"Control of African labour is a cornerstone of Apartheid."

CONTROLS WHICH FORCE LABOUR TO BE MIGRATORY

By FELICIA KENTRIDGE

ADDRESSES have been delivered today on the growth and crystallization of the policy of migrant labour. Tomorrow there will be discussion of and comment upon the social and economic effects of this policy. I have been asked to describe the legislative controls which enforce it and I have decided to deal in the main with the Native Labour Regulation Act and the Natives (Urban Areas) Consolidation Act No. 25 of 1945 as amended by the Bantu Laws Amendment Act now awaiting promulgation.

I have chosen to approach the subject in this way partly because it seems to me that influx control and the control of employment contracts are the basis of the present system, partly because I am sure that the speakers tomorrow will wish to comment on the new Act and partly because it is not possible to discuss satisfactorily in one session the numerous other acts of legislation which bear directly upon labour and are relative to the administration of South Africa as a White man's land with Africans limited to temporary *working sojourners in it.*

Exiled from home

Furthermore, "migrant labour" is a sociological term rather than a legal one and I am able to address you only in a legal fashion. In its older usage, migrant labour meant perhaps seasonal labour or labour coming from another place for a specific and limited purpose and then presumably returning whence it came. This older concept lingers on in the thinking of those concerned governmentally with the administration of African labour — so many enactments provide that Africans must on certain conditions return "home". But there is also now official realization that there are in fact Africans who have no hinterland "home". When these Africans are deprived of their permission to remain in a White area they are required to go to an African area, as though it were their home. **For such people such compulsory movement is not a "return home", it is an exiling from what was in fact their home.**

No free movement

It is also not possible to talk about migrant labour with reference to Africans, as labour which moves in response to economic needs. There are *so many obstacles in the way of an African wish*ing to move from one White area to another that mobility is one of the assets noticeably denied African workers. A change of employment is a greater hazard for an African than for a White. The African worker has a strong incentive to remain with his employer; but this incentive is often weakened by difficulties which he may face in establishing a home for his family. And over him always hangs the threat of loss of his employment —not for economic reasons or for causes over which he has any control, but for administrative or political reasons. Indeed, I find that I have modified the term "migrant labour" to mean temporary labour, in the sense that it may be interrupted by bureaucratic action.

Men specially recruited to work on the mines may still fulfil the original concept of migrant labour in that they come to the mines under contract and are returned home when the contract comes to an end, but mining legislation is a field in itself, not to be dealt with today.

Other legal restrictions on African labour

I must, however, make at least a passing reference to some other statutes which are relevant to my subject in that they restrict the natural development of African labour. **The Group Areas Act** controls racially the use to which property may be put; one of its incidental consequences has *been to prevent Non-White professional men from* working among their colleagues. Another odd consequence of this Act is that the legal fiction that limited liability companies have personalities has been embroidered to endow them also with race and colour. There are White companies and Black companies and fictitious Black persons like their natural brethren suffer from economic disabilities designed to direct Black away from

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White. **The Industrial Concilation Act** contains a total prohibition on the right of Africans to strike, forbids them to belong to registered trade unions (i.e. the only bodies which are statutorily recognized as having collective bargaining powers) and empowers the Minister to reserve jobs in any industry to members of one racial group only. **The Mines and Works Act** and the **Native Building Workers Act** contain restrictions on the level of skill at which Africans may be employed in these industries. **The Master and Servant Acts** in force in the four provinces make poor service into a *crime. For some Africans it is a criminal act to* fail to commence service at the stipulated time or to absent oneself from work without cause, or to disobey a command or work negligently. For a complete picture of the forces restricting the natural development of African labour it would be necessary also to study the political and social pressures which exist in this country. **Indeed, control of African labour is a cornerstone of apartheid and is bound at all points to the legislation and life of South African society.**

Bantu Laws Amendment Act

However, I shall at least attempt to analyse the most important provisions of the **Native Labour Regulation Act,** No. 15 of 1911 and the **Natives (Urban Areas) Consolidation Act, No. 25 of 1945** in the light of the amendments contained in the Bantu Laws Amendment Act of 1964. I must make it clear that I do not attempt to deal with every provision of these Acts. Nor can even the main provisions be analysed in all their niceties. There are certain beneficial (or potentially beneficial) provisions, such as the amendment which provides that failure to produce a reference book on demand is no longer inevitably an offence, which fall outside the scope of this paper. The provisions with which I shall deal (and which I consider to be of the greatest importance) are those relating to the control of African labour in White areas.

Since 1948, the administration and direction of African labour have become increasingly comprehensive and rigorous. With the amendments contained in the 1964 Act, the two prinicipal Acts now provide a structure whereby it is theoretically possible to control administratively the entire life of all Africans living in South Africa outside African areas, and the Acts have been so designed that the control shall be uniformly in accordance with Government policy and subject to supervision by the central government. The Urban Areas Act is no longer a measure intended to control the influx of African into urban areas in the interests of health or good order. It is a massive instrument for the control of African labour and enterprise and so, indirectly, for the control of the whole economy.

Fundamental principle

The fundamental principle to be extracted from these two Acts is that residence in a White area by Africans is normally tied to their employment. Africans may be in White areas while they are engaged in approved work. And their dependants may in some cases remain while the breadwinner satisfies this criterion. "White area" is a loose translation of the technical term "prescribed area". South Africa is divided into "prescribed areas" and "released or scheduled areas". The latter are African lands in terms of the Natives Trust and Land Act, 1936. All urban areas are *ipso facto* prescribed areas and all other parts of South Africa outside the released or scheduled areas may be declared to be prescribed areas.

No African has an unqualified right to be in a prescribed area and the manner in which he may acquire or be deprived of a limited right to be in such an area is the basis of labour control in *South Africa.*

Sec. 10 (1) of the Natives (Urban Areas) Consolidation Act contains the general prohibition: "No Bantu shall remain for more than 72 hours in a prescribed area". To this there are four exceptions. An African may remain in a prescribed area if he can prove:—

(a) that he has since birth resided continuously in that area; or
(b) that he has worked continuously for one employer in the area for 10 years or has been lawfully and continuously resident within the area for 15 years and does not work outside the area and has not while so working and residing been sentenced to a fine exceeding 100 rand or to imprisonment for a period exceeding 6 months; or
(c) that she or he is the wife, daughter or son of someone qualifying in terms of (a) or (b) and, having entered the prescribed area, is ordinarily resident with such a person within the area; or
(d) that he has permission from a labour bureau officer to be there.

Inertia of immobility

On the face of it the first two exceptions (to which I shall refer as protection by birth and long residence or employment) would appear to produce some stability of labour in regard to those workers who qualify under them. But instead of the positive element of stability there is only the inertia of immobility. Movement outside the one prescribed area in which rights have been laboriously acquired may lead to forfeiture of even those rights. Immobility caused by fear of the consequences of moving is not the equivalent of stability arising from satisfaction with freely chosen employment. And supplementary control such as control of employment contracts and control on the entry of families in fact reduce considerably the apparent freedom of those so qualifying to remain in permanent employment in the areas of their choice.

Labour Bureaux

The most simple yet far-reaching provisions of these Acts is that no person may enter into any contract to employ a Bantu in a White area save through a labour bureau. [New Sec. 10 *bis* (1)]. All Africans seeking employment must register with the bureau; all employers seeking to fill vacancies must notify the bureau.

All contracts of employment in which an African is the employee must be approved by the official

(Continued overleaf)

managing the labour bureau for the area. [See new Section 10 *(bis)* — s. 48 of amending Act]. This same official has the power in certain circumstances to cancel employment contracts. It follows that through these bureaux all African labour may be controlled and directed.

The hierarchy of labour bureaux and of the officials managing them is set out in the new sections 21 *bis* and *ter*, of the Native Labour Regulation Act. It now stands as follows:—

1. a local bureau in each prescribed area managed by a municipal labour officer;
2. a district labour bureau managed by a district labour officer;
3. a regional labour bureau under the control of the regional labour commissioner, and finally
4. a central labour bureau in the office of the Director of Bantu labour.

District and municipal labour bureau officers must conduct their bureaux in terms of the regulations made under the Act and on the instructions and under the supervision of the regional labour commissioner or the Director.

In terms of Sec. 23 (i) (o) of the Labour Act, regulations may be framed to cover conditions under which work may be taken up and the classes who must register with the bureaux as well as the details concerned with the administration of these bureaux. There is, however, one important proviso to the very wide scope of the empowering section:

> "Provided that a Bantu shall not be refused permission under any regulation made under this paragraph to re-enter an area after an absence therefrom of not more than twelve months, for the purpose of taking up employment, if a vacancy exists, with the employer by whom such Bantu was last employed in such area before leaving such area, or, if such vacancy has ceased to exist, and if the Bantu Affairs Commissioner has no objection, with any other employer in such area."

Cancellation of contract

An officer exercising his power to approve of employment will do so subject to regulations which may be framed by the Department. But the grounds on which an official may cancel a contract of employment are set out in the Act itself. The grounds for cancellation are:—

(i) that the contract of employment with such Bantu is not *bona fide;* or
(ii) that such Bantu is not permitted under any law to be in the area of the labour bureau concerned; or
(iii) that such Bantu has not been released from the obligation of rendering service under an earlier contract of employment or labour tenant contract; or
(iv) that such Bantu is not permitted by this Act or any other law to take up employment; or
(v) that such Bantu refuses to submit himself to medical examination by a medical officer or, having been medically examined, was not passed as healthy and vaccinated as prescribed or is found to be suffering from venereal disease or from tuberculosis or from any other ailment or disease which in the opinion of the medical officer is dangerous to public health; or
(vi) that such employment or continued employment impairs or is likely to impair the safety of the State or of the public or of a section thereof or threatens or is likely to threaten the maintenance of public order, provided the Secretary concurs in such refusal or cancellation; or
(vii) that an order of removal has been made under any law, against such Bantu.

An African whose employment contract has been so cancelled or who has been refused permission to enter into employment may be referred to an aid centre and may even in certain eventualities be required to leave the prescribed area. This power may be exercised even in the case of those who were previously protected by their birth and long residence or employment in the area, but the order requiring such persons to leave the area must be confirmed by the chief Bantu Affairs Commissioner. If such an order is disobeyed the right *(sic)* acquired in terms of Sec. 10 (1) (a) or (b) is destroyed (See Sec. 21 *ter* (8).)

Casual labourers and independent contractors

In addition to control over those in regular employment the Bantu Laws Amendment Act has tightened control over casual labourers and independent contractors. No African may carry on business as a hawker, pedlar or street trader, etc., outside an African residential area without the permission of the urban local authority (this is apart from acquiring a licence) and the urban local authority must in turn have received permission from the Minister to give consent. (New 27 *bis* of Act 25 of 1945.)

In February 1963 a circular was issued by the Department of Bantu Administration and Development relating to trading by Africans in White areas. The main provisions of the circular were the following:—

1. Africans will not be allowed to trade in an urban area outside an urban African township. No further Africans must be licensed to trade in such areas as pedlars, hawkers or speculators in livestock or produce. Where such licences have already been granted endeavours must be made to restrict the activities of the holders to African residential areas.
2. Where, owing to distance or other factors, it is necessary to grant trading rights in urban African townships such rights must be granted to Africans only. But the Government's overriding policy is not to allow an increase in the number of Africans in such townships who are not in paid employment. Therefore when it is possible without undue inconvenience to satisfy the needs of township residents from existing businesses in the towns, no reason exists for the establishment of trading concerns in the townships. This policy applies mainly in cases where the townships are small and are not far removed from the towns.
3. If it is necessary to provide trading facilities in the townships the trading rights must be

granted only to those who qualify to remain in the area concerned under section 10 (1) (a) or (b) of the Urban Areas Act. No foreign Africans may be granted such rights.

4. The carrying on of more than one business, whether of the same type or not, by the same African may not be allowed, not even in different African townships in the same urban area.

5. No business which does not confine itself to the provision of daily essential domestic necessities must be established. New licences for dry-cleaners, garages and petrol filling stations, for example, should not be granted. Persons already holding sunch licences can continue to operate until "the opportunity arises to close" the concerns or to persuade the owners to move to a Bantu homeland.

6. The establishment of African companies or partnerships must not be allowed in urban townships. Existing companies must not be permitted to take over or open further businesses there. Nor must African-controlled financial institutions, industries or wholesale concerns be allowed in such areas.

7. Africans granted trading rights must not be permitted to erect their own buildings. All buildings necessary for trading purposes must be erected by the local authority for lease to Africans at economic rentals.

8. The showing of films for entertainment in urban African townships must in future be undertaken by the local authority only. Other bodies already authorized to do so may for the time being continue.

Such directives will presumably be embodied now in regulations framed under Sec. 23 (1) (o) which empowers regulation of "the conditions under which a Bantu may be permitted to work on his own account in any remunerative activity or as an independent contractor." Such restrictions are also authorized by the new Sec. 37 *bis* of the Urban Areas Act.

Apart from the restrictions on business and employment opportunities which flow directly or indirectly from these Acts there is also the ingenious dissuasion from property investment which is a result of the withdrawal of freehold rights from African in urban areas. People residing in African residential areas within prescribed areas do so under a variety of permits. The most long-term is that of a site permit which allows a 30-year occupancy of the site and the right to dispose of his interest in the house on the site. As the time remaining on the permit decreases so must the value of the right of occupation which can be sold. No one as yet knows what the situation will be or what measures will be taken when these 30-year leases terminate, but whatever the position then may be, **it is clear that property investment for Africans has none of the security with which it is usually associated by the White population.**

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> ● *Even though it is an inescapable fact of South African life that Africans live and are needed in the White areas, these Acts ensure that no African may with any complacency contemplate his future and that of his family in a White area.*
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Summing-up

To sum up, the position of Africans working and living in a prescribed area is this:

1. **They may live in a prescribed area** (1) if they qualify by reason of birth and long residence or employment or, (2) if they have conditional permission to do so (the condition being in general that they be employed by a specific employer) or, (3) if they are the dependants of those qualifying under (1) and are permitted to live with the breadwinner.
2. **Africans may work in a prescribed area** as long as their employment continues to be acceptable to the labour bureau officer. If the employment fails or ceases to have the approval of the labour officer, any African ultimately may be required to leave the prescribed area. Furthermore an African long out of work runs the risk of being declared idle or undesirable and as such may be sent from the prescribed area to his home (if he has one) or to an African scheduled or released area.
3. They cannot in any substantial manner accumulate or invest capital in a prescribed area.

   In fact in the White areas of South Africa there are no established African communities with the amenities necessary to settled population.

The facts with which I have been dealing in themselves acknowledge the existence of a class of urban-born and bred Africans. Nevertheless, while these statutes remain in force African workers are ultimately at the mercy of officials, African businessmen are under pressure to move to African areas. At all times the declared policy of the Government is that Africans must go back to their homelands; here is the machinery by which this can be achieved. Even though it is an inescapable fact of South African life that Africans live and are needed in White areas, these Acts ensure that no African may with any complacency contemplate his future and that of his family in a White area. His presence there is always dependent upon good behaviour and upon the needs of the White population. And it is these conditions, which are operative in the case of all Africans outside released or scheduled areas, which make the whole pattern of African labour migratory in the sense referred to earlier.