

REPRESENTATIONS BY

THE BLACK SASH AND ATHLONE ADVICE OFFICE, CAPE WESTERN REGION
TO THE SELECT COMMITTEE ON

"THE ORDERLY MOVEMENT AND SETTLEMENT OF BLACK PERSONS BILL"

The Black Sash, Cape Western Region, believes that the controls, harassment and discrimination practised against Blacks under present legislation will be increased by the promulgation of "The Orderly Movement and Settlement of Black Persons Bill", not ameliorated as stated as the government's intention. The Black Sash opposes in principle any discriminatory form of influx control, particularly as the government's demographic figures, those of academics, and other institutions concur that urbanization will increase in South Africa; e.g. "South Africa's urban population will increase from 13,63 million in 1980 to 24,05 million by the year 2000" (Research paper by Stellenbosch sociologist quoted in Argus 19/8/82). This Bill seeks to curtail Black urbanization to the natural increase, at most, of the present legal Black urban dwellers, excluding the millions of rural Blacks who cannot find employment, or are under employed, in the "Homelands", independent or not. The government has no stated strategy for significantly developing these areas as it neglected the Tomlinson proposals of 1956. Should this Bill become law it will be divisive, inflammatory, and discriminatory in protecting whites, coloureds, and urban Blacks at the expense of the vast majority of the population. It is destructive of Black societal structures where individuals and families care for the extended family and the wider community. It gives great powers to the Minister and his designated officers without the necessary controls. It will further alienate millions of Black people in, and outside, urban areas.

This Bill seeks to strengthen the position of legal urban Blacks at the expense of those based in the "Homelands", but even those accepted as Permanent Urban residents will be subject to harassment between 10 p.m. and 5 a.m., in that they must produce, on demand, permits to prove that they have the right to be present in the urban area (section 3).

Section 54(1)f gives the Minister power to prohibit such people from being in a Group Area, other than their own, between the hours of 10 p.m. and 5 a.m. They will also be subject to night raids, as will white, coloured and Indian house-owners, to make sure that they are not housing unauthorised Blacks. Freedom is indivisible and cannot be provided for one section of the population at the expense of the other.

DEFINITION OF "PERMANENT URBAN RESIDENT"

Section (xxiii)(b)(ii) refers to "the registered owner of fixed property in any urban area". In the Western Cape this seems to be meaningless since the few Blacks who own property do so under a 30-year lease, renewable for 30 years. It would appear that the provision refers to those Blacks with 99 year leases only.

Section (xxiii)(c) refers to "a person born in any urban area from parents both of whom are persons referred to in paragraph

(a) or (b)(i) or (ii)(xxi)". Well over half the children born to women in Soweto have been found to be illegitimate, and much the same is true of the Black townships in Cape Town and elsewhere. Such children have only one parent who is a Permanent Urban Resident and will not be able to qualify themselves. Women born in an urban area often marry men who can never become permanent urban residents (migrants, contract workers, etc.) since they are no longer South African citizens. Children of such a marriage will not qualify for permanent residence.

FUTURE LIMITATION OF PERMANENT STATUS

Future acquisition of Permanent Resident status, should the Bill become law, will be confined to South African citizens (section 6(1)(a)) "who have been legally in an urban area for a continuous period of at least 10 years".

In the Western Cape \pm 90% of the Blacks are Ciskeians or Transkeians who have been deprived of their South African citizenship as a result of the independence of Ciskei and Transkei. It would appear that such people will be totally excluded from any advantages of Section 6(1)(a). What appears to be an improvement on the 15 years continuous residence required by Section 10(1)(b) of the Urban Areas Act, is in reality a loss of all rights under that section for most Blacks in the Western Cape.

DEPENDENTS

We have many queries concerning the definition of "dependent" in section (xi) and references to dependents in other sections.

- (1) Under Section (xi) a dependent of a person is
 - (a) "the wife or one female partner in a customary union with such person living with him".

Can a woman who is a Permanent Urban Resident have dependent children, an elderly husband or other elderly relatives living with her?

- (2) There appears to be a conflict between Section 4(2) and Section 6(1).

If the dependent child is not the child of parents who are both permanent urban residents, or if the child is not a South African citizen, will he on the death of the permanent resident(s) on whom he was dependent, be allowed to stay in the urban area under Section 3(1)(b) until such time as he becomes competent under Section 6 to apply for recognition as a permanent urban resident? Will he then be accepted as one?

- (3) When the dependent children grow up and become financially independent will they have to wait 10 years before they are accepted as permanent urban residents or will they never qualify because they are not South African citizens? The fear of losing the status of "dependent" may discourage young people from seeking employment.

VISITORS

Section 7(1) lays down that a visitor to an urban area for even one night shall, within the prescribed period after his arrival . . . report his presence to a designated officer. The prescribed period is not specified but obviously expires at 10 p.m. the first night of the visit.

At present all Blacks may visit an urban area without a permit for 72 hours. This right has also been lost.

Section 7(2) states that permission to visit may not be granted

- (a) unless the visitor has approved accommodation for the whole period of the visit.
 - (b) for a period, which together with any previous period for which such person stayed as a guest in that urban area, exceeds 14 days a year.
- (1) At present visits are usually granted for one month and extended to three months on application.
 - (2) No provision has been made for the many rural Blacks who need to come to urban areas for sophisticated medical treatment. While they are in-patients they are catered for by Section 12(2)c but the moment they become out-patients they may exceed the prescribed 14 day visit and be unable to get an extension for their medical visit. Does the designated officer have no power to extend the visiting permit? (7(b))
 - (3) Cape Town is a long way from Ciskei and Transkei and 14 days is a very short period which wouldnot justify the cost of travel.

EMPLOYMENT Sections 8 and 9.

Section 8 states that no employer shall, in an urban area, employ a Black unless he

- (a) has the right under section 3(1) to stay in the area
- (b) is a commuter.

The fine for so doing is to be increased to a maximum of R5 000 or 12 months or both for a first offence.

People with temporary rights to be in the area may not be recruited - only those with permanent rights under 3(1). These fines may be imposed by the Commissioners Courts. It is quite unsuitable that such a large fine may be imposed by a lower court. This clause will lead to further unemployment - people with jobs and accommodation will be dismissed to join the large number of unemployed.

Under Section 11(1) the Minister may decide that no unauthorised person shall seek or take up employment in an urban area or in a specified category of work. This may protect the authorised Black - the Permanent Urban Resident - but what of the migrant

desperate for work and quite unable to support his family in his "Homeland".

We must emphasize that we strongly support the right of all those born in South Africa to seek work anywhere in the Republic and have their family to live with them where they work.

ACCOMMODATION

Section 10(1) makes it an offence, punishable by a fine of R500, to give accommodation to an unauthorised person, either in a white, coloured, Indian, or Black group area. Implementation of this inhuman section will lead to night-raids on households in white as well as Black areas. This invasion of privacy will be insupportable and one remembers the indignities suffered by Blacks some years ago when night-raids were prevalent in Cape Town. This practice was stopped and raids have been confined to the day time. How else can this section be implemented other than by raids between 10 p.m. and 5 a.m.? We note that guests in registered hotels and patients in hospital will not be so disturbed. However, there are no hotels or boarding houses in any of the Black townships in Cape Town.

Section 13(1) lays down that authorised persons may not be accommodated outside Black townships or hostels without a permit and this permit may be cancelled for various reasons. No permission will be given unless the Black is authorised to be in the area temporarily or permanently. If the Minister decides that there is enough accommodation for Blacks in Black townships he may refuse to allow any to be accommodated in white areas. This will make life unnecessarily difficult for both Blacks and whites and is a further invasion of the individual's rights and privacy.

RURAL AREAS

Section 15(1): No Black shall be

- (a) resident in a rural area unless he has been so authorised by a designated officer.
- (b) be resident in any other place in the rural area other than the place where he is authorised to be. It would appear that even in rural areas a Black cannot stay with a friend on another farm, or in another township, without a permit to do so. The Bill does lay down the right of a Black authorised to be in a rural area to have his dependents with him (as defined earlier). He may also have a visitor with the permission of the owner of the land. This has not been the case in the Western Cape up to the present.

SQUATTERS

Section 31 deals with squatters.

If Black persons settle in such numbers on a piece of land to which they have no right and reside on that land in such conditions from which it appears in the opinion of the Minister that their conduct

- (a) is calculated to canvas support for a campaign for the

repeal or amendment of any law or for the variation or limitation of the application of the law

- (b) is calculated to endanger the maintenance of law and order
- (c) threatens their own health, social welfare, or the health of the public in general.

The Minister may, by notice in the gazette, order that every Black person who on, or after, a date stated in the notice, is unlawfully resident on that land . . . may be summarily removed with his dependents (if any) to the area from which he comes in the opinion of the Director General or to any other place or area indicated by the latter.

Thus, no law need be invoked, not even the Admission of Persons to the Republic Act 59/1972. There is no court jurisdiction - no warrant for arrest - no chance of legal defence - no opportunity to prove that one is not a squatter - may even be a Permanent Urban Resident who has not his permit with him. The Minister, who may not delegate his powers under this section, will be directly responsible for untold misery.

DESIGNATED OFFICERS AND INSPECTORS

Under Sections 33 - 38 the powers of the designated officers are described including the power to act as a Passport Control Officer with respect to a Black person for the purpose of Act 59 of 1972.

Section 39(1) states that "any person who is aggrieved by a decision of a designated officer under this act may within the prescribed period . . . appeal to the Minister against such decision.

(2) "an appeal under subsection (1) shall be lodged in the prescribed manner and shall fully set out the grounds of the appeal and be accompanied by the prescribed amount.

This would seem to mean that the present right of a Black to appeal to the Chief Commissioner within seven days has been replaced by a formal, and possibly expensive, appeal beyond the ability of the average person.

Section 40(3)(a) states that an inspector may, for the purposes of this Act, without previous notice

(a) at any time during the day or the night enter any premises where a Black person is accommodated, resident, or employed or is suspected to be accommodated, resident or employed The inspector will have no warrant but will carry a certificate to identify him.

Section 42 gives the inspector or peace officer the right at any time to call upon any Black person to produce to him for examination any authority or certificate granted or issued to him under this Act. This means that under this Bill Blacks can be stopped in the street and asked to produce their "certificates" just as they are stopped today and asked to produce their "passes". Thus the harassment will not be confined to the hours of 10 p.m. - 5 a.m. but will continue day and night and will be suffered by authorised and unauthorised Blacks alike.

JUDICIAL MATTERS

Section 43 deals with offences and fines and 43(4)(a) provides that Blacks committing offences under this act will be fined R500 or 6 months for a first offence, with a continuing fine not exceeding R20, or equivalent imprisonment, for every day during which the offence continues, up to a maximum of 3 months, or equivalent fine.

4(b) provides that employers of unauthorised Blacks will be fined R5 000 or 12 months or both.

Where else in the world can a person be fined R5 000 or imprisoned for a year for giving employment to a destitute person in the country of his birth? This fine will certainly lead to a great deal more unemployment, and women who are employed and housed will be thrown upon the streets and their children whom they, and only they, support, will starve in the "Homelands".

Section 49(1) provides that persons found guilty under Section 3(2) or 15(1) may be deported together with their dependents.

Section 50 provides that no court of law may intervene with respect to orders issued under Section 31(1) or 49(1).

GENERAL PROVISIONS

Section 52(1): The Minister may, by notice in the gazette declare that any or all of the provisions of this act

- (a) shall not be applicable in an area specified or only applicable in such area subject to such adjustments as set out in the notice.
- (b) shall exempt certain persons under certain conditions.

We in the Western Cape fear that the few concessions relating to Blacks contained in this Bill could be revoked for this area.

C O N C L U S I O N

Repeal of the Urban Areas Act means that Blacks no longer qualify by legal rights but may, or may not, be accepted as "authorised". Once the Act has been repealed a Black will not be able to prove that he qualifies for permanent residence. Those who already qualify will be accepted as being Permanent Urban Residents but what of those whose qualification had not been accepted before the Act was promulgated?

This Bill removes the right of Blacks under Section 10 of the Urban Areas Act in a subtle way so that those who already have them may not be penalised. In future the rights will be replaced by permits and their sense of security, small as it is at present, will be further undermined.

We feel that this Bill, in toto, must be set aside and a national development strategy must aim to realise the aspirations of all of South Africa's population and enable all people to share in a political system that will be adapted to these aspirations.

The reports of the Fagan, Snyman and Cillie Commissions bear witness to the resentment and bitterness of urban Blacks at the policies applied to them. In addition, the monthly and annual reports of the Athlone Advice Office record the daily accumulation of resentment, bitterness, and alienation. The Black Sash, Cape Western Region, and the Athlone Advice Office can see few improvements, if any, for legal Blacks in this Bill, and only infinite suffering on the part of all other Blacks.

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