied by the prescribed amount". (With our wide experience of those who are aggrieved by decisions of the present Labour Officers and who make appeals having to pay to do so will prevent many from availing themselves of a right to appeal. Because they are refused permission to remain in an area they tend to be unemployed and very many are destitute and living on the charity of friends). Lodging an appeal will not suspend the application of the D.O's decision.

This is the case at present and, as at present, the new law will allow the Commissioner to permit the person concerned to stay in his area pending the outcome of the appeal (Commissioner's are not lavish in dealing out those temporary permissions)

Aid Centres (Clause 48) remain under the new legislation. Persons arrested for contravention of the pass laws may be referred to an Aid Centre.

The Commissioner may hold a Court within an Aid Centre. The manager of an Aid Centre can recommend that a person be not charged, or may place a person in employment and order that he be given authority to stay in the area or may make an order for the removal of a person and his dependents to another place. This removal can be ordered without a trial having taken place first.

Clause 49 also allows a person who has been convicted of staying in an urban area or residing in a rural area or who is, in the opinion of a D.O., staying in an urban or rural area in contravention of the Act, to be removed to any other place together with his dependents, after an enquiry has been made by a Commissioner. Anyone who has been convicted of introducing a black person into an urban area illegally or of giving accommodation to an unauthorised person may be ordered to pay the costs of the removal of the person, his dependents and his household effects and the costs of his detention prior to his removal. No Court of law shall be competent to interdict, suspend, postpone, prevent or prohibit or interfere with the execution of a warrant issued in terms of Clause 49 (1).

The Curfew. Clause 54 (1) (f) reenacts the Minister's powers to impose a curfew preventing black people from being present in a public place outside a black township during hours of the night to be specified by the Minister. (One had hoped that this anachronist and outdated provision would disappear altogether in the new legislation. The number of people arrested for breaking the curfew has declined over the last few years and it is a great pity that this particular restriction has not been removed).

This Bill is terrifying in its implications for people who have to live within the homelands. It can only serve to increase the dire poverty already existing in those areas. It greatly increases the efficiency and rigidity of influx control. Far from leading to any kind of controlled urbanisation process it slams the door shut in the face of landless, rural people who have to come to town to seek survival.

The legislation is totally unacceptable and will remain so whatever changes are made by the Commission before it is brought before Parliament again. It once more illustrates the impossibility of having any kind of just legislation to control the free movement of persons in South Africa.

SHEENA DUNCAN

BLACK SASH

12th July, 1982.