A ROSE BY ANY OTHER NAME:

A PRELIMINARY EXAMINATION OF THE THREE DRAFT BILLS WHICH TOGETHER COMPRISE Dr KOORNHOF'S "NEW DEAL PACKAGE" FOR THE URBAN BLACKS.

by Julian Riekert

One's immediate reaction upon reading the Local Government Bill, the Laws on Co-operation and Development Amendment Bill and the Black Community Development Bill [1] is to echo the words of Scrutton, L.J., in *Green v Premier Glynrhonwy Slate Co. Ltd.*[2] "If I am asked whether I have arrived at the meaning of the words which Parliament intended I say frankly I have not the slighest idea." However, since, in the words of the General Notice, "any comment or representations thereanent should be forwarded to the Director-General of Co-operation and Development . . . within 14 days of publication hereof" the luxury of bewilderment can be ill-afforded.

The confusion begins with the headings to the second- and third-mentioned Bills which have been transposed, presumably by the Government Printer's bilingual gremlins, so that the Bill which follows has absolutely no bearing on the heading. The confusion ends with the schedule of legislation repealed by the last Bill of the trilogy, which must surely have established some form of world record for obscurity.[3] Since it is this legislation which may in future determine the residential and employment rights of the urban blacks it is little wonder that the newly formed Association of Lawyers for Human Rights has chosen these three Bills for its first seminar, at which some of South Africa's finest legal minds will endeavour to unravel their complexities.

In this note I will attempt to outline some of the outstanding features of the Bills, and particularly of the Black Community Development Bill, which will assume the responsibility for influx control from the Blacks (Urban Areas) Consolidation Act, which it will repeal if enacted in its present form. It is a masterpiece of faulty draftsmanship and, if enacted unamended, it will give rise to a wave of litigation of unprecedented dimensions. Apart from a host of deeming clauses (of which A.P. Herbert's Lord Mildew remarked "there is too much of this damned deeming") the Bill incorporates sizeable portions of several other statutes by reference.

There are also some passages which are sheer nonsense. For example, the words "controlling interest" are defined in relation to any company or any incorporated or unicorporated association of persons as "a majority of its shares". Since only a company or an incorporated association is likely to have shares, the reference to unicorporated associations must have been inserted in a fit of zeal by the draftsman, who may have felt that the section of the Group Areas Act from which he lifted the wording, did not go quite far enough.

There are two key concepts in the Black Community Development Bill. These are the concepts of "disqualified persons" and "the controlled area". The first of these concepts is defined in the Bill as follows:—

" 'disqualified person' means—

(a) in relation to immovable property, land or premises in a township, any person not authorised by this act to be therein;

(b) in relation to any immovable property, land or premises outside a township and for any other purpose (including employment), a black."

On the face of it, and ignoring the tautologous repetition of "immovable property" and "land", these definitions appear to be quite straightforward. In townships, disqualified persons, who are subject to the penalties provided which include fines, imprisonment and "repatriation", are those persons whose presence in the township is not authorised by the Act (Bill). In all other areas all blacks are disqualified persons. If this were the meaning then only those blacks who are lawfully resident in townships would be immune to prosecution. However, the matter is not as simple as that.

Chapter V of the Bill goes on to provide that, subject to certain conditions, bona fide employees, servants, visitors and dependents may lawfully occupy land or premises in a controlled area. There is no definition of a controlled area in the Bill. However, section 31(1) provides a clue. It states that:

"For purposes of the application of the Group Areas Act. 1966 . . .

(a) an administration area outside a township shall be deemed to be a controlled area as defined in section 1 of that Act."

From this it would seem that the principle instrument of control of the lives of urban blacks is to be the Group Areas Act. A qualified person will be deemed to comply with the provisions of that Act, while a disqualified person will be deemed not to do so and will therefore be liable to prosecution. But, once again, the question is not clear cut. It is by no means clear just which categories of persons can be sure that they will be regarded as being qualified for the purposes of the Bill.Nor is the definition of "controlled area" satisfactory. Although administration areas outside townships are deemed to be controlled areas "as defined in section 1" of the Group Areas Act, the definition in that Act expressly excludes the very land to which the Bill applies. It is thus a self-defeating definition.

The main thrust of this Bill would seem to be to render lawful the occupation of land in urban townships when the occupier is:—

(1) in lawful employment in the area or is living in approved accommodation in the area;
(2) a person who formerly held rights under section 10 (1)(a) or (b) of the Blacks (Urban Areas) Consolidation Act;
(3) a person who is lawfully employed or accommodated in another controlled area;
(4) the owner or lessee of a house in a township;
(5) a bona fide visitor of a lawful resident in a township. In the case of a visit lasting not more than 30 days in a calendar year no permit is required for the visit;
(6) a bona fide hotel guest, patient, scholar or student, subject to certain qualifications;
(7) a bona fide dependant of a lawful resident. Dependant is defined to include a wife, customary union partner, unmarried child and a person who by reason of age or ill-health is in fact a dependant.
(8) a disqualified person who at the time of commencement of the Act was ordinarily resident in a township. This is however a special class, the rights of which can be terminated by the Minister of Co-operation and Development by notice in the Gazette;
(9) a person to whom consent had been granted in terms of section 10(1)(d) of the Blacks (Urban Areas) Consolidation Act to remain in an area while in lawful employment. This authority will lapse upon the date stated in the original consent.

As will be seen from the foregoing, the proposed amendments are in fact very similar to the present position. Although some commentators[4] have suggested that the principal reform is the introduction of the Riekert Commission's touchstones of lawful employment and approved accommodation, these have always been implicit in section 10(1)(d) of the Blacks (Urban Areas) Consolidation Act. In fact, in one sense, the proposals are more prejudicial to the rights of urban blacks since the criteria are now *approved* accommodation and lawful *regular* employment. The latter concept is defined as being "bona fide employment to the extent and subject to the conditions (if any) as the Minister may by notice in the Gazette prescribe". Thus two new areas for the exercise of administrative discretion have been opened up

The following are the principal reforms introduced by the Bill. Firstly, the 72-hour provision of the Blacks (Urban Areas) Act has been relaxed to 30 days, but only for bona fide visiting purposes. Secondly, a black person who is registered in one administration area may, it would seem, reside in another administration area until he is able to acquire approved accommodation in the first-mentioned area. Thirdly, the Bill permits those who are at present ordinarily resident in a township and who, under the new proposals, would become disqualified persons, to lawfully remain in the township, but under the Damoclesian sword of the Minister's power to abolish this right by notice in the Gazette. Fourthly, a capital development fund is established for the advancement of black areas.

The disadvantages of the proposals are more numerous. Firstly there is no relief for the unemployed, unless they are able to prove dependency upon a lawful resident. Secondly, the Bill provides, for the first time, for a penalty of R250 or three months imprisonment for any black who, while a disqualified person, remains in any controlled area, or in unapproved accommodation. Any person who introduces such a person to a controlled area, or who permits him to remain there, is liable to a fine of R500 or six months imprisonment. By means of a clumsy and highly unsatisfactory deeming provision, the offence in each case is deemed to be one under the Group Areas Act. Thirdly, in the case of most of the criminal offences created by the Bill, the onus of proof of various aspects of his innocence is cast upon the accused person. Fourthly, the Bill prohibits any person, other than an attorney or advocate practising as such, from accepting or receiving any money or reward for any service rendered to a black person in connection with the registration and employment provisions of the Bill. This section is clearly aimed at the informal group insurance schemes which operate in black areas in terms of which a member of the scheme pays a monthly contribution to the scheme, in return for which the scheme will pay any legal charges which the member may incur in complying with influx control requirements. Fifthly, the Bill proposes the establishment of so-called "community guards" which are clearly informal tribal policemen, whose activities in connection with the notorious *makgotla* system have been the subject of much criticism.

The last of the principal disadvantages of the Bill is the proposal contained in section 62 that the proper court for all matters arising out of the Bill is the Commissioner's court. Although the section commences with the words "subject to the provisions of the Black Administration Act", the ordinary effect of which would be to limit the effect of the section to blacks, it goes on to add "irrespective of whether or not the matter is ordinarily beyond the jurisdiction of such a court." If this section means what it appears to mean, whites and members of the other race groups may yet experience the perils of prosecution and litigation in the Commissioner's court, which until now, has been the exclusive and dubious privilege of the black group.

It is also interesting to note that although section 65(1) purports to repeal the whole of the Blacks (Urban Areas) Act, section 65(2) retains the two notorious "idle or undesirable Blacks" and curfew sections, sections 29 and 31, until the State President abolishes them by proclamation in the Gazette.

After reading this confused, confusing, imprecise and poorly drafted Bill, one begins to empathise with Harman, L.J., who declared in *Davy v Leeds Corporation:*[5]

> "To reach a conclusion in this matter involved the court in wading through a monstrous legislative morass, staggering from stone to stone and ignoring the marsh gas exhaling from the forest of schedules lining the way on each side. I regarded it at one time, I must confess, as a Slough of Despond through which the court would never drag its feet, but I have, by leaping from tussock to tussock as best I might, eventually, pale and exhausted, reached the other side . . ."

How any layman can be expected to come to grips with the provisions of this Bill is beyond my understanding. It is the best example I have yet encountered to prove the absurdity of the rule that all men are presumed to know the law.

Its two companions, the Local Government Bill and the Laws on Co-operation and Development Amendment Bill, are less contentious and better drafted. The former, as its title suggests, is intended to substitute a limited form of local government in the form of town and village councils, for the present urban black councils and black advisory boards. It will go some way toward the development of autonomous black urban areas, but a major shortcoming in that regard will

be the low revenue to be derived from the rating of township land, due to the very low incidence of commerically rateable property.[5]

The Laws on Co-operation and Development Amendment Bill is intended to effect consequential amendments arising out of the enactment of the first two Bills. Its first section, which is reproduced here in the form in which it appears in the Gazette, brackets indicating deletions and italics insertions, creates a sense of unease. Firstly, it broadens the scope of the crime to include all race groups which would seem to fall outside the context of the Black Administration Act. Secondly, it is merely a reiteration of section 1 of the General Law Amendment Act, 94 of 1974, which "(1) Any person who utters any words or (does) *performs* any other act or thing whatever with intent to (promote any feeling) *cause, encourage or foment feelings* of hostility between (Blacks and Europeans) *,different population groups of the Republic* shall be guilty of an offence and liable on conviction to (imprisonment for a period not exceeding one year or to a fine of one hundred pounds, or both) *a fine not exceeding two thousand rand or in default of payment to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment";*

Footnotes on p. 19

THE STORY OF AN AFRIKANER

by Natie Ferreira
Published by Ravan Press
A Review by Abraham de Vries

It is characteristic in the anatomy of suppression that it sometimes forces the suppressed into tiresome soul searching. At best this search leads to good literature, at it's worst to futile explorations beyond the limits of the situation, into metaphysical guilt and anxiety.

The Story of an Afrikaner by Natie Ferreira (subtitled "The revolution of the children") does not escape metaphysical vagaries and a resulting exaggerated emotionality, but at the same time it is an honest and daring account of a man's fight against what he terms Dwurg ("acronym for *doodwurg"*), meaning the strangling Ideology of Apartheid, the smothering System where the individual has no lebensraum except in submission. The book is obviously meant as faction ("This is a true account recorded in different appearances of reality." (p.18) and "Not according to the tiresome restrictions of the god Literature." (p.4) It is also meant as a „testament", which accounts for the form of the book: two long letters to his daughter, Nadine, arising from her questions: "Tell me about the real world" and "Explain God to me". The second letter forms an introduction and a conclusion, a framework for the most interesting part, the first letter. In this he writes about his career as political correspondent of *The Citizen* and later of the *Transvaler.* But these letters also form a very personal document which deals basically with the wresting from a situation of fear of rejection, rejection by what Freud would have called the father figures: the Party, God, the System." ("The only real sin is to point out the Lie. Remember, the System is never wrong. That is rule number one. The only God (but never say it) is the "national interest', the only justice that which protects and perpetuates 'the System', the only truth complete identification." p.69).

The book is in parts a chilling account of the ruthless dishonesty, the lack of willpower in leadership (Vorster telling Ferreira's Editor that he expected a 'shooting war' and admitting his helplessness; Wimpie de Klerk placing his hope on the role of the unexpected in history!) the deceit and the dangers in deviation from the System (" . . . Afrikaans newspapers and the SABC start in on what they call a 'knife job'. This simply means that the culprit is discredited, smeared, written off and buried" or in a "subtler version": the *doodswyg-metode,* the kill-by-silence method" p.4.)

Ferreira does not draw his punches and spares nobody. His disillusion with the "theatre of cynicism" (parliament) is spelt out clearly, and so are his views about church, opposition and Mr English ("In his heart of hearts he despises the Afrikaner and considers the African a savage. He lives his life quietly and efficiently in the company of these two uncouth giants and is always slightly irritated by the fact that his obvious superiority is not recognised." p.73.)

Unfortunately some of these cynicisms have a deja vu character—or could it just be that there is in our situation, as Adam Small once argued, nothing new to be said?

It would be possible to go even further and say that Ferreira's book is nothing more than the work of an embittered man who makes no bones about it that he was pushed out and left out in the cold on several occasions. (He had at one time advocated a Government supporting English newspaper built on the ideal of the sovereignty of the individual!) It would be easy to discredit Ferreira's observations, but I believe it would be wrong. In a book like this "objectivity" is obviously no criterion and even distortions are sometimes more true than the "truth".

Ironically Ferreira is not always at his best where he wilfully exposes or discredits, but in "throw away" cameos such as the following:

> "Uncle M was a tall educated farmer and town councillor. He spoke beautiful Afrikaans, his son, D, played Chopin and his wife served tea in the most delicate cups and won prizes for her canned fruits.
>
> But something went wrong, something, I think, in connection with his work as councillor. He was in charge of 'Native Affairs' and apparently insisted on certain changes. Eventually he was branded a 'kafferboetie' and ended up in a mental home, a hollow man who accused his few visitors of avoiding him."

Which gives me reason to believe that Ferreira has more strings to his bow than those used in the greater part of this book. And sharper arrows. Because, whereas many readers could regard Ferreira's disillusionment with the System as growth pains out of naïvety, the story quoted above can not easily be discredited. It is a variation on the story of many Afrikaners. □