



ATHLONE ADVICE OFFICE

**ANNUAL REPORT
OCTOBER 1979 — SEPTEMBER 1980**

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

Price 50c



The Argus

Mr V W Komani after his successful appeal.

Cover: *Mrs Komani* (The Argus)

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and the S.A. Institute of Race Relations)

5 Long Street, Mowbray 7700
Ph: 69-3150

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BACKGROUND

This has been a turbulent year for Blacks in the Western Cape:

- * the school boycott resulting in the closure of all the high and higher primary schools in the Black townships;
- * the bus boycott, begun on June 2 and still continuing;
- * the unsuccessful strike of Black meat workers, aimed at obtaining recognition of their trade union rights;
- * the deliberate exclusion of the Western Cape from the post-Riekert moratorium for registration of illegal workers;
- * the continuing Crossroads registration difficulties.

All these pressures have been reflected in the longer queues of people coming to 5 Long Street in search of help. Attendance figures have jumped by more than 1 000 over last year's total and in all we conducted 4 662 interviews in 240 working days. This in spite of a significant drop in attendance during the height of the bus boycott when punitive action was taken against the unlicensed taxis that were filling the transportation gap.

These specific crises have added to our daily work of helping people to deal with the mass of restrictive legislation and regulations which face Blacks in the Western Cape. The problems, amongst others, of influx control, residential rights, unemployment, contract labour, wage disputes, housing and pension difficulties — all of which are intensified in the Western Cape by the Coloured labour preference area policy — are what bring streams of people to the Athlone Advice Office.

PERMIT PROBLEMS

The lives of Blacks in 'white' or 'prescribed' areas are governed in particular by Section 10 of the Blacks (Urban Areas) Consolidation Act no. 25 of 1945:

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 in 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 under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of 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.'

This legislation is designed to control Black influx into so-called White areas and has a direct impact on the family life and employment opportunities of up to 250 000 people in the Greater Cape Town area.

Family Life

Many people come to us seeking the permits that will enable them to live normal family lives. The major issue is that of qualified men attempting to gain 10 (1) (c) permits for their wives. This will be dealt with under the legal section of this report where we record the success of Mr Komani's appeal on behalf of his wife. But it is not only wives who are affected — every family relationship can be prevented or interfered with under the Act. We see

- * children forbidden to live with their parents;
- * daughters whose marriages have disintegrated unable to return to their parents;
- * elderly parents refused permission to live with their adult children;
- * orphans unable to live with sole remaining relatives.

In all of these cases, if there has been some infringement of the stringent conditions set out in Section 10, or if these conditions cannot be met, or be *proved* to have been met, the individual is endorsed out of the area and consigned to an impoverished existence in his or her 'place of origin' or in a 'resettlement area'.

Situations such as these involve a great deal of hard work and the documentation of special circumstances on the part of the Advice Office and are sometimes resolved on compassionate grounds. But why should this be necessary? The existence of such laws rigorously applied makes a mockery of family life and creates untold resentment and unhappiness. How can any society render the individual's normal family desires and aspirations illegal?

Mr M left Cape Town with his mother as a child. His mother died in a rural area and the child, aged 7, returned to live with his father in the single quarters where he has been illegally ever since.

Mr R.W. Silwana has lived and worked in Cape Town since 1939 and therefore has obtained 10 (1) (b) qualification. In 1955 he was married in Salt River by civil rites but his wife, a Transkei citizen, can only join him for legal visits — although they have been trying since 1965 to get permission for her to join him permanently. His appeal was finally taken to Dr Koornhof himself, but was refused because 'as far as the Western Cape is concerned, a Black who qualifies for accommodation on a family basis can only be allowed to bring his wife provided accommodation is made available by his employer in an Urban Black residential area.' His employer was willing to provide the worker with a housing loan but unfortunately Mr Silwana is three years over the age limit for such loans.

Dr Koornhof's refusal seems to be based on policy rather than legal considerations.

Employment

The second aspect of permit difficulties includes those people coming to us wanting permits to work in Cape Town. Many of these 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. There is therefore nothing to be done for most of these people. 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 again 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.

Domestic Workers

The Riekert Report laid great stress on relating work permits to the availability of jobs *and* housing, yet live-in domestic workers — many of whom had been with the same family for ten years or more — were being denied work permits.

Fortunately there has been some relaxation recently, and women who have been illegally in full-time, live-in employment for over two years with the same employer now stand a reasonable chance of being given a permit to work for that employer. The longer the service the greater the likelihood of the permit. This concession has brought immense relief to many people,

both employees and employers, so drastically affected by the new R500 maximum fine for the employer of an illegal black worker.

However this concession does not apply to charwomen. The large fines for employers have caused many to dismiss their illegal black employees as they feel the financial risks are too high, and we have had many tragic cases of long-service chars being refused permits and now being totally without means of livelihood.

Mrs G M is a widow supporting four school-going children in the Transkei. She has been working as a char for the same family for ten years but has been told that there is no possibility whatever of her being given a permit to work legally in Cape Town.

Protecting 'borners'

Administration Board spokesmen try to justify the policy in terms of protecting Section 10 (1) (a) ('borners') and 10 (1) (b) local people from 'unfair' competition for jobs and the depressing of wage levels, but their viewpoint finds little support from the Chambers of Commerce and Industry in the Western Cape.

Black Labour Regulations

Amendments gazetted on June 13 1980 remove some obstacles to mobility of black workers and work-seekers. Those qualified under 10 (1) (a), (b) or (c) can change their employment without having to report personally at the local labour bureau. The notification is returned to the employer, who keeps one copy and gives the other to the employee to use as proof of employment, when necessary.

Further, blacks who qualify in one prescribed area cannot be refused permission to take up employment in another prescribed area — provided the authorities are satisfied that adequate housing is available.

This post-Riekert concession is welcome but virtually meaningless in the face of a 1 500-family waiting list for houses in the Cape Town prescribed area.

SQUATTERS

The permit problem is also central to the squatter issue, as the squatter communities have arisen in response to the acute housing shortage (brought about by the unwillingness of the authorities to erect more black housing in a Coloured labour preference area) and to the large-scale presence of illegal black workers. The squatting community includes those illegal workers as well as a large number of illegal families of legal workers.

Crossroads

The Advice Office closed its extension office in Crossroads in November last year as it did not wish to become embroiled in the internal disagreements of the community. The extension office was re-opened at the end of April this year at the request of the community. The office was asked to assist in compiling a list of those Crossroads residents who for various reasons had missed the Administration Board survey of July 1979.

What started as a trickle in May became a flood in June, and the extension office moved back to the Advice Office where we could offer better facilities for interviewing the 600 people who came forward in that month alone. After a great deal of work, a list of over 900 people was compiled alphabetically and handed to the Crossroads committee as a basis for hearing the applications for permits. This time four selected members of the Committee worked in conjunction with the Western Cape Administration Board, and after some initial teething problems, the re-survey seemed to proceed satisfactorily. It was an unenviable job, as the many genuine residents had to be distinguished from those desperate people with no claim to Crossroads residence who saw this as a badly-needed opportunity to gain a coveted residence permit with which they could work legally. (Crossroads residents have been granted 10 (1) (d) status).

Hout Bay

This year also saw the dismantling, amidst great publicity, of the Hout Bay squatter community. Here the Administration Board, thanks to the intervention of concerned Hout Bay residents, eventually acted with some compassion, arranging contracts for the illegally employed men, and visiting permits for the wives and families in need of medical treatment. The other families were endorsed out, with assistance in removing their belongings.

Here again the issue of housing is critical: the community arose through lack of black family housing in Hout Bay for men who work on the boats and in the fish-processing plant on the harbour. To commute daily by train and bus from Langa, Nyanga or Guguletu is impossibly time-consuming and expensive.

CONTRACT WORKERS

Contract workers (migrant workers) come to us with a variety of complaints from ill-understood conditions of employment to premature cancellation of contracts. As contract workers do not receive individual copies of their contracts, misunderstandings over wages and deductions often arise. These could be obviated by more careful explanation at the time of recruitment and by the provision of individual contracts — as was called for by the 1979 national conference of the Black Sash.

Premature cancellation of contract on unfair grounds is sometimes

reversed with our assistance, and some workers whose contracts were cancelled for unavoidable reasons were transferred to other employers.

Unemployment is a major problem, accounting for 739 (22 percent) of our new cases. Many of those who come to us are contract workers who have not had their contracts renewed. After waiting for months in a rural area they are driven by desperation to come to town in search of work. We explain contract procedures to would-be employers of such work-seekers, but many are reluctant to become involved with the complexities of the system.

Owing to mechanisation and other factors, the authorities are cutting back on contract workers in the Western Cape — now only 18 000 compared with some 40 000 a few years ago (*Argus* 1 December 1979).

The contract labour system is rigidly controlled, and as of April 1979 contract workers can be dismissed for not occupying their hostel beds. This is a direct attempt to prevent contract workers from bringing in their families and living with them in squatter housing. Thus, consonant with the Riekert Commission recommendations, the main core of qualified workers is to be protected at the expense of the peripheral but economically essential contract worker, and influx control is to be all the more strictly applied.

Mr A.L.S. has been a contract worker with Royal Dairies for seven years. His contract was prematurely terminated because, after repeated warnings, he was not occupying his hostel bed. He and a fellow-worker were dismissed as an example and warning to the other workers.

Finally, contract workers from 'independent homelands' such as Transkei do not have the benefit of any social security protection as a result of their employment in South Africa. They cannot contribute to unemployment insurance or derive any benefits as a result of loss of employment, nor can their widows claim any benefits.

Mr F.H.D., a 27 year old contract worker, died suddenly of natural causes. His wife received only those wages due to him, in this case R10. She is left, a young widow with two children, with no possibility of any widow's benefits. The firm carried no insurance for its contract workers.

MISCELLANEOUS

This category comprises wage disputes, housing and pension difficulties, Unemployment Insurance Fund and Workmen's Compensation claims.

Wage Disputes

Wage disputes and complaints from domestic workers are frequent, and we note a hardening of attitudes amongst domestic workers who are no longer prepared to submit to the arbitrary withholding of their wages by irate employers. We find these complaints constructive, for this most unprotected category of employee must set its own standards of pay and fringe benefits. Common law requires that employers pay for work done and that reasonable notice of termination of employment be given. But there is no legal framework for minimum wage or fringe benefit demands. We encourage domestic workers and their employers to draw up a written agreement of working conditions.

Miss C M was dismissed, and her employer refused to pay her wages for work done. She obtained legal assistance through the Advice Office, and as a result her employer paid her wages plus two weeks wages in lieu of notice.

Housing

Housing problems are legion and are all related to the acute housing shortage in the Peninsula. The absence of new housing would seem to be a deliberate reflection of the Coloured labour preference area policy in the Western Cape — no significant building programmes for blacks have been undertaken for over ten years. The current conversion of bachelor quarters into married quarters has produced an additional 700 or so units, but this in no way meets the need. The new Crossroads housing project, when completed, will only be used to rehouse Crossroads residents (but by no means all) and will not affect the majority of those suffering conditions of gross overcrowding. The 1980 census preliminary returns show a 63% increase in the black population within a 50 km radius of Cape Town in the last decade, (*Argus* 14 October 1980). This indicates the severity of the problem and the drastic need for a massive building programme. The present shortage has fundamental effects on Section 10 rights, for qualifying men are refused permission to bring in their wives because of the lack of housing.

Mr N W S is qualified under 10 (1) (a) for permanent residence in Cape Town. His wife is qualified to live in Port Elizabeth, another prescribed area. They found accommodation in Cape Town, and Mr S applied for permission for his wife to join him. This was refused by the authorities on the basis of 'the acute housing shortage'.

We also hear of people driven by desperation over the housing situation in

Cape Town who apply for 'repatriation' to a rural black area where they are promised a house, thereby forfeiting their own and their children's rights to live and work in Cape Town.

Old Age Pensions

	New	Old
White	R109	R97
Coloured	R62	R54
Black	R33	R27,50

Pensions

Old Age pensions have been increased as of October 1 1980 to R33 per month payable every two months. The administration of the pension system is however very slow and cumbersome, and leads to much hardship.

Mrs E N is a 77 year old pensioner. In January she did not receive her usual pension, as her name had been removed from the roll following a report that she had died. The pension is to be restored to her, and arrears paid, but by August she had still not received any payments. She was told to wait until the next two-monthly payment date.

Old age pensioners who qualify to live in Cape Town have to surrender their pensions if they decide to leave Cape Town and go to live in the Transkei or Ciskei. They then have to re-apply locally, and face very long delays before payments can be resumed.

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 — the pass laws — is enforced through a network of Administration Board inspectors — who have draconian powers of entry and inspection without benefit of 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 — non-possession of 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.

Despite the Viljoen Commission into Penal Reform having recommended in 1976 that influx control should be depenalised, the Langa Courts are full, and we have repeated reports of massive pass raids in the townships and in the white residential areas.

This year our lawyers represented 129 people in the Commissioner's Courts, a minute proportion of the cases heard. (In 1979, 9 755 people were arrested in the Cape Peninsula on charges under the influx control law, Hansard 1980, Vol. 17 p. 855.) Nevertheless the work done by our lawyers is significant and valuable: 48% of the cases were successfully defended, and many of the others resulted in reduced fines following pleas in mitigation.

The court proceedings remain a source of extreme distress, a daily South African tragedy. Most people are undefended, and are shunted through the Court at the rate of one case a minute. In many cases those who attempt their own defence are remanded in custody while their stories are checked by the authorities. This checking can go to extreme lengths.

Mrs E K was arrested on suspicion of being illegally in the area but allowed out on bail. An inaccurate fingerprint identification was supplied by Pretoria. The case was remanded six times, with the State being prepared to fly a fingerprint expert down from Pretoria. When our lawyers were prepared to produce their own expert, the State finally withdrew the case.

Retreat Magistrate's Court

Our lawyers appeared 12 times in this court, defending men accused of 'harbouring' or 'illegally introducing' their wives into the area (Section 11(1) of the Urban Areas Act). All of these appearances were successful, the accused being either acquitted, cautioned and discharged, or having the cases against them withdrawn.

Claims for Section 10 Rights under the Urban Areas Act

These appeals often drag on for many years, as they are vigorously contested by the Western Cape Administration Board. This year, three such appeals were successfully concluded, two of them having been in process for five years.

Supreme Court Appeal

The appeal against sentence of V. Kohlakala who was charged with

harbouring his wife was successful, and the fine was returned. The court made a widely publicised statement about the lack of justice in the Langa Commissioner's Court.

Appellate Division of the Supreme Court – Mr and Mrs Komani

On 19th August 1980 the Appellate Division of the Supreme Court of South Africa upheld the appeal of Veli Willie Komani that his wife be considered qualified to remain in the prescribed area of the Cape Peninsula in terms of Section 10 (1) (c) of the Bantu Urban Areas Act, 25 of 1945. The court held that Mrs Komani was so qualified and ordered the defendant (the Bantu Affairs Administration Board, Peninsula Area) to pay costs.

In the course of the judgement, the court declared Regulation 20(1) of the regulations governing the control and supervision of an urban black residential area *ultra vires*. This regulation stated that in order to live in a black residential area, a black had to be in possession of a site, residential, accommodation or lodger's permit. These permits were given by Administration Board officials, and could be withdrawn, thereby negating the right of said black to remain in a prescribed area. It was the withdrawal of Mrs Komani's lodging permit which led to this case.

Mr and Mrs Komani were married in Willowvale in 1953 and lived together in Dordrecht location until Mr Komani came to Cape Town in 1958. Mrs Komani came on legal visits from 1962 onwards but could not get permission to stay permanently.

Her last legal visit was from May 1974 to January 1975 when her lodging permit was cancelled and she was told to leave. After several attempts to persuade the authorities to allow Mrs Komani to remain with her husband as a 10 (1) (c) qualified wife, the Advice Office instructed their legal representatives to obtain a declaration of rights for Mrs Komani from the Supreme Court.

This was later converted to an appeal to the Supreme Court which failed on the basis of the regulation requiring lodging permits. The case was then taken on appeal to the Bloemfontein Appellate Division. The Appeal Court found that this regulation was in conflict with the intention of the legislature in Section 10 of the Urban Areas Act.

Thus it is now only necessary for a wife to enter a prescribed area legally and to be 'ordinarily resident' with her qualified husband in order for her to qualify to remain. She does not have to pass the additional hurdle of obtaining a lodger's permit.

This case sets a precedent which could dramatically affect the lives of the many illegally resident wives of qualified men in black townships around the country.

CONCLUSION

Our thanks go to everyone at the office: our interpreters and case workers

— Mrs Lettie Malindi, Mr David Viti and Miss Nomahlube Nabe; our voluntary case workers who give so generously of their time, energy and sympathy; and the legal panel who provide essential service on a roster basis. We were sorry to lose Sue Philcox at the end of last year, but are grateful for her continued interest and assistance. We wish to thank Barbara Versfeld for her assistance throughout the year as a leave replacement.

R.N. ROBB
Director

V.L. WEST
Organizer



The Argus

Hout Bay squatters watch as their houses are demolished.

INCOME AND EXPENDITURE

INKOMSTE EN UITGAWES

1 OCT/OKT 1979 – 30 SEPT 1980

INCOME	1980	1979	INKOMSTE
S.A. Institute of Race Relations	809	750	S.A. Instituut vir Rasseverhoudinge
Bantu Welfare Trust	1 000	695	Bantowelsyntrust
Sale AAO Reports	87		Verkope AAO verslae
Black Sash	<u>7 178</u>	<u>9 357</u>	Swart Serp
	<u>R9 074</u>	<u>R10 802</u>	
EXPENDITURE	1980	1979	UITGAWES
Salaries	6 063	4 869	Salarisse
Rent	720	720	Huur
Pension	214	68	Pensioenfonds
Insurance Fund	249	496	Versekeringsfonds
Reg. fees BAAB	162	135	Registrasiefooie BAAB
Stationery & Office	187	279	Skryfbehoeftes en kantoor
Secretarial expenses	180	180	Sekretariële uitgawes
Legal expenses	76	3 197	Regkundige uitgawes
Fares	184	229	Reisgeld
Telephone	233	186	Telefoon
Postage (incl. monthly report)	160	64	Posgeld (insluitende maandelikse verslag)
Sundries		41	Diverse
Annual Report	<u>646</u>	<u>338</u>	Jaarverslag
	<u>R9 074</u>	<u>R10 802</u>	

ATTENDANCE - BYWONING

1 OCTOBER / OKTOBER 1, 1979 - 30 SEPTEMBER 1980

	Okt.		Nov.		Des.		Jan.		Feb.		Mar.		Apr.		May		Jun.		Jul.		Aug.		Sep.		Total
	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	1-14	14-31	
Permit Problems	71	71	31	81	100	71	78	54	46	54	35	74	766	Permitprobleme											
Squatters	44	58	13	29	30	34	29	27	10	9	19	10	312	Plakkers											
Crossroads office	37				5	71	654	173	940	Kantoor by Crossroads															
Contract workers	64	44	20	30	24	17	37	39	18	17	28	27	368	Kontraktwerkers											
Miscellaneous	92	101	37	73	91	84	85	94	49	87	70	79	944	Diverse											
Old cases returned	134	153	86	103	157	102	135	109	58	102	83	110	1332	Ou gevalle teruggekeer											
TOTALS	445	427	187	316	402	308	369	394	835	442	235	302	4662	TOTAAL											
									1978/79 TOTAL/TOTAAL				3480												
Unemployed	85	63	31	59	87	63	67	81	46	49	62	46	739	Werklozes											