


Memorandum on the Mass Laws and Influx Control




**SASH VOL. 16 No. 8.
FEBRUARY, 1974.**

PRICE: 50 CENTS



The Black Sash published a Memorandum on the pass laws in 1966. During the following five years there were many changes in legislation and in the implementation of the pass laws so the memorandum was revised and republished in January 1971. The present edition is again updated and altered to include some clarifications and some comment on the Bantu Affairs Administration Act which is now being put into effect.



Cover Design: ANNE POGRUND

introduction

The pass laws are being evermore rigidly applied and more and more people are being affected by their implementation. Government policy is to reduce the number of Africans residing in the "prescribed areas" and to ensure that as many as possible of the workers needed in the metropolitan areas are migrants. In the year July 1970 to June 1971, 615 075 people were prosecuted for pass law offences; that is, an average of 1 685 prosecutions per day.

We are deeply concerned about the effect these laws are having on the African people, morally, socially and economically. We are concerned about the discrimination, the injustice, the break-up of family life, the increase in crime, the poverty, the insecurity of all urban Africans, and the breakdown of the whole social fabric of the African community.

The system used to control the use of African labour has dehumanised the official, the employer and the African worker. It has made authority a monster, and the worker a labour unit. *The pass laws are inhuman laws and they cannot be administered humanely.*

This Memorandum is based on the knowledge gained from the work in the Black Sash Advice Offices in Johannesburg and Cape Town. The examples given are factual, from information given to us and they are typical of many similar cases in the files. Names have been changed to protect the privacy of the people concerned. For every person who comes to the Advice Offices for help, there are hundreds more who are in the same predicament.

WHAT IS A PRESCRIBED AREA?

A prescribed area is one which has been declared prescribed in the Government Gazette; in practice it is any area which is considered to be a "White" area, but where a large number of Africans live and work.

From time to time different directives in different areas are introduced and applied; but in the main, the effect on all urban Africans is substantially the same.

THE INFORMATION IN THIS MEMORANDUM IS BASED ON THE REQUIREMENTS OF THE FOLLOWING ACTS AND REGULATIONS

- The Bantu (Urban Areas) Consolidation Act (No 25 of 1945) as amended.
- The Bantu Labour Act (No 67 of 1964).
- The Bantu Labour Regulations; Gazette No R.1892, December 3 1965.
- The Regulations for Labour Bureaus at Bantu Authorities (Bantu Regulations (Bantu Areas) 1968); Gazette No R.74, 1968, March 19 1968.
- The Bantu Affairs Administration Act (No 45 of 1971).
- The Regulations Governing the Control and Supervision of an Urban Bantu Residential Area and Relevant Matters. Gazette No R.1036, June 14 1968.

THE BANTU AFFAIRS ADMINISTRATION ACT OF 1971 provides for combining several prescribed areas under the administration of one Bantu Affairs Administration Board. As the Boards are established they take over all responsibility for African affairs, including labour and township administration, from local authorities.

The Act allows a greater mobility of labour within the administration area of any one Board but the prescribed areas within one Board area remain separate prescribed areas and there is no change in the laws and regulations which must be complied with.

Analysis of Section 26 of this Act is on page 66 of this memorandum.

The Bantu (Urban Areas) Consolidation Act as amended; the Bantu Labour Act of 1964; the Bantu Labour Regulations of 1965 and the Regulations Governing the Control and supervision of an Urban Bantu Residential Area and Relevant Matters, of June 14, 1968, are applicable to all urban and prescribed areas.

section 10 of the bantu (urban areas) consolidation act as amended

Most of the problems of the urban African arise from the administration of Section 10 of the Bantu (Urban Areas) Consolidation Act of 1925 as amended by the Bantu Laws Amendment Act of 1964 (Act No 42 of 1964). Section 10 governs the right of an African to be in a prescribed area, and the conditions under which he may remain there.

Section 10(1) reads:

'No Bantu shall remain for more than 72 hours in a prescribed area unless he produces proof in the manner prescribed that —

- (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 one hundred rand or to imprisonment for a period exceeding six months; or
- (c) such a Bantu is the wife, unmarried daughter or son under the age at which he would become liable for the payment of general tax under the Native Taxation and Development Act, of 1925 (Act No 41 of 1925) of any Bantu mentioned in paragraphs (a) or (b) of this subsection and *after lawful entry* into such prescribed area, ordinarily resides with that Bantu in such area; or

(d) in the case of any other Bantu, permission so to remain has been granted by an officer appointed to manage a labour bureau in terms of the provisions of paragraph (a) of subsection (6) of Section 21 term of the Native Labour Regulation Act, 1911 (Act No 15 of 1911), due regard being had to the availability of accommodation in a Bantu residential area.'

Section 10(1)(a)

gives men and women who qualify to remain permanently in a prescribed area under this clause because they were born in *and* have remained continuously in that one area since birth the *greatest degree of security which it is possible for an urban African to have.*

This right is only lost if the person leaves the area to live somewhere else or is declared idle or undesirable (See section 29 on Page 50. It will not be lost if a prison sentence is imposed, nor if there are absences for schooling purposes or for medical treatment at a recognised institution. Generally speaking, people who have this right in one prescribed area are allowed to retain it if they are *officially resettled to another prescribed area.* But they will lose it if they move themselves.

For example, people who were born and have always lived in Alexandra township and who have been compulsorily moved with their families to Meadowlands, Diepkloof or Tembisa are qualified to remain in the new area in terms of Section 10(1)(a). This is by agreement between the local authorities concerned.

However if a residential township for Africans is abolished and alternative accommodation is not offered to the inhabitants Section 10(1) rights are removed because there is no lawful accommodation. At Bonnievale in the Cape Province all housing for Africans was demolished when the area was declared for occupation by Coloured people and qualified Africans were simply removed from the area.

People who qualify in terms of Section 10(1)(a) can change jobs (within the area) as they wish — but they must register as workseekers at the labour bureau within three days of becoming unemployed. The labour officer may allow them to be registered as self-employed to work independently in African residential townships. *Men who qualify may rent a house in a residential township provided that they fulfil all the other conditions (see page 39).*

The authorities generally demand the production of a birth certificate before recognising a 10(1)(a) right.

Section 10(1)(b)

applies to people who qualify because they have worked *continuously* for one employer for 10 years in one area, or have resided

lawfully in one area for 15 years. They have, more or less, the same rights as people qualifying under section 10(1)(a). In some prescribed areas however the Labour Officer will no longer allow them to be registered as self-employed and in some other areas they are not allowed to become the tenants of a house.

The authorities are rigid in considering applications for 10(1)(b) rights. If a man's employment with one employer has been interrupted at all within the 10 years it is not regarded as continuous. For example, men who work as cleaners in blocks of flats are registered in employment by the managing estate agents but each time they are transferred to another building they are re-registered at the new address. The Johannesburg Advice Office has come across many men who have worked for one firm of estate agents for as long as 30 years but not for a continuous period of 10 years at one building. They are refused the 10(1)(b) qualification. The 15 years *lawful* residence is even more difficult to attain. It means continuous residence in a township with a residential or lodger's permit, or lawful accommodation on an employer's premises.

Case

MRS SEKHUTU has been living continuously in Johannesburg since 1946 but her name was never listed on any residential permit until 1970. She was refused 10(1)(b) rights and is only allowed to remain in Johannesburg for as long as she remains employed. She will only qualify for her 10(1)(b) if she stays with her current employer for 10 years or, (if she lives that long), in 1985 when her name will have appeared on the township residential permit for 15 years.

Section 10(1)(c)

has provisions and implications so complicated that they are dealt with separately in the chapter on page 29.

Section 10(1)(d)

applies to all those people who do not qualify to be in a prescribed area in terms of Section 10(1)(a), (b) or (c) who must have permission from the Labour Officer to work in the area and may only remain in the area if that permission is granted.

If a man came to the area before March 1968 and is still working for the employer to whom he was registered before that date he can stay in the area as long as that employment lasts. If he remains with that employer for 10 years he will qualify in terms of Section 10(1)(b). (This seems to be the normal practice but the Advice Office has received reports from time to time that, since 1968, some employers have been instructed by the labour department to formally discharge their workers and to re-register them

on annual contracts, thus depriving the men concerned of any chance of achieving 10 years continuous employment.)

Otherwise, if a man has worked in one area for less than 15 years and has not been listed on any residential permit for 15 years he will be forced to leave the area if his job ends for any reason. He will thereafter be forced into the system of annual migrancy under the 1968 regulations explained below. (See page 27 for variations in the case of women.)

For a worker who was registered in his current job before the 1968 regulations came into force:

- (a) The service contract lasts for as long as he continues to work for the same employer;
- (b) He may go home on leave provided:
 - (i) that his employer does not sign off his reference book, but endorses it in Section B of the book that the man is away on leave from until
 - (ii) that he returns to work for the same employer;
 - (iii) that he does not stay away from the urban area for more than six months.
- (c) He may not be the tenant of a house;
- (d) He cannot have his wife and children to live with him (unless the wife is already living lawfully in the area in her own right in terms of Section 10(1)(a) or (b) or (d)).

Men who have taken new employment since the 1968 regulations came into force must now comply with those regulations as shown below.

migrant workers

Regulations for labour bureaux at Bantu authorities Pensions

These regulations provide for the establishment of Tribal, District and Territorial Labour Bureaux. They extend and entrench the migrant labour system. This is a summary :

● Every African domiciled in the area of a Tribal Labour Bureau who is unemployed but dependent on employment for his livelihood, shall within one month of becoming unemployed or within one month of reaching the age of 15 years or ceasing to be a full-time pupil or student, register as a workseeker with the Tribal Labour Bureau in his area.

● All workseekers must be classified in a particular category of employment.

● These people are exempt from registering as workseekers :

TEENAGERS under 15 years of age.

FEMALES, unless they wish to work.

MEN over 65 years.

ANY owner of land on which he lives lawfully and which he cultivates regularly.

PHYSICALLY or mentally incapable people.

BONA FIDE pupils or students.

CASUAL labourers or independent contractors.

● Labour is recruited by a licensed recruiting agent.

● All contracts must be attested before the worker starts work.

● A service contract will be for a maximum period of one year (360 shifts, or 270 shifts if the worker is under 18 years). The worker must have a reference book or identity document and be over 16 years of age, or must have the consent of his guardian.

● At the end of the contract period, the employment must be terminated. Contract workers must return home at the end of their contracts. On his return to his Bantustan the worker must report to the Tribal Labour Officer and wait to be recruited again.

● Employers cannot dismiss employees for reasons of injury or illness without the permission of the Bantu Affairs Commissioner.

● No African may leave his Bantustan to seek work.

● A fee of R1 per worker per year must be paid by the employer to the Tribal Labour Officer.

● The employer is responsible for the cost of transport from and to the Bantustan and the place of work. But this money may be recovered from the worker.

● An employer who wishes to re-employ his worker can make use of a "call-in-card". The employer should take his worker to the local labour bureau before he returns to his homeland at the end of the contract and apply for the "call-in-card". The African then takes the relevant portion of the card to the Tribal Labour Officer at home, when he will be given permission to enter into a new service contract with the same employer. On payment of R1 the man must return to his job on the specified date.

Before he starts work he must be taken on the day of his return, to the Local Labour Bureau to be registered in the employment. (Even if a worker comes back to the same employer on the call-in-card system for more than 10 years, this is not *continuous* employment as required by Section 10(1)(b) of the Urban Areas Act. See page 4).

Workers registered under these regulations are subject to restrictions:

THEY can only enter into a service contract for a maximum period of one year.

THEIR reference books must be signed off at the end of each yearly contract.

THEY must return to their homeland at the end of every service contract.

THEY can never be the tenants of a township house. They must always live in "bachelor" hostels, or on their employer's premises.

THEY can never change their category of work.

THEY cannot bring their wives into the area.

Applications to employ a particular worker

All recruiting of workers for employment must be done by recruiting agents although some authorities will still allow employers to apply for a specified individual. These applications

are only allowed in very limited categories of work, mainly domestic service.

If permission is granted to an applicant who wishes to bring a particular man to the area, the service contract will be restricted to one year.

Provisions which have to be complied with when making application for an individual worker

THE African must be in his home area when the application is made by the prospective employer.

THE applicant must go in person to the Municipal Labour Officer to ask permission to apply for a particular man.

THE applicant will be told that he will have to wait for a period to see if the vacancy can be filled by a local workseeker.

AT the end of the period, if the employer is not suited he must again go to the local labour officer and fill in a form seeking permission for a specific African to come to the prescribed area for employment with the applicant.

HE must fill in form B A 1163 of the Fortieth Schedule of the Bantu Labour Regulations, 1965.

THEREAFTER the applicant and the African must wait for three weeks to six weeks for permission to come through.

THE African must not leave his home area without obtaining the necessary document from the Tribal Labour Officer.

THE employer must specify exactly where his employee will be housed before permission is granted.

The applicant will not be allowed to apply for a specific African :

IF there are men locally who are seeking work in the category of employment offered; or

UNTIL the registering officer is satisfied that the prospective employer cannot be accommodated with a local employer to suit his requirements; or

IF the prospective employee is a woman. There is a total embargo on women entering most urban areas for purposes of work or residence. (Randburg and Sandton will, however, allow the employment of women from specified areas in the Transvaal.)

IF there is no authorised accommodation available for the worker.

Holiday Leave

WORKERS who qualify to remain in the prescribed area for as long as they are working for the same employer and who are not subject to the Bantu Labour Regulations, 1968, may be away on leave from the prescribed area for a maximum period of six months.

N.B. This period is altered from time to time and it is as well to enquire what the period is before the worker goes away on holiday.

Before the worker leaves, the employer should endorse his reference book "Away on leave from until" and sign it. It is important that the employer does not sign the man off by signing his name and the date in the discharge column.

CONTRACT workers subject to the 1968 regulations must go home at the end of the service contracts. If the "call-in-card" (see page 8) has been used he must return in 28 days. If he is not returning to the same employer he must wait to be recruited by a licensed recruiting agent for a new employer.

There is, of course, nothing to prevent the employer allowing the worker to go home on leave during the period of the contract.

Housing for Contract Workers

Most contract workers have to be housed in "bachelor" hostels. They are not eligible for a township house and they may not bring their wives and children to the area where they work.

In Johannesburg, domestic servants may be accommodated on the premises of their employers. If the employer has more than one living-in servant it is necessary to obtain a licence from the Bantu Affairs Department for each servant living-in, in excess of one. A fee of 50c per month per employee in excess of one must be paid to the Bantu Affairs Department.

Tenants in blocks of flats must pay a licence fee of 50c for a living-in-domestic servant.

In Cape Town, a fee of 50c per month per worker is charged if more than one servant is employed. Fifty cents is charged for every living-in servant if more than one is employed, e.g. one living-in servant, no fee; two living-in servants, R1 per month.

Contract workers can apply for a lodger's permit to live with their wives if the wife is living lawfully in the area in terms of Section 10(1)(a) or (b).

If there are no children with the wife a lodger's permit may be refused and he may have to live in a hostel and his wife in a hostel for women.

If the wife is a country woman her husband can apply for a visitor's permit — provided suitable accommodation is available — so that she may come to the area to visit him for a short specified period. In Cape Town visiting permits are not normally given to the wives of contract workers but an exception may be made for a grave medical reason.

If both are domestic servants they may be living on the premises of their separate employers. Permission will not be granted for them both to live together on the premises of the one employer, even if the employer is willing. If both husband and wife work for the same employer they may at present live together on

the premises. However when sufficient hostel accommodation is available one of them will be forced to go to a hostel. In other words licences for living-in workers will be refused by the Department.

Comment

It is Government policy that all labour in the urban areas is eventually to be there on a migratory basis. This is a devastating policy as far as the African is concerned. The contract worker can only spend a limited period a year with his wife and family while between contracts or if he gets leave. This is contrary to civilised standards and leads to many social evils, both in the Bantustans and in the urban areas.

In the tribal areas the illegitimacy rate was formerly low because customary law provided for a code of conduct which inhibited illicit sexual relations. Illegitimate children were provided for either by the natural father or by the husband of the woman if the child was born in his kraal. Today, tribal women are left alone and often do not remain faithful to their husbands who are working in the White areas. Husbands and wives are made to live abnormal and unnatural lives.

Migratory labour depresses the wages of unskilled workers and, as a result, poverty and malnutrition are widespread. In the resettlement villages and the closer settlements in the Bantustans, where many of the wives and children of migrant workers live, employment for women is almost unobtainable and starvation, malnutrition and the resulting diseases are prevalent.

Under the 1968 regulations the migrant worker, when attesting his employment contract, may have to defer a proportion of his wages to his dependants. The employer is responsible for transport, quarters, medical attention, rations, and protective clothing — all of which costs may be deducted from the workers' wages.

Paragraph (3) of the Contract of Employment reads as follows:

“The Bantu acknowledge having received the advances set out below against their respective names and undertake that these amounts shall be repaid by deduction from the moneys **IN EXCESS OF R1** earned by them for each completed period of 30 days or 30 shifts worked until the whole of such amounts shall have been repaid after which the full earnings shall be paid to them”.

So a man can be left with R1 of his monthly wages as his total income.

Neither the migrant worker nor his family has any security. The man is placed in a work category at the age of 15 and no contract of labour can be attested unless the category (other than mining or farming) is the same as that for which he has been registered. He can only change to another category with the

agreement of the Tribal Labour Officer. He has little hope of advancement and little hope of earning a wage adequate to keep himself and his family in any degree of comfort and decency.

He has no control over where he will work, for whom or what type of work he will do. He does not own his own labour.

Dr. Francis Wilson in his book, "Migrant Labour in South Africa" estimates that every second African worker in the common area of the Republic is an oscillating migrant.

The migrant worker can develop no sense of loyalty either to his family, to his work or to his employer. He is dehumanised, regarded as a labour unit and can be shuttled around every year at the behest of the Department of Bantu Administration.

Cases

MR RADALE is registered as a contract worker in Johannesburg. He started working for his present employer four years before the 1968 regulations came into force. He is paid R26 a month. He has just been offered a job at R10 a week. If he leaves his present employer in order to accept the job which would pay him nearly twice as much, he will lose all chance of qualifying under Section 10(1)(b) and will be registered on a yearly contract under the new regulations.

He also runs the risk that his home area may have been declared a "closed" area for purposes of employment in Johannesburg. (If an area is "closed" no applications by employers for employees from that area will be accepted.) If this was the case he would have given up his present job to no avail. If he does not take the risk he must work for at least another year for his present employer knowing he could earn far more on an open, unrestricted labour market.

MR THUPUDI is a young man who recently left school in the Orange Free State and, very much against his own wishes, has been classified as a mineworker by the labour officer. When he argued, he was told that he had to work on the mines because his father had done so.

MR SENONE is registered as a workseeker at a labour bureau which is closed to all areas except a nearby industrial growth point. He is earning R16 a month in a factory and is forbidden by law to sell his labour for what it is worth in any other place.

MR TSHILWANA is an experienced factory worker with a wife and four children to support but his labour bureau has been closed to all recruitment except by White farmers in the surrounding districts. He is therefore prevented by law from using his skills and is forced to work as a farm labourer for a wage which in no way compares with what he was earning two years ago.

MR MONALEDI came to the Transvaal from Queenstown in 1948. He worked legally in Benoni and then, not knowing the

implications for himself accepted work in a business at Halfway House where he was registered from 1960 to 1966.

He thus lost the rights he had acquired in Benoni, has not acquired any rights to be in the Halfway House area and must work for the rest of his life on annual contracts. He married a Benoni woman in 1956 and they have five children. None of his family is on any permit anywhere because they moved from Benoni with him. He can never qualify to rent a house for them in the urban areas and they have no roots in the Queenstown district. There is no way that he can even be assured that he will be allowed to work on contract in the Transvaal.

MR MOSES DLADLA comes from KwaZulu. He has worked for the same firm of estate agents in Johannesburg for nine years. His wages were raised from R30 a month to R45 a month after six years of employment. He was offered a salary of R60 a month by a commercial firm and handed in his notice to the estate agents. Because he did not remain with them at the low rate of pay for one more year so as to qualify under Section 10(1)(b), he will now spend the rest of his life working on annual contracts.

MR PASHA is a displaced person. He was born in Johannesburg but was sent to his grandmother in Virginia in the Free State as a small child because his mother is a domestic worker and could not have him living with her at her place of employment.

He never attended school, and when he took his reference book in Virginia he accepted work on a mine. He then wanted to change to another type of employment. Virginia refused to register him as a workseeker unless he agreed to continue as a mine labourer. He returned to his mother in Johannesburg and was told to go back to Virginia.

Because he is unwilling to spend his life as a mine labourer he has been unable to register anywhere as a workseeker and therefore cannot have legal employment.

MR F. MOLAPO was working on contract in Randfontein. He was offered and thought he had a contract for R8 a week for eight hours a day, five days a week. He was then ordered by his employers to work for 9½ hours a day, six days a week and was not paid any overtime. He complained and was immediately fired. He must now return to his rural home and spend some weeks earning nothing while he waits to be recruited to a new job.

MR GEORGE MABUZA comes from KwaZulu. He has worked for a hospital in Johannesburg since 1951 but has been back to his wife and children many times on leave, sometimes staying there some months to plough. Each time he went on leave the hospital discharged him and re-engaged him when he returned, so he has never qualified to remain in Johannesburg permanently as he has not had *continuous* employment for 10 years, or 15 years' continuous residence.

The last time he went home on leave he did not realise that under the 1968 labour regulations he should return within 28 days in order for the call-in-card system to operate. He stayed longer and was endorsed out of Johannesburg on his return. He has a wife and six children and was paid R37,50 a month after 21 years with the same employer.

MR MDHULI was qualified in terms of Section 10(1)(a) in Westonaria. In 1969 he accepted employment in Johannesburg and was registered as a contract worker. That job came to an end and he has been refused permission to register in Johannesburg in a new job.

He did not realise the implications when he left Westonaria. He has lost his right to go back there. He will always have to work on annual contracts. He wishes to marry now and is devastated to find out that he can never rent a house of his own in an urban area because he can never again qualify.

MR FANYANA NQUBANE came to Johannesburg from Natal many years ago. He was working in registered employment and had acquired a right to remain in terms of Section 10(1)(b). He was assaulted and badly injured. He was unable to work for several years and spent those years in Natal. He now has to work on yearly contracts. He is elderly and greying and says, "When will these laws be ended — when a person must travel all the time to look for work?"

MISS NONKULULEKO MBEWE lives in Queenstown lawfully with her parents. She must work to help support her family but can find no work in Queenstown. She travelled to Johannesburg but because almost no women are admitted to Johannesburg to work she must return to Queenstown. She has no freedom of movement to try to find work for herself anywhere except in Queenstown.

MR J. KUBEKA is a contract worker who has been told he may work only in the Halfway House-Olifantsfontein areas. He cannot find suitable work there and has been offered a good job in Johannesburg. He has been refused permission to work in the city and ordered to leave the area.

MR KAMHAYA is registered as a contract worker to a firm in Johannesburg. He is paid R11,50 a week but his employer deducts R5 a week from his pay saying that this is essential for registration fees. Over the six weeks since he began this job his employer has deducted R30.

MR KHOZA was working on contract in Johannesburg. He was arrested and charged with theft. He was found not guilty and discharged from his employment. He was then endorsed out of Johannesburg and must now return to his home area to await recruitment to a new job. He has a wife and children who live lawfully in Johannesburg.

reference books

Every African boy or girl must apply at the office of the Bantu Affairs Commissioner for a reference book when he/she turns 16 years of age. He is then given his identity number which remains the same throughout his life.

It is an offence for an African of 16 years and over not to be in possession of a reference book. It must always be carried around on the person and produced when demanded by the Police.

It is not always easy for a young person to obtain a reference book in the area where he applies for it.

In 1964 the Minister of Bantu Administration and Development ordered that a reference book was to be issued in the place where it was applied for. This policy was changed in 1965: a reference book was only issued in the area where the young person was lawfully domiciled. In Johannesburg the policy appears to have been modified and the book is issued if there are reasonable grounds for supposing that the applicant has no other home district. Issue of the book does not imply, however, that the young person has rights of domicile in the area.

Sometimes a reference book will not be issued without the production of a birth certificate. Many Africans still have no birth certificate but if they can produce evidence of the birth they can apply for a late registration of birth. This usually takes some months and in several cases in Johannesburg the child has been told to get a reference book first. This means he is caught in a vicious circle: no birth certificate — no reference book — no reference — no birth certificate.

If a child was born and has lived all his life in the urban area, his reference book will be issued to him there.

But:

● IF he was sent out of the area to stay with relatives or grandparents he will lose his rights to return to the prescribed area. He will be unable to prove that he entered the area lawfully and will probably not be issued with a reference book in his home town; he will be told to return to the place where he was living with his grandparents and to apply for it there.

● IF a child's name is not included on any housing permit, whether he has been out of the area or not, he will have difficulty in obtaining a reference book.

● IF a child was born in a rural area, then despite his mother being qualified to remain in a prescribed area with her husband in their own home, she will still have to obtain permission to have the child living in the area. If this permission is refused and the child's name is not listed on the housing permit he will be unable to prove his domicile when he goes to apply for his reference book. The authorities in different areas vary in their readiness to grant permission to children born out of the area.

● Problems will be encountered if a child's mother is a domestic worker who resides on the premises of her employer and who does not have any relatives in the prescribed area. She will have difficulty in finding a family to take in the child. If she does succeed in this, it will not be easy to have the child's name listed on the housing permit. The child will have difficulty in obtaining a reference book when the time comes.

There are many children born in the backyards of the mother's employer who either live illegally in their mother's room or who live where they can in the townships. They have no proof of their birth or of their presence in the prescribed area. They may not have been to school and there may be nothing to prove that they belong in the area. When a reference book is refused to them and they are told to leave the area they literally have nowhere to go.

Cases

MR NGALEKA applied for his first reference book in 1964 when he turned 16. He was refused a book because his name was not on any housing permit. Since then he has been working at odd jobs and casually as a porter at the Johannesburg market because he has been unable to take up any regular employment — because he never had a reference book.

He was born in Moroka in 1948. His father died in 1954 and his mother in 1959, since when he has been living illegally with an aunt and uncle. He is now trying to find some way of proving his birth in Johannesburg, and is collecting documents to prove his schooling and continuous residence in the area since the time of his birth.

MRS MASINE, like Mr. Ngaleka was born in Johannesburg in 1950 and has always lived in the area but has very few proofs. She was refused a reference book when she first applied and is now trying to collect documentary proofs of her birth and continuous residence in the area.

MISS KHAMBULA was born in Johannesburg in 1948 and attended school in Johannesburg from 1957 to 1968. Her mother never had permission to remain in Johannesburg although she has lived in the area for more than 20 years. This meant that Miss Khambula has never had her name on a house permit. Her father is mentally ill and is unable to help her.

Her application for a reference book was turned down. Until she has a reference book she cannot be registered in employment or to live in Soweto. The authorities would not issue a reference book because her name does not appear on any housing permit.

Duplicate Books

If a man or woman loses his/her reference book he/she must apply to the Bantu Affairs Commissioner immediately for a duplicate reference book.

The person must take with him to the Bantu Affairs Commissioner the sum of R2,60 and two passport photographs. He should know his identity number. If he does not, delays and difficulties occur.

He will be given a temporary identification document pending the issue of a new book which usually takes some months.

Many people are refused a duplicate reference book if they cannot furnish the proof of their right to be in the prescribed area, i.e. if their names are not on a housing permit or they are not in registered employment.

They are frequently told they must go and apply for a duplicate book in their "home" area. They may not have another home area to go to.

Temporary Identification Certificates

These certificates, which are issued to anyone who has applied for a reference book must be endorsed by the labour officer with the relevant permission for the holder to be in the area. If a man is registered in employment the employer must sign the certificate monthly and the registration must be shown.

If a temporary identification certificate is lost the holder must reapply for a reference book.

Incorrect information in a reference book

It is not uncommon for a wrong name to be put in a reference book or for a name to be spelt wrong. When he applies for a reference book the child is asked to take his parent or guardian to the Bantu Affairs Commissioner's office with him. When a child who is living with his grandparents in a rural area reaches the age at which he has to take out his reference book, he is sometimes registered in his maternal grandmother's maiden name. It can happen that he is registered in the name of his stepfather or in his mother's maiden name, or the name of the head of the kraal where he is living, whether the man is related to him or not.

All kinds of difficulties occur. It is sometimes found that a child has been known at school by his mother's maiden name. When he goes to apply for his reference book there is endless trouble in proving what his correct name really is, and that, whatever name he is known by belongs to the same person.

In other cases the official asks where the father was born. When the young person truthfully replies he finds his place of birth is entered as the place where his father was born although he may never have been there in his life. This can be very serious. The wrong place is noted in the boy's reference book as being the area to which he must pay his tax and is interpreted as being his birthplace. He may find that this mistake dogs him throughout his life when he tries to register for employment or residence.

The child may be endorsed out to the area where his father was born. It could be to a "White" rural area or another prescribed area or even another country. He would have no right to be in any of these places, but he would have to prove that he was not born there and that he was born in the area where he said he was born.

Many Africans do not have birth certificates and it is very difficult for a man to prove his place of birth, particularly if his mother did not attend an ante-natal clinic or was not confined in a hospital or by a midwife.

Another error occurs when the official asks an African to which tribe he belongs. If he replies that he is a Swazi or a Msotho and this is entered in his book, he may find later that he is deemed to be a foreigner and he will have to prove that in fact he was born in the Republic. (See page 63)

Another cause for complaint occurs when a person has 3 names besides the surname. Many have been told that they are not allowed to have 3 names in a reference book. The one omitted is often the one which was used at school or on the birth certificate.

The Advice Office has also had experience on several occasions of children under the age of 16 who have been arrested for not being in possession of a reference book or have been told by a policeman to go and get a reference book or face arrest. It is difficult for a 14-year-old to produce proof on the spot that he or she is not yet 16.

Cases

SIPKIWE MOKOLA. This girl is 13 years old. She was sent to the Advice Office with a note from the teacher at the Mission school she attends, because she had been told by the police to get a reference book at once or she would be arrested. She went to the Bantu Affairs Commissioner's office in Alexandra township to apply for a reference book and was sent from there to the Municipal Labour Office for the Alexandra/Sandton area with a duplicated form which said: "Before I deal with this application it is referred to you as arranged so that the applicant may be screened forthwith."

At the Municipal Labour Office the form was completed as follows: "The abovenamed does not qualify to be or remain in the prescribed area of Alexandra or Sandton in terms of paragraph (a), (b), (c) or (d) of sub-section 10(1) of Act 25 of 1945. My investigations indicate that her place of birth is unknown."

Sipkiwe was, in fact, born in Alexandra and has lived there continuously since her birth. Her mother has a letter from a doctor proving her birth in the area but her name does not appear on any residential or lodger's permit. When she came to the Advice Office we were able to reassure her that she was too young to be forced to carry a reference book, but that it was essential that she prove her right to remain in Alexandra and have her name entered on a house permit. On investigation it transpired that her mother, Tholiwe Mokola, had been endorsed out of Alexandra and has never had permission to live there.

Mrs Mokola was born in Alexandra township and has lived there all her life, having been away only once for a few months in 1957 when she went to Natal on a visit. In 1959 she was issued with a reference book in Johannesburg but, as usual, was asked where her father was born. He had been born in Swaziland and, when her book was issued, Swaziland was shown as her home district.

She has never been to Swaziland in her life — not even on a visit — but she did not realise that this wrong information in her new book might have serious repercussions in the future.

In 1962 and again in 1970 she was warned to leave Alexandra and told she must go to Swaziland. She can produce proof of long residence in Alexandra in the form of doctor's letters and affidavits and a letter from the priest of her church. But it is essential that she find some proof of her birth, otherwise she is considered to be a foreigner and even long residence will not help her to get permission to remain.

Her father and her only brother are both dead and her mother deserted her when she was a very small child, and cannot now be traced. The only relative she has is a cousin who remembers the date of her birth because his sister was born on the same

day. If the authorities do not accept this sworn affidavit as to her birth there is no other way she can prove that she is in fact a South African citizen. If she has to leave South Africa and go to Swaziland it is doubtful whether her two minor children will be able to live in South Africa and they will lose their 10 (1)(a) rights in Alexandra.

SOLOMON MASHIMBYI was born in Alexandra in 1948. His mother has a letter from her doctor testifying to this. He lived in Alexandra with his family until they were all compulsorily moved to a house in Diepkloof in 1962. His name was entered on the family's housing permit at that time and he continued to attend at his school in Alexandra to which he travelled daily. His name was also endorsed in his mother's reference book. When he was 16, in 1965, the township superintendent told Solomon that it was time he took out his reference book and removed his name from the house permit and from his mother's reference book.

When Solomon applied for his book he was asked by the Bantu Affairs Commissioner where his father had been born. Solomon told him Rustenburg. When Solomon's book was issued, Rustenburg was shown as his home area; when he went to the Municipal Labour Officer, permission for him to stay in Johannesburg was refused. His case was investigated by the officials but he was eventually endorsed out.

Solomon is in fact entitled to remain in the prescribed area of Johannesburg in terms of Section 10(1)(a) and has documentary proof to show this. But, because his book wrongly states his area to be Rustenburg, he has been unable to have his right recognised. He has only been to Rustenburg twice in his life — on both occasions when he was arrested and taken there under escort.

After years of struggle during which time his mother lost her job because of the time she had spent in various "pass offices." Solomon was registered in employment but his 10(1)(a) was not recognised. When he left that job he was endorsed out again and had to begin the whole dragging process once more. All this has happened because of a mistake made by an official of the Department when his reference book was first issued.

endorsements in the reference book

As well as being a document of identity a reference book should contain information about the ethnic group the holder belongs to; his place of domicile; his employment record and receipts for payment of tax; together with monthly signatures of employers, in the case of a man, and in the case of a woman, the name and address of her guardian.

The most coveted stamp in a reference book is the one which states that the owner is:

“permitted to be in the prescribed area of in terms of Section 10(1)(a) of Act No 25 of 1945” or,
“permitted to be in the prescribed area of in terms of Section 10(1)(b) of Act No 25 of 1945.”

Many men and women who qualify under these sections do not have this fact reflected in their reference books. They do not know that they should ask for it to be shown. Although their complete records are kept in the files at the pass office the omission of the endorsement can lead to difficulties when a labour officer acts overhastily and does not investigate the record before refusing to register someone as a workseeker.

When a man or woman registers as a workseeker the reference book is endorsed “Registered as a workseeker at” When the individual finds employment and registration is allowed the stamp reads “Permitted to remain in the prescribed area of while employed by”. If the man is a migrant worker the stamp reads “Permitted to remain in the prescribed area of while employed by until” or “for a period not exceeding”.

Endorsements out

If the labour officer does not agree to register the person concerned he endorses the reference book "To report to the District Labour Bureau at before for the purpose of refused entry"

When the man reports to the District Labour Bureau his book is stamped, often in red, "Ordered to leave the prescribed area of within 72 hours".

This is the dreaded "endorsement out" and means that the man (or woman) must leave the area. He cannot be employed there nor can he live there.

Appeals

Africans have a right of appeal to the Bantu Affairs Commissioner against any decision of a municipal or district labour officer. The appeal must be lodged in the form of a sworn affidavit within seven days of the decision being made.

Many people do not know about this time limit nor do they know how to make an affidavit or what information the Bantu Commissioner may want. If the appeal is lodged late the Commissioner may refuse to consider it at all. The Advice Office has found that some people have had difficulty in lodging the appeal in time because the queues are so long that they are turned away. If it is lodged in time the person concerned will be given a temporary permit to remain in the area pending the result of the appeal. He may be asked to submit additional documents. If the appeal is refused he must take immediate steps to leave the area. The decision of the Commissioner is final.

Anyone who is aggrieved by a decision or order of a municipal or district labour officer and contends that an irregularity has occurred may ask that the decision be reviewed by the Commissioner.

The onus of proof

The onus of proof is always on the African man or woman. Unless he can furnish conclusive proof to the satisfaction of the authorities he will not be permitted to remain in the area.

Documents

Any right an African may have to be in an urban area is dependent on the correct stamp in his reference book. The stamp is a permit, and documents are the key to a permit. These documents are necessary because they furnish the proof of a person's presence in a certain place at a certain time — they prove the whereabouts of the African for every month of every year of his life from birth onwards. The African must be a collector of documents from the day of his birth to the day of his death.

Documents which must be procured and kept:

- (a) **Birth Certificates:** If the birth was not officially registered a late registration of birth can be applied for at the office of the local Bantu Affairs Commissioner if the mother was attended by a registered midwife attached to an institution where records are kept or by the submission of two affidavits from witnesses to the birth. There must be accurate information as to the date of birth and the name under which the mother was registered. (Many women are registered under their maiden names and care must be taken to ensure that the application is made in the right name). If a late birth certificate cannot be obtained some other proof must be furnished, such as affidavits from two people who can testify from personal knowledge that the child was born in the area stated.
- (b) **Baptismal Certificate:** These are not accepted as proof of location of birth, but they are proof that he was in an area specified when baptised.
- (c) Clinic cards, hospital cards, doctor's certificates.
- (d) Letters from the Department of Health, giving notification that a child must be taken for vaccination or inoculation on a certain date or within a stipulated period.
- (e) School certificates attesting that the child attended school for a certain period and giving the dates.
- (f) References or certificates of employment, of registration and discharge, going back over 15 years, and giving dates.
- (g) Certificates from a church, stating that the man was a member of the congregation of that church during a specified period.
- (h) Rent receipts and/or any other receipts which could be proof of residence in an area at a particular time.
- (i) Housing permits.
- (j) Marriage certificates.
- (k) Death certificates of father or relative if their qualifications could be of assistance.
- (l) Divorce certificates.
- (m) Pay slips.
- (n) Any other document which could provide proof of presence in an area at any particular time.

Unless an African can furnish conclusive proof that he has a right to be in an urban area he will not get the correct stamp in his reference book. Documents, therefore, are the most precious possession of African people.

Cases

MRS NYOFU'S case is included in this section because it illustrates many facets of the pass laws. It highlights the difficulties of people living in Alexandra, or other townships which are demolished, who are compulsorily removed to different prescribed areas, their resulting problems in trying to obtain a work and

residence permit. The case shows the absolute necessity of keeping and collecting documents of various kinds.

Mrs Nyofu lived in Alexandra from 1938 to 1965 when she moved to live with her adult son in Soweto. Her troubles arose because her husband deserted her in 1959 when he was moved with the children to Meadowlands and he put another woman on his housing permit as his wife.

After his death their eldest son was given a house of his own and Mrs Nyofu moved to this house but was refused permission to remain there. The son died and the other children were given a lodger's permit. But again Mrs Nyofu and her two youngest children, who had remained with her all along, were refused permission to remain.

During all this time she was working, first as a school teacher, then as a qualified midwife and a doctor's assistant. She worked in Alexandra, Edenvale and Johannesburg—always in the Greater Johannesburg area but in different prescribed areas.

In 1968 she lost her reference book and was unable to get another one until she took legal advice. After instituting proceedings in the Supreme Court, she was issued with a book. Then she had to try to get permission to remain in the area. She had no rights in Alexandra because she had moved away but could establish no rights in Johannesburg because her entry into that area had been unlawful.

She asked the authorities for permission to remain on the grounds that she has lived in the Greater Johannesburg area for 31 years and that she had always been reliably and gainfully employed, that her children were all born in Alexandra and that it was through no fault of her own that she was not removed to Meadowlands with her family.

The following extracts from her affidavit show how important documents were to her and what happened to them during the course of the years:

“On 6th October, 1938, I married Alexander Nyofu in Pietersburg (Marriage Certificate Number attached).

“From 1939 to 1945 I was employed as a teacher at the Alexandra Lutheran School, 3rd Avenue, Alexandra. This school is no longer in existence and I am unable to obtain a letter of proof that I taught there.

“In 1945 to December, 1949 I taught at a Presbyterian school, 6th Avenue, Alexandra. My reference from this school was given to my next employer — the Bridgman Memorial Hospital — and the matron retained it. The Bridgman Memorial Hospital is no longer in existence and I cannot furnish this proof.

“In December, 1950, I started training as a midwife at the Bridgman Memorial Hospital. In October, 1951, I qualified and obtained my certificate. My certificate was stolen and I applied to the S.A. Nursing Council for a duplicate. They replied that

they did not give duplicates but that the receipt of my annual subscription was adequate. (Photostat copy attached).

"In 1952 until 1954 I worked at Baragwanath Hospital as a midwife. A letter of proof of this employment was retained at the offices of the Bantu Resettlement Board, Meadowlands.

"In 1963 my husband died. In 1965 I paid R36 to the rental office Meadowlands, being the debt for rent incurred by my husband. This payment is recorded in the files at Meadowlands.

"In 1966 I worked for Dr David R. until 1968 when he died (letter from his widow attached).

"I attach the following documents such as I have — the others are with authorities as stated in this affidavit:

1. Marriage certificate.
2. Nursing Council receipt for 1970.
3. Offer of employment.
4. Letter to registering officer from Superintendent dated 28/1/70.
5. Letter to registering officer from Mr G. dated 2/7/1968.
6. Notice from Resettlement Board dated 13/3/1965, demanding payment of arrears of rental.
7. Certificate of employment from Mrs R."

There are other documents which Mrs Nyofu should have had, such as birth certificates for all her children. It would also have been helpful if she had kept such things as receipts for hire purchase payments. However, she was eventually registered in employment in Johannesburg but was given no right to remain permanently.

MRS MONTSI first came to Johannesburg in 1946 when she was 26 years old. In 1968 she was ordered to leave the area within 72 hours. She appealed against this endorsement out but did not know what was required, and anyway did not have a chance to collect all the necessary documents within the stipulated seven days. Her appeal was refused.

She came to the Advice Office in November, 1970 and managed to collect proofs of continuous employment from 1950 to 1970. She then asked the Appeals Officer to re-investigate her case and to register her in her present job. She also asked that, in view of her 20 years' continuous employment in the area, she be recognised as being in the area with permission in terms of Section 10(1)(b). This last request was refused on the grounds that her 20 years' employment was not lawful because it was unregistered, and therefore did not qualify her under this section. The most she could hope for was registration in employment.

the pass laws and african women

The Urban Areas Act was amended by the Bantu Laws Amendment Act of 1952 which was promulgated on June 24, 1952, but it was not immediately implemented with regard to women.

The necessity for women to have a permit to be in a prescribed area for more than 72 hours was introduced on different dates in different areas. In Johannesburg it was March 10, 1959. In Cape Town, women were advised in 1954 to take out their reference books, but it only became obligatory for a woman to be in possession of one on February 1, 1963. However those women who did not qualify to be in Cape Town in terms of Section 10 (1)(a) (b) or (c) had to have permits in terms of Section 10 (1)(d) from 1954 onwards and were arrested if found without such a permit.

Until 1964 a man who qualified in terms of Section 10(1)(a) or (b) could have his wife, unmarried daughter or son under the age of 18 to live with him provided that he could prove that they ordinarily resided with him in the area where he qualified. In that year, however, the Bantu Laws Amendment Act added the words "after lawful entry". Now the wives and children of qualified men have to prove that they entered the area lawfully before they can live with their husbands and fathers. (See page 29)

Since March 10, 1959, when restrictions on the entry of women into the prescribed areas were introduced in Johannesburg the laws have been implemented with ever-increasing severity and harshness.

In Cape Town, no woman qualifies for permanent residence unless she can prove that she has been registered as having lived legally in the area for 15 years. If she becomes unemployed or widowed, she will be endorsed out — unless she can prove that she has been registered for 15 years.

In Johannesburg, she must prove that she has lived continuously in the area since March 10, 1959. She will then not be endorsed out if she is widowed or unemployed but she cannot get a 10(1)(b) qualification until she can prove that she has been in employment with the same employer for 10 years or in registered employment for more than one employer for 15 years or listed on a residential permit for that period.

Single women

If a woman is the unmarried daughter of a man or woman qualified to be in a prescribed area and she can prove that she entered the area lawfully and ordinarily resides with her parent in the area she has no trouble; but for a single woman whose parent is not qualified to be in the prescribed area, or who lives in single quarters, or does not live there at all, or has died, there can be serious problems.

Today no woman can *enter* a prescribed area for purposes of employment or residence. After the promulgation of the Bantu Laws Amendment Act of 1964 on May 15, 1964, a total embargo on the entry of women into the urban areas was imposed, other than on a visitor's permit valid for a specific and restricted period.

On January 9, 1959, the provisions of the Bantu Labour Act were made applicable to women. Because of an error in the Government Gazette which published the proclamation, the date set in Johannesburg when women had to comply with the Act was March 10, 1959. On this date in Johannesburg it became obligatory for a woman to have a permit to be in the area for more than 72 hours and to seek work. In Cape Town, registration became compulsory in 1954. The date varies in different towns and cities.

A single woman is permitted to be in a prescribed area if:

- She was born in the area and has lived there continuously; or
- She can prove that she has lived continuously in the prescribed area since the day on which the permit system was introduced in her area, i.e. in Johannesburg since March 10, 1959; in Cape Town since 1954; or for 15 years with permission and that, thereafter, she has lawfully resided in that prescribed area; or
- She is the unmarried daughter of a man or woman qualified to be in the area in terms of Section 10(1)(a) or (b) provided she can prove she entered the area lawfully and that she ordinarily resides with her parents; or
- She entered the area after the date on which the permit system was imposed and was given permission for a particular reason to work for a specified employer, to remain in the area as long as she continued to work for the same employer. She is then permitted to be in the area in terms of Section 10(1)(d). If she loses or leaves her job she will be endorsed out unless she can prove that she worked for her employer for 10 years, when she will qualify in terms of Section 10(1)(b), or unless she

married a qualified man while she was legally employed and lives with him at his lawful place of residence.

● In certain limited areas she may be allowed to work on annual contracts.

If the father of an unmarried daughter dies and she qualifies only in terms of Section 10(1)(c) she loses her right to remain in the area unless she can prove that she lived lawfully in her parents' home for 15 years prior to her father's death.

If before her father's death, she had married a man who qualified in terms of Section 10(1)(a) or (b) she would be allowed to remain in the area. But if her husband only qualified in terms of Section 10(1)(d) she might have to lose her domiciliary rights as she would no longer be the unmarried daughter of a man qualified to remain in the area in terms of 10(1)(a) or (b), or the wife of a qualified man.

The ramifications of the laws and regulations which affect single women are so complicated that it is difficult to establish what their rights are in all the varied circumstances.

Before the pass laws and influx control were rigidly applied to women, in Johannesburg at least, African women were able to be employed without let or hindrance. They were not required to enter into a service contract and though permission was required to live in the townships they were not subjected to the harsh restrictions which pertain today.

Women who were housed on the premises of their employers and for whom there is no record of presence in the urban area now, however, find it difficult to prove their residence in the prescribed area before January, 1959.

Another reason why single women find it difficult to furnish proof of their long residence in a prescribed area is the failure of employers — mainly of domestic servants — to register their servants.

Today these unfortunate African women are finding they have no means of obtaining the required proof of their employment either because their ex-employers have died or have left the area, or in some cases refuse to give them a letter because they fear prosecution for themselves. Furthermore, many women who have been working in the area for more than 15 years, but whose employers did not take the trouble to register them after 1959, are refused the 10(1)(b) qualification because this long residence was not "lawful".

Case

MRS MANANA was born in the Cape and came to Johannesburg as a very small child. She has lived in that city ever since. She has never been registered in her employment and has never been on any house permit.

In November, 1970, she obtained employment with someone who tried to register her. She collected proofs covering her em-

ployment and residence in Johannesburg from 1954 to 1970. Although she was unable to find any documents for the years before 1954, her proofs showed her to have been in the area for more than 15 years. When she took all her documents to the Municipal Labour Office she was endorsed out of Johannesburg.

She appealed and asked that she be permitted to remain in the area in terms of Section 10(1)(b) in view of her more than 15 years' continuous residence. This request was refused on the grounds that her residence was not lawful because she had not been registered since 1959. However, she was told that, if her employer would accompany her to the pass office, she would be registered in terms of Section 10(1)(d) and her endorsement out would be cancelled.

SECTION 10(1)(c)

Dependants of men qualified to remain in an urban area in terms of Section 10(1)(a) or (b)

The difficulties of African men permitted to remain permanently in urban areas revolves, in the main, around their wives and families.

Wives

A man who is qualified under 10(1)(a) or (b) is entitled to have his wife to live with him provided that *she entered the area lawfully* and can prove that she *ordinarily resides* with her husband in that urban area. But, because of the embargo on the entry of women into prescribed areas, it is extremely difficult for a man to bring his wife from outside the area to live with him.

Lawful entry

In Johannesburg a woman must be able to prove that she came to the city before March 10, 1959 and has remained there since that time. There are very few exceptions:

● If a woman qualifies as 10(1)(a) or (b) in another prescribed area she may be allowed to live with her qualified husband in Johannesburg in terms of Section 10(1)(c) provided that he has accommodation for her.

● In 1972 when Dr. P. J. Koornhof was Deputy Minister of Bantu Administration he announced that qualified men could bring their wives from the Bantustans or the platteland to the prescribed areas provided that the husband had accommodation for his wife and that the marriage took place after December 10, 1971. Not many women are able to get permission in terms of this concession because of the crucial shortage of accommodation in the urban areas.

● A very limited number of women are given permission by the labour officer to come to work in certain prescribed areas. The areas where this is allowed are very few. This permission

constitutes lawful entry and if these women marry qualified men in the same area they are entitled to remain in terms of Section 10(1)(c).

● Women may come to visit their husbands and obtain a visitor's permit for a few months. In one case the Cape Division of the Supreme Court ruled that this constitutes lawful entry. The Court ruled that the appellant was entitled to remain in Cape Town in terms of Section 10(1)(c) although the visitor's permit had long since expired because she had entered lawfully in the first place and ordinarily resided with her residentially qualified husband in his permanent and lawful accommodation.

Ordinary residence

The phrase "ordinarily resides" implies that the woman is living with her lawful husband in a house where he is entitled to be by virtue of the fact that his name is enumerated on the residential permit or he holds a lodger's permit. His accommodation must be suitable and lawful for married people. In other words, she cannot claim that she ordinarily resides with him if he is officially resident in a hostel or in authorised accommodation on his employer's premises.

Comment

This is one of the worst aspects of South Africa's pass law system. There are thousands and thousands of broken Black families where husband and wife must live apart because the husband has permanent residence rights in an area where his wife is not allowed to be.

Cases

MRS NDLOVU qualifies to be in Johannesburg in terms of Section 10(1)(a). She married a man who lives lawfully in Alexandra township and who is registered in his employment in Sandton (a different prescribed area from Johannesburg although they adjoin one another). He is registered in terms of Section 10(1)(d) and has not been in the area long enough to get his 10(1)(b). He was born elsewhere so he does not qualify as 10(1)(a). Mrs Ndlovu was not allowed to move to Alexandra to live with him. They have to live apart although they are each lawfully resident within a few miles of each other.

MRS ZULU is married to a man who qualifies to remain in the prescribed area of Johannesburg in terms of Section 10(1)(a). There are four children of the marriage who were all born in Johannesburg. Mrs Zulu herself was born in Johannesburg in 1942 in the old township of Sophiatown. Until 1962 she was living lawfully in the area and had a lodger's permit to reside in her parent's house in Meadowlands. In that year she was ill for some time and failed to pay the monthly fee for the lodger's permit at the Superintendent's office.

In December, 1962, her reference book was stamped that she was not permitted to remain in the prescribed area of Johannesburg. Her attempts to have the position rectified were not successful and in October, 1969, she was ordered to leave the area within 72 hours.

At this time she was living "unlawfully" with her four children in her mother's house and her husband was living in "bachelor" quarters in a hostel because he did not qualify to have a house for himself and his family because his wife and children were deemed to be unlawfully in Johannesburg. He visited his family on his way from from work in the evenings.

Mrs Zulu's birth was never registered so she was unable to produce a birth certificate; but her mother made an affidavit swearing that she was born in Sophiatown. Mrs Zulu was able to collect very comprehensive documentary proof of her residence in the area of Johannesburg since the time of her birth. After she had enlisted the aid of an attorney and after a great deal of time spent at various offices she was eventually given permission to remain in Johannesburg in terms of Section 10(1)(c) as the wife of a qualified man. This is not altogether satisfactory because the authorities have denied her the right to remain in terms of Section 10(1)(a) because they would not accept the proof of her birth. As a 10(1)(c) she is dependent on the wellbeing and goodwill of her husband. Should he die or desert her she may well be endorsed out and have to "ask" for resettlement as she knows no other home she can go to.

MR SABATA RAPHAEL who was born and has always lived in Johannesburg and thus qualifies under Section 10(1)(a) married a young woman, Masekiemang, who comes from the Mafeking district. She first came to Johannesburg on a visitor's permit in 1968 so has no rights in the area at all. Mr Raphael asked for permission for her to be allowed to live with him at his parent's home in Soweto. He was told he must first get a transfer for her from her home district. This he did with no difficulty. She was given written permission to leave the Mafeking district to come to Johannesburg. However, the authorities in Johannesburg refused permission for her to stay there. This young couple will never be allowed to live together in the city where the man was born and where he works.

In July, 1971, the Black Sash wrote to the Deputy Minister of Bantu Administration on behalf of three young women who were married to Johannesburg men. In each case there were young children of the marriage and in each case the marriage had taken place in about 1965 or 1966. The women had all entered Johannesburg unlawfully at the time of their marriage. All three had been ordered to leave Johannesburg within 72 hours. All had appealed to the Bantu Affairs Commissioner and been refused.

The Deputy Minister replied that these women could not be

permitted to remain with their husbands and that they should settle in their homelands where their husbands could visit them regularly.

Children

The registration of births in urban areas is now enforced. All township superintendents are assistant registrars of births and deaths. Birth certificates are necessary in order to have a child's name put on a residential permit and must be produced when the child is first admitted to school. At the beginning of 1974 all children in Soweto were told they must produce evidence of lawful residence in Johannesburg in order to be allowed to attend school.

- (a) Parents must register the birth of all infants and obtain a birth certificate.
- (b) The father must take the infant to the township superintendent and have the child's name listed on the tenant's house permit.
- (c) The children born in prescribed areas have 10(1)(a) rights whatever the position of their parents.
- (d) To retain these rights these children must remain continuously in the area. But:
- (e) If the father wishes to send his children to school outside the prescribed area, he must tell the superintendent:—
 - (i) that the children will be going to school in a rural area;
 - (ii) that he, the father, will be paying the school fees;
 - (iii) that the children will be coming home for the school holidays;
 - (iv) that at the termination of their schooling they will be coming back home to the prescribed area permanently;
 - (v) that he wishes the children's names to be retained on the housing permit.

Failure to comply with this procedure can result in the children losing their domiciliary rights; being refused the issue of a reference book in the prescribed area and being refused permission to take employment and to live in the area where they were born.

Teenage sons

The sons of parents qualified to remain in the prescribed area are entitled to live with their parents, provided they *entered the area lawfully*, until they are 18 years old, i.e. the age at which they become liable for general tax. There are, however, considerable numbers of cases where the children have spent some time out of the area and where their parents have failed, mainly through ignorance, to comply with the above regulations. When the children return home they find that their names have been re-

moved from the house permit and they are deemed to have re-entered the area unlawfully.

They then have difficulty in establishing their right to remain in the prescribed area; they may be refused the issue of a reference book in the area and then they are warned to leave the area within 72 hours.

Many who return to the rural areas where they stayed with relatives while they were at school find that the Bantu Affairs Commissioner there has no record of their residence in this area and he too will not issue a reference book. They come back to their parents and live illegally in the prescribed area where they were born. They cannot regularise their position; they cannot accept employment; they frequently are arrested, brought before court, sentenced to a term of imprisonment or to a fine; serve their sentences, come out of jail and live like fugitives until they are again arrested and the whole process is gone through again. The result is that they learn to live by their wits and it is not long before some of them turn to crime.

Many children are in trouble because they were away at school at the time their parents were allotted a house and their names were, therefore, not entered on the house permit. Others are in difficulties because they were born out of the area where their parents live permanently and were then left in the care of relatives because the parents had no house, or because their parents sent them away to grandparents because they had no suitable accommodation, or because both man and wife had to work and had no one in the city to care for their children during the day. When the parents are at last allotted a house they want to bring the children to live with them. Permission is very often refused. The influx control restrictions are almost as rigid for children as they are for men and women.

Unmarried daughters

The same conditions apply to young girls as to their brothers but *after lawful entry* daughters are entitled to live with their qualified fathers as long as they remain unmarried. Their names, as in the case of their brothers, must be included on the tenant's house permit. If their names are not on the permit and if they have been out of the area for some time they may be deemed to have entered the area unlawfully and they will probably be endorsed out.

If a daughter has been given permission under Section 10(1) (c) to reside with her father and she then marries a man who only qualifies under Section 10(1)(d), she may be endorsed out.

Comment

Lawful entry is one of the most difficult things to prove. Few parents, lawful urban residents, are aware of the implications, for

either their daughters or their sons, of sending them to a rural area to stay with grandparents.

The policy of endorsing teenage children out of a prescribed area causes great hardship and anxiety to both parents and their children.

How, one asks, can a young person, at a most impressionable age and in need of the guidance and discipline of his parents, be expected to develop into a mature and responsible member of society if he is cast out of his home to "some place" where he knows no one and is unable to find congenial employment? The disservice to the community of the implementation of this aspect of policy is particularly obvious. Only socially destructive results can be expected from the forcible separation of teenagers from their parents.

Cases

JOSEPH MASHOAI and his wife Rashitieng were married by lobolo in 1948 and lived together in a room in Newclare, Johannesburg. At that time Mr Mashoai was working for a firm in Johannesburg. He died in 1970, while still in their employ after 25 years. He qualified to remain in Johannesburg in terms of Section 10(1)(b).

In 1965, Mr Mashoai had been given a house in Meadowlands for himself and his family. By this time there were seven children of the marriage. The three youngest ones were living with their parents when the house was granted to them and their names were entered on the house permit with no difficulty. The names of the four eldest children were not entered.

Alec, who is their eldest son, was born in the room in Newclare in April, 1949 and lived there with his mother and father until he was seven years old. Then they sent him to school in Acornhoek in the Eastern Transvaal. He finished his schooling in 1964 and returned to his parents at the beginning of 1965. He was living with them when they were given the house. But the Superintendent refused to put his name on the permit because he was just 16 and told him to get a reference book. His reference book was issued showing his district to be Bushbuckridge — which meant that his claim to belong in Johannesburg was not accepted and permission was refused for him to live with his parents.

Norman, Mpule and Raneya were all also born in the room in Newclare in 1951, 1954 and 1957 respectively. Norman went to school in the Eastern Transvaal from 1958 to 1969; Raneya from 1964 to 1969 and Mpule from 1960 to the present date. All these children were away at school when the house was given to the family so their names were not entered on the permit. Ever since then permission has been refused by the Superintendent.

Mrs Mashoai has been collecting affidavits from the women who assisted her at the birth of her children and who have known

the family intimately for many years. She has twice been to the Eastern Transvaal to get papers certifying to the children's years at school. The first time she brought back all the certificates the Superintendent refused to accept them because they were not on the official form and sent her back to get them again.

Her husband died on October 17, 1970 and when she went back to the Superintendent's office with the second batch of school certificates she was ordered to leave Johannesburg within 72 hours. This happened because her permission to be in the area was in terms of Section 10(1)(c) and this automatically fell away at her husband's death. She then had to try to prove that she had been lawfully in Johannesburg for 15 years so that her right to remain in terms of Section 10(1)(b) could be recognised. She was unable to do this.

She is still trying to prove that her children are entitled to remain in Johannesburg in terms of Section 10(1)(a) by virtue of the fact that they were born here and have only been away for purposes of schooling. If this right is not recognised by the authorities they will all be endorsed out. Mpule can no longer claim permission in terms of Section 10(1)(c) as the son under 18 of a qualified man; Raneya cannot claim it as she is no longer the unmarried daughter of a qualified man; Alec and Norman are now both over the age of 18 and would not have qualified in terms of this section anyway.

MR AND MRS TSEKU have four daughters and one son. These children were brought up by their grandmother in Natal while their parents waited to be allotted a house. When he was eventually given a house, Mr Tseku brought his children to Johannesburg to live with him. He asked for them to be allowed to remain with him in terms of Section 10(1)(c). This was refused and he was ordered to send them all back to Natal.

Fortunately he refused to accept this decision and persevered with his appeals to the authorities. Eventually all his children were given permission to remain with him. His daughters, who are all unmarried, will be able to remain until they marry, but after that their future will be determined by the qualifications of their husbands. His son, who is 10 years old, will have to leave Johannesburg again when he turns 18.

The families of Government employees

African men who work in Government service are often transferred to different centres in the course of their duties. If they are not migrants working on annual contracts their wives and children are allowed to go with them and this often leads to future difficulties for the children. They grow up without any rights in terms of Section 10(1) and may find themselves condemned to a life of oscillating migrancy because no prescribed area will accept them as permanent residents. In the same way the children of Ministers of Religion may become displaced when they grow up.

displaced people

Because of the rigid requirements of Section 10(1) of the Urban Areas Act there are people who have no rights to remain in any prescribed area and who are refused permission to work in any prescribed area. If they also have no home in any Bantustan they find themselves displaced people in their own country. They literally have no place at all where they may legally be.

They therefore have no area in which they may register as workseekers and are unable to accept employment of any kind.

They have two alternatives. They may ask for resettlement to a Bantustan — which is not at all easy to achieve if they have no relatives or affiliations in the homelands; or they may try to get permission to work in the urban area where they ordinarily are domiciled.

If they were born in that town or city but lost their right by going away for a period they are termed “misplaced” and find it relatively easy (at least in Johannesburg, although definitely not in Cape Town) to be registered in employment provided, of course, that they can produce proof of their birth. But if the town of their birth will not acknowledge them or if they were born on a “White” farm where they no longer have any connections they will find themselves caught in a dreadful struggle for survival.

No one will take responsibility for making decisions about their registration and they may go from place to place for years vainly seeking to be legally employed. If they do succeed and are eventually registered in employment by special consent of the Bantu Affairs Commissioner they often remain in a precarious position. If they leave their employment they may be endorsed out again and have to start the whole process afresh. They still have no place they can regard as home and this leads to great difficulties when they wish to establish some security for their children.

Case

MR MOLALE was born in the Kimberley district in 1923. He began work at the age of 17 and his first job was on contract to an employer in Vryheid, Natal.

He first paid tax when he was working in Vryheid. He returned to Kimberley in 1941 and worked there from 1941 to 1949. In 1950 he obtained employment with the Railways and

worked for them at a place 40 kilometres from Kimberley until 1959. He then again worked in the Kimberley district between 1960 and 1964. From 1965 to the present date he has worked illegally in Johannesburg. He is married to a woman who has a 10(1)(a) right to remain in Johannesburg.

He has served three prison sentences for pass offences and has twice been escorted out of Johannesburg and taken to Vryheid. On both occasions he was refused permission to remain in Vryheid and was sent back to Johannesburg. The authorities in Kimberley said he did not belong there. The authorities in Johannesburg refused to register him because he only came to that city in 1965 for the first time. He was told to apply for resettlement to his homeland.

He is a Tswana so he started on a long trek around Bophutha-Tswana seeking a chief who would accept him in his area. He lost his reference book during one of his terms of imprisonment and was told he must wait for his new book to be issued before he could be resettled. This involved a delay of nine months because, as he belonged nowhere, no one was willing to issue a reference book.

When the book was eventually issued he resumed his tour of areas in Bophutha-Tswana. Everywhere he asked he was told the place was "too full". Eventually he found a chief who would accept him in the Rustenburg district. But this was not the end of his troubles. Officially he had to obtain permission for an inter-district transfer from Vryheid to Rustenburg. (He had only ever lived in Vryheid for six months while working there in 1940; but because he first paid tax there he was deemed by everyone, except of course, Vryheid, to belong there and Vryheid had to transfer him.)

When he applied for the transfer someone made a clerical error and wrote on the form that the transfer was to be to Hamanskraal. This error took from January to December, 1972 to resolve. Then someone in Rustenburg forgot to send the completed form back to Vryheid. This was resolved five months later and in May, 1973 Mr Molale was at last registered as a workseeker at the Bakgatla Tribal Labour Bureau in the district of Mankwe near Rustenburg. This is not what he would have chosen. But because he has no control over whether he will be allowed to work on contract in Johannesburg where his wife lives he had to "voluntarily" ask for this resettlement in order to be able to work.

One would think this would be the end of his tribulations. But the chief at Bakgatla has told him that his registration there as a workseeker is only temporary because, before it is made permanent, he must pay R160 for the stand allotted to him, R80 of this to be paid immediately. As he has not been able to work legally for years and has only had casual employment it is difficult to see where he is to find such a sum of money.

african family housing in urban areas

Before 1952 there were a number of areas where Africans owned the land on which their houses were built. The Bantu (Urban Areas) Consolidation Act of 1945 as amended in 1952 abolished the right of freehold title for Africans in the White areas.

They were instead granted the right to build their own houses on 30-year leasehold plots, or they could buy houses on such plots from the local authority on a 30-year lease.

In 1968 even this limited right was abolished. The Department of Bantu Administration and Development issued a directive to local authorities stating that Africans living in urban areas could no longer be allowed to build their own homes on 30-year leasehold plots, nor were they allowed to purchase their homes from the local authority. In future all Africans would have to rent their houses.

Africans with means who wished to own their own homes were to be encouraged to go to the homelands. Those Africans who already owned houses could continue to own them but if they wished to sell, they had to sell to the local authority. They could not bequeath them to their heirs.

The regulations governing the control and supervision of an urban Bantu residential area

These regulations were published in the Government Gazette of June 14, 1968. All African townships in the urban areas are administered in terms of these regulations.

There is a serious shortage of houses in many urban areas. It

is Government policy that the building of family housing in prescribed areas must give way to the provision of hostels for migrant workers. In Johannesburg there were over 14 000 families on the waiting list for houses in 1973.

In order to be accepted on to the waiting list for a house the applicant must be a man over the age of 21 who qualifies to remain in the area concerned in terms of Section 10(1)(a) or (b). He must have dependants who are lawfully in the area. This almost always means that he must be married and that his wife must have permission to live with him.

He must not already be the tenant of any house in any other prescribed area and he must be, in the opinion of the Superintendent, a fit and proper person to reside in the area. If he fulfills all these conditions he will be accepted on to the waiting list for a house but may have to wait for a number of years before a house becomes available.

Women and foreign men are not accepted on to the waiting list although the Chief Bantu Affairs Commissioner may give his consent to a residential permit being issued to a woman who has dependants if she qualifies under Section 10(1)(a) or (b) and if she has been living in the house with her husband before he dies or deserts her.

When a house becomes available a man is issued with a residential permit. His name, identity number, the number of the house and his ethnic grouping are shown on the permit. (Residential townships are divided into separate districts for the different ethnic groups.)

Every member of his family who lives with him in the house must be enumerated on the permit with their identity numbers, dates of birth, ethnic group and their relationship to him. It is an offence for him to allow anyone to stay in his house whose name does not appear on the permit.

Residential permits expire on the last day of the month in which they are issued and the holder must renew the permit before the seventh day of the following month. The acceptance of the rent for the month is deemed to be the renewal of the permit.

Cancellations of permits

Residential permits can be cancelled if the holder is unemployed for more than 30 days, or has been employed outside the area for more than 30 days without the permission of the Superintendent, or if he leaves the area for more than 30 days without the written permission of the Superintendent. It may also be cancelled if he loses his rights under Section 10(1)(b), if he is sentenced to prison for more than six months or if he or his dependants leave the house.

If a man's wife deserts him or dies, the house may be taken away from him. If he deserts his wife and moves out of the

house the permit may be cancelled and the wife and children would then have to leave.

Other grounds for cancellation are if he ceases to be a fit and proper person, in the opinion of the Superintendent, to reside in the area or if he fails to carry out the instructions of the Superintendent relating to the erection or demolition of any structures on the site.

Lodger's permits

Families whose names are on the waiting list for a house must seek lodgings for themselves in someone else's house. When they have found accommodation they must approach the Superintendent to ask for a lodger's permit. The names of all members of the family must be enumerated on this permit which expires on the last day of each month and must be renewed within three days.

All those families who do not qualify to become the tenants of a house of their own must also find accommodation and ask the Superintendent for a lodger's permit. The onus is on those in need of accommodation to find a tenant willing to accept them.

These families include all those where:

- the male head of the family does not qualify in terms of Section 10(1)(a) or (b);
- the head of the family is a woman and there is no qualified man over the age of 21 in the family.

In 1970 there were almost 10 000 families living lawfully as lodgers in Soweto.

It is now extremely difficult to find accommodation in areas such as Soweto. The tenants of houses are often reluctant to take in another family as lodgers. There is already a serious lack of privacy in the small township houses without voluntarily accepting more people who might not even be relatives.

The Advice Office has heard from many people, particularly from women with several small children, of the unending search for accommodation.

It is extremely important for people to have their names always enumerated on a residential or lodger's permit as this furnishes the necessary proofs of the recognition of rights under Section 10(1) as described earlier. It is also an offence for the tenant of a house to allow anyone to stay in his house if that person is not in possession of a permit to reside there.

The critical shortage of houses is making it impossible for many people to abide by the regulations. People sometimes find somewhere to live but the Superintendent refuses to issue a lodger's permit for them to stay there on the grounds that the house is already too full. There are also abuses where a house-

holder will allow lodgers to stay but not to have a permit and charges them an exorbitant rent for the one room they occupy.

The Superintendent must also be satisfied, before he will issue a lodger's permit, that the applicant is a "fit and proper" person to reside in the area and is lawfully employed there and that he has not refused to accept accommodation offered to him in a hostel or other dwelling provided by the local authority.

The lodger's permit can be cancelled at any time if the registered tenant of the house wishes his lodgers to move out.

The housing regulations have important effects on the rights of people to remain in the prescribed areas. This is particularly so for women who have been widowed, deserted or divorced or who have remained unmarried but have children.

Widows

Women usually cannot be the registered tenant of a house and widows are seldom allowed to remain in their houses after their husband's death; but Chapter 2, Sub-Section 7 (4) of the Regulations provide that the Superintendent may, with the written permission of the Chief Bantu Affairs Commissioner, approve the tenancy of a house to a woman if she has dependants to support. This permission is sometimes given if the woman qualifies in terms of Section 10(1)(a) or (b).

In Johannesburg there are still women who are the tenants of their houses. Most of them were given this permission some years ago and the conditions of tenancy are:

- (a) she was living in the house when her husband died;
- (b) she has dependants to support;
- (c) her earnings are sufficient to pay the rent; and
- (d) she is not disqualified by either of the following conditions:
 - (i) that she is a foreigner (born outside the Republic, including Lesotho, Botswana and Swaziland).
 - (ii) that she is a South African citizen but does not qualify to be in the prescribed area in terms of Section 10(1) (a) or (b).

If she is a foreigner she will have to leave South Africa when her husband dies. It does not matter for how long she has been living in the Republic.

Widows whose husbands were not registered tenants, but whose families have been living as lodgers in someone else's house, will not be given a house. These women may continue to stay as lodgers with their children provided that the widow qualifies to be in the area in her own right. If she qualifies to be in the area in terms of Section 10(1)(c) i.e. as the wife of a qualified man, she loses those rights on his death. She has to leave the area.

Deserted wives

If a man deserts his wife :

- the deserted wife has no claim to the house ;
- if the marriage is a customary union the children are regarded as belonging to the father unless the full lobola is returned to him ;
- the husband can turn his wife out of the house and keep or bring a second wife into the house, provided that he can prove that she is his wife, entered the area lawfully and is permitted to be in the prescribed area ;
- if the deserted wife is legally in the area and she qualifies in her own right to remain there, she can apply for a lodger's permit for herself and, if she has the custody of the children, for them as well. If she has not got the children, and she qualifies to remain she must live in a hostel if a bed is available ;
- if she does not qualify in her own right to remain in the area, but is registered in employment, she will be allowed to remain as long as she works for the same employer or after she acquires rights ;
- if she is not in registered employment but was a housewife living with her husband in terms of Section 10(1)(c), she will probably be endorsed out.

Divorced women

The same conditions obtain for divorced wives except :

- in a divorce the Supreme Court may grant either wife or husband the guardianship and the custody of any minor children if it would be in the interests of the children to do so. Or custody may be granted to the mother while the father remains their guardian.
- if the woman is awarded custody of the minor children and qualifies in terms of Section 10(1)(a) or (b) the Chief Bantu Affairs Commissioner might give his consent to her becoming the registered tenant of the house.

Comment

In practice the housing regulations lead to great hardships. A woman whose husband dies, or who is divorced or deserted by her husband, may be evicted from her house.

The Bantu Affairs Commissioner may give permission for her to remain as the tenant but this permission is often refused and she then has to leave the house with her children and seek lodgings in someone else's house. In overcrowded townships this is not easy. She will also, inevitably, have to sell or store a large part of her furniture.

If she has a son over the age of 21, permission may be given for him to become the permit holder and the family may stay

together in the same house. Frequently an adult son is told he should marry then he will be allowed to become the permit holder. Sometimes he may marry a woman who is not permitted in the area: then he may end up without a house and not be allowed to live with his wife either.

Difficulties also occur for men who are deserted by their wives. They and their children may be evicted from their house and be told to find lodgings.

Complications with reference books often arise when application is made for a house. It may be discovered at this stage, when documents are scrutinised, that the wife is not permitted in the area and she may be endorsed out. A man may have difficulty proving that he is entitled to the 10(1)(a) or (b) qualification.

Cases

MR MOKOLA qualifies in terms of Section 10(1)(a) of the Act to remain in Johannesburg. He and his wife and children lived together in a house in Soweto. His wife died and he was told to marry again or he would lose his house. He took another wife by Bantu Custom, paying lobola to her family. He was given notice to vacate his house shortly after the marriage because he had not produced a marriage certificate.

MRS MOKOENA was living lawfully in a house in Soweto with her husband and three children. Her husband left her and divorced her and she was given notice to vacate the house. She had to find lodgings for herself and the three children.

MR DIALE is working lawfully in Johannesburg. His wife and children all qualify to remain in the area in terms of Section 10(1)(a). He has been in Johannesburg since 1935 and used to hold an "exemption pass". Believing that this meant he had a 10(1)(b) right in Johannesburg he applied for a house for himself and his family. His application was refused because the authorities say he is registered in terms of Section 10(1)(d). They say he lost his 10(1)(b) right because he left Johannesburg on holiday for five months in 1967. He was told he could find lodgings in someone else's house and apply for a lodger's permit.

MRS MBATA was recently widowed. She lived in a house with her husband and 11 other members of the family — her children and grandchildren. Then her husband died and all the family were ordered to vacate the house. Although she qualifies under Section 10(1)(b) to live in Johannesburg and all her children and grandchildren in terms of Section 10(1)(a), all their names being on the house permit, the Bantu Affairs Commissioner refused to allow them to remain in the house. They are going to have to separate and seek somewhere to live in small groups or singly.

peri-urban areas

Peri-urban areas are prescribed areas and the people who live there are subject to Section 10 of the Urban Areas Act.

The peri-urban areas around Johannesburg have been greatly reduced since Randburg and Sandton became separate municipalities and since Johannesburg incorporated a large area to the south of the city.

Alexandra Township

Alexandra township, lying just outside the Johannesburg north-eastern boundary, has been administered since 1958 by the Peri-Urban Health Board. It used to be an area where Black people had freehold title to land. It is one square mile in extent and became grossly overcrowded, housing over 100 000 people at one stage.

After the Government-controlled Peri-Urban Health Board took over the administration of the township the pass laws and influx control were strictly enforced. A census was taken and people who had lived there since 1950 and before were given permits to remain. Those who came after 1950 could stay as long as they remained employed. Those people whose names were omitted from the census because they were temporarily out of the area, lost their rights to live there. Some of them are still living there illegally and have become displaced persons because there is no area in which they are entitled to be.

All family housing in Alexandra is now being demolished and hostels to house 60 000 men and women in "bachelor" quarters are planned. The first two hostels, one for men and one for women, are in use at the time of writing although the women's hostel is by no means full.

The families who lived lawfully in Alexandra have been and are being moved to houses in Diepkloof and Meadowlands if the male head is employed in Johannesburg, and to Tembisa if the male head is employed in Randburg or Sandton or elsewhere in the old peri-urban areas. He must, of course, qualify for permanent residence.

Meadowlands and Diepkloof are adjacent to Soweto. Tembisa is approximately 27 kilometres to the east of Alexandra and fell under the jurisdiction of the Germiston municipality until the Administration Board took over. It is zoned into different areas for the accommodation of people working in several municipalities.

By agreement between the different local authorities people who qualify in terms of Section 10(1)(a) or (b) or (c) in Alexandra have been enabled to take these qualifications with them if they are officially resettled to a new area.

Entry of women into Alexandra was deemed to have been lawful if it took place before February 1958. Otherwise they must have obtained special permission to have lived there. (See page 27.)

The removal of families from Alexandra has led to a multitude of problems for the people who lived there and things are particularly difficult for women with children where there is no male head of the family. These women are not being resettled to houses with their dependants. They have been told either to seek lodgings for themselves in overcrowded Soweto or, in some cases, to send their children away and to move into the hostel where, of course, no children may live. It is an urgent requirement that suitable family housing be built for such women.

In today's Black urban society there are many women who have been widowed, deserted or divorced or who have remained unmarried. These women are the sole breadwinners for their children and carry tremendous responsibilities alone. It is iniquitous that they should not be offered proper family accommodation when they are forced to leave their existing homes.

In many cases their problems have been aggravated by the fact that their children's names have not been enumerated on their permits in Alexandra. In many cases women have complained to the Advice Office that they have tried time and again to include their children in their permit but have been refused. When the woman is then told to go to the hostel the authorities maintain that she has brought her children into Alexandra illegally.

There are other tragic cases in Alexandra where a husband works in Randburg or Sandton but does not qualify in terms of Section 10(1)(a) or (b). He will be given single accommodation in Alexandra. If his wife is a lawful Johannesburg resident she will not be given permission to live with him in Alexandra nor will he be given permission to live with her in Soweto. Many

united families have also been divided by the removals when adult children are working in different prescribed areas.

Cases

The following cases are taken from our files for 1972 and illustrate some of the problems and some of the people condemned to live in the hostels apart from their families.

ELIAS M. MOFOLO has been refused family housing. He was born and has lived continuously in Alexandra since the time of his birth. He is registered in employment in Johannesburg. His father owned a property in Alexandra. His father died in 1947 and his elder brother took over the house until it was bought from him by the authorities in 1964. Mr Mofolo was ordered to take a hostel bed in Soweto in 1964. He never did so because he was living with a woman in Alexandra at the time. He remained in Alexandra.

On September 14, 1971 he married Notinzi Gertrude Kunene who is legally employed as a nurse in Alexandra.

Because they have been refused resettlement on a family basis, and because Mrs Mofolo is not eligible to seek lodgings in Soweto, this couple will be forced to live separate from one another in the hostels.

LEITLHOANA JOHN LETLAPE married Eva Mponini Matababe on August 25, 1965 in Alexandra. They have three children who were all born in Johannesburg. Mr Letlape is registered in his employment in Alexandra in terms of Section 10(1)(d). He does not qualify to have a house. Mrs Letlape is registered in her employment in Johannesburg and has no permit to live in Alexandra.

They cannot have a house and do not know where their children will live if they both have to live in the hostels.

BACEZINI EVA NXUMALO is divorced from her husband. She has four children. Both she and her children have rights in terms of Section 10(1)(a) to remain in Alexandra but these rights have not been recognised by the authorities. She has been refused resettlement to Diepkloof on a family basis. She is lawfully employed in Johannesburg and has had a permit to live in Alexandra on a single basis only. She has been told that she can seek lodgings for herself in Soweto or a bed in the hostel in Alexandra and was told that the authorities do not care what she does with her children. They should go to the homelands. She has made an appeal and has been given a temporary permit to remain in Alexandra with her children.

MOROPE MARTHA TIYANE has two adult daughters, one married and both with young children. The two daughters are permitted to live in Alexandra on a family basis but Mrs Tiyane has been given a single permit and told that she must go to the

hostel and will not be allowed to live with her children and grandchildren.

PRETTY HLASHWAYO and her husband are both permitted to be in Alexandra in terms of Section 10(1)(d). They both have permits to live there on a single basis and at the moment live together in an old house there. They cannot get family housing and are to be moved to the hostels.

MRS DOPSIE is legally employed in Sandton as a domestic worker. She lives in Alexandra with her 16 year-old son. She has been told to go to the women's hostel and to put her son in the men's hostel. It is totally unacceptable to her that this young man should be thrust into communal life with much older men.

MR RAMATSITI is an unmarried young man who qualifies to remain in Sandton in terms of Section 10(1)(a). His father has been registered in employment in Johannesburg for many years. Now his father and mother and the younger children have been given a house in Soweto but Mr. Ramatsitsi has been told he cannot live with them there because he works in Sandton. He has been told to take a bed in the hostel in Alexandra.

aid centres

Aid Centres were legislated for in the Bantu Laws Amendment Act of 1964 and were established in various centres from 1971. In 1972 there were 13 Aid Centres functioning in Benoni, Bloemfontein, Boksburg, Brakpan, Cape Town, Germiston, Johannesburg, Kimberley, Nigel, Pietermaritzburg, Pretoria, Randfontein and Welkom with another seven being planned.

Any African who is arrested and charged with having contravened the various pass laws and regulations may be admitted to an Aid Centre. The Bantu Affairs Commissioner may hold a court there and may make representations that no criminal action be preferred against a person admitted to the centre. This means that the Commissioner may waive prosecution against any particular African but the Act says nothing about the circumstances under which this may happen.

The Commissioner may "after due inquiry and with due regard to the family ties or other obligations or commitments of such Bantu make such order as may appear to him to be just in regard to the placing in employment of such Bantu or the issue to him of the requisite documents or the granting to him of the requisite permission *or in regard to the repatriation of such Bantu and his dependants to his home or last place of residence, or to a settlement, rehabilitation scheme or any other place indicated by such Bantu Affairs Commissioner.*"

People may, of course, go to the Aid Centre voluntarily to seek assistance. During 1973 138 000 people were referred to 16 Aid centres. 44 000 were subsequently not prosecuted, 1 600 were assisted to find employment and 92 000 were returned to their homelands (Hansard. 25.2.74)

It seems that people are held in custody while their fingerprints are checked in the records at the Central Bantu Reference

Bureau in Pretoria. If their story tallies with the record and shows them to be legally in the prescribed area concerned then the prosecution is waived. As has been stated on Page 18 the area to which a man is deemed to belong is not always the area in which he has rights to remain.

Comment

Before the Aid Centres were established many people arrested for pass offences pleaded guilty, even if they felt that they were not guilty, and paid a fine in order to avoid losing their jobs. It seems that now they may be held for some days in custody while the investigation goes on. In one case that came to our attention a man was arrested on a Friday evening because he was not yet registered in his new employment five days after starting work. Bail was refused. He appeared in court on the Monday for remand and the Aid Centre proceeded to check his story. His employer was told that the investigation would take time and that he would not appear in court again until the following Friday. In the event the prosecution against him was waived but he had already spent some days in prison.

The Johannesburg Advice Office has found the Aid Centre helpful to destitute people who have no papers and no place where they may legally live. People who report to the Centre voluntarily have the benefit of being given a seven-day permit during which time they can visit the Labour Bureau or the Bantu Commissioner's office to try to get their papers fixed up without fear of arrest.

When the first Aid Centres were established the Black Sash said:

"Dr Koornhof (then Deputy Minister of Bantu Administration) said that the Aid Centres would do everything possible to help an African to take up *legal* employment . . . by channelling such cases through the proper Labour Bureau. This is undoubtedly true but the point is that people arrested and taken to an Aid Centre for being illegally in the place they want to be will not consider themselves to have been assisted by being removed to a place where they *are* legally entitled to be but where they do not want to be.

"The Aid Centres will function within the framework of all the existing legislation. They will undoubtedly enable the authorities to administer the law more effectively but the only way to achieve Dr Koornhof's objective 'to reduce the burden on the technical offender' is to abolish the pass laws and influx control and to allow South African citizens freedom of movement within their own country".

Nothing has happened since we made this statement to make us change our minds.

idle and undesirable people

Section 29

In the Bantu Laws Amendment Act of 1964 a new section 29 of the Bantu Urban Areas Consolidation Act was substituted for the original much-amended one.

This allows any authorised officer to arrest without warrant any African whom he has reason to believe is an idle or undesirable person.

An idle person is defined as being

- one who is over the age of 15 and under the age of 60 if a woman, or 65 if a man, who though capable of being employed is normally unemployed. Bona fide housewives, professional people and traders who are lawfully in the area and have permits to operate as self-employed, and bona fide students are exempted.
- one who has refused or failed to accept suitable employment offered to him by a Labour Bureau unless he gives his reasons to the Bureau immediately on being offered the job or within three days.
- one who has on more than two occasions during any six month period lost a job within one month of starting work "due to his own misconduct, neglect, intemperance or laziness."
- one who has been discharged from employment on more than three occasions in one year due to his own misconduct.

The definition also includes beggars, and those who fail to provide for themselves and their dependants through misconduct such as gambling or addiction to drink or drugs, *and those who have been ordered to leave an area and have either remained there or returned there illegally.*

Undesirable people are those who have been convicted of various offences, including public violence, and "of any offence in-

volving violence to any officer entrusted with the administration of Bantu affairs . . . and has been sentenced to imprisonment, either with or without the option of a fine, for a period in excess of 14 days.”

A man who has been arrested under Section 29 must give the Bantu Affairs Commissioner a “good and satisfactory” account of himself. If he fails to do so (and the burden of proof rests on him) he is declared to be an idle or an undesirable person.

The Commissioner may then order him to be detained in custody pending his removal from the area by the police to his home or to “a place indicated” by the Commissioner. Or he may be sent to and detained at a retreat, rehabilitation centre, farm colony, or a rural village, settlement or institution in an African area. His dependants may be removed with him. The Commissioner may offer him a contract of employment and detain him pending his removal to the place where the job lies. Should the contract be terminated before the stipulated period the man will again be dealt with in terms of Section 29.

If a person who qualifies under Section 10(1)(a) (b) or (c) is declared idle or undesirable he forfeits his right to remain in the prescribed area.

Comment

It has been the experience of the Johannesburg Advice Office that people who are declared idle or undesirable have often suffered in this way because they have been unable to prove their right to remain in the area. As the onus of proof rests upon them and because they may never have been registered in employment through being unable to produce this proof, once they are arrested under Section 29 they have little hope of avoiding being declared idle.

miscellaneous problems

Orphaned children

It is a complicated process for an urban African to become the legal guardian of an African child who was born in and lives in a rural area. He has to comply with the following procedure before he is allowed to bring the orphaned child to live in his home with his own family in an urban area:

- He must apply to the Bantu Affairs Commissioner to be appointed the legal guardian of the child;
- The guardian must go to the rural area where the child lives and obtain permission from the Bantu Affairs Commissioner there for the child to leave the area;
- He must then return to the prescribed area where he lives and ask for permission for the child to come into the prescribed area; and
- If he is granted the necessary permission he must then approach to the township Superintendent to have the child's name included on the housing permit.

The guardian will have to prove that he has a right to the guardianship of the child; that he lives legally in the prescribed area to which he wishes to take the child and that he has a home of his own there.

It takes a long time for permission to be granted — and sometimes months, even years. It is often difficult for a man to get leave from his work to go to a country area to get the necessary permission and it is difficult to find someone to look after the child in the interim period.

Frequently, through ignorance, the guardian does not know the procedure with which he must comply and he takes the child into his family, assumes full responsibility and brings the child

into his home without permission. In due course this is discovered and the child has to leave the area, because the guardian cannot have the child's name included on his housing permit.

There are many Africans who take over the guardianship of children born and living in the same urban area. Many of these men and women take the child into their own home without adopting him legally. They do not have the child's name listed on the housing permit, either because it is refused or because they are afraid to go to the Superintendent in case it is refused and the child is endorsed out.

There are hundreds of children, some of them illegitimate, whose mothers die or desert them and they are brought up by relatives or neighbours.

The trouble for the child comes when he has to apply for his reference book. He has no proof of his birth or of his residence in the urban area or anywhere else, and he is often endorsed out with nowhere to go.

Orphaned children and adoptive parents will often live in fear of this happening and experience particular insecurity.

The aged

Because the normal wages paid to African workers do not allow for savings, old people are often destitute. If they qualify to remain in the prescribed area where their sons or daughters have houses, they may be allowed to live with their children, provided that their names are on the house permit.

If they do not qualify to be in an urban area it is almost impossible for them to obtain permission to come to the prescribed area to live with their families. For an old woman it is quite impossible because of the embargo on the entry of women into prescribed areas. Many of them are not capable of looking after themselves or may be ill.

In reply to a question asked by Mr Oldfield in Parliament on September 11, 1970 (Hansard No 8 Col 3929), the Minister of Bantu Administration and Development said:

- that no homes for aged "Bantu" in the Republic are administered by the State;
- four are administered by welfare organisations and 154 persons were accommodated in them.

He also said that subsidies are paid to welfare organisations in respect of aged persons accommodated at homes administered by such organisations. These grants are determined in consultation with the Treasury, depending on the institution's financial development.

Apart from the four homes run by welfare organisations, six settlements for the aged are run by churches as agents for the Department and two by Bantu authorities, accommodating a total of 726 persons. Furthermore, the frail and infirm are trans-

ferred to shelters for the chronic physically disabled, which are also run by churches and other bodies. The total number of persons (including the frail and infirm aged) accommodated in the shelters is 1 195.

Settlements are subsidised on the basis of R1 per person per day but the basis may vary from case to case.

Pensions

Pensions are only paid in urban areas if the applicant can prove that he or she is living lawfully in the area concerned. If the name is not enumerated on any residential or lodger's permit no pension will be paid and no welfare assistance will be given by the welfare section of the Bantu Affairs Department.

The maximum pension an African can receive is R8 per month. The average pension paid in 1972 was R5,38 per month to the aged, R5,21 to the blind and R5,35 to disabled pensioners. Pensions are paid out every two months.

An African can earn up to R6,66 per month and still receive the full pension. But when earnings exceed this the pension is progressively reduced. When earnings equal the maximum pension i.e. R96 p.a. no pension is payable. Pensions accruing from firms' pension funds to which the employee contributed during his period of service are regarded as earnings, but if the employee receives ex gratia payments from his ex-employer these do not affect the State pension.

Case

MRS MOSOTHO was born during the Anglo-Boer War and, according to her reference book, was granted an old age pension in Randfontein on November 17, 1963. At that time she was permitted to reside in the Location there.

In November 1968, by which time she had been widowed, she was ordered to leave her house. She says she was told by the Superintendent to go to her only daughter who was working legally in Johannesburg.

Mrs Mosotho came to Johannesburg as instructed and has been refused a permit to remain in Johannesburg and therefore cannot get a lodger's permit. Because she is not on any house permit her pension payments were stopped in June 1969. The authorities have refused to resume payments. Because she left Randfontein in 1968 she has lost her rights there. She is a displaced person. She has now been told to report to the Bantu Commissioner in Randfontein for resettlement.

Once she has been resettled in one of the homelands she can reapply for her pension. But she does not want to be moved to a strange and distant place and is too frightened to go to the Bantu Commissioner's office.

The mentally defective, mentally retarded and physically handicapped

Some of these people, mentally retarded or mentally defective through injury, are not ill enough to be certified or to qualify for sheltered employment. But they need the care and supervision of their relatives. They may not, however, be able to have this care because they cannot get permits, even though the relatives are responsible for them and are anxious to give them the care they need.

They are an anxiety because :

- they are frequently arrested and sentenced to imprisonment or to a fine. After serving the sentence and on release, they are sometimes incapable of finding their way home and get lost ;
- they are arrested again, as they are unable to give a satisfactory explanation as to what they are doing or where they came from ; and
- they are often unemployable or cannot keep employment or cannot be registered in employment.

Cases

MRS MASHOAI is 56 years old but appears to be much older. She suffers from mental confusion and lapses of memory. She first came to the Advice Office in August 1969, because she had a mutilated reference book and had been endorsed out of the prescribed area of Johannesburg. She was refused a new reference book and was unable to get any help whatsoever from any official.

She first came to Johannesburg in about 1920 and lived continuously in the city from that date. Because of her mental state it was difficult to collect proofs of her long residence but she was able to trace two of her employers and Baragwanath Hospital was able to certify to her treatment there. All these proofs showed that she had been living in Johannesburg for at least 15 years.

She was issued with a Temporary Identification Certificate which was later cancelled and at that stage an attorney took Mrs Mashoai's case up with the authorities. After innumerable letters to officials and innumerable visits to various offices and after notice had been given to the Department of Bantu Administration and Development that Mrs Mashoai intended to apply to the Supreme Court for a Declaration of Rights and for an order directing the Department to issue her with a new reference book, she was issued with a reference book on June 4, 1970.

She was immediately endorsed out of the prescribed area of Johannesburg, although her Temporary Identification Certificate had been stamped that she had permission to remain in terms

of Section 10(1)(d). After intervention by her attorney, she was given permission to remain. On June 8 she was again endorsed out and later that day was given a stamp permitting her to remain "for investigation". On June 12 she was finally given permission to remain in terms of Section 10(1)(d).

But her troubles were still not over. She could not find anywhere to live. She had been living in Pimville which is being demolished and when she went to the Superintendent and asked for somewhere to live he told her she did not qualify for housing and must look for somewhere for herself in Soweto. On several occasions she was threatened with arrest for occupying the house where she had lived for years. On October 23, 1970, she was arrested and fined R2. Eventually at the beginning of November she was given a lodger's permit and somewhere to live.

MRS ANDRIES is legally employed in Johannesburg. She has a child of nine who is severely retarded and has been living with her grandmother in Hammanskraal. The grandmother cared for the child while the mother earned the income for the family but she is now failing rapidly and losing her sight and is no longer able to give the child the care she needs.

Mrs Andries has three sons who are all working but are unmarried and between them they also support three small children of her younger sister.

Mrs Andries wishes to apply for a house in Soweto so that the family can live together. She would like to bring her mentally retarded child to Johannesburg where she could attend the Pumula Day Care Centre. None of this family qualifies to have a house. The two older sons are over 21 but are not married and are not regarded as having dependants. Mrs Andries and her sister do not qualify because no woman may apply to be the tenant of a house.

Even should Mrs Andries manage to solve her accommodation problems she will have to apply for a permit to bring her daughter from Hammanskraal, which may well be refused. This child is going to need care for the rest of her life and it is difficult to see how this can be provided by her family under the present system of laws.

Comment

A mark of a civilised society is the humane treatment of its helpless people. In South Africa orphaned and deserted children, the mentally ill, the aged and physically handicapped have not even the minimal security which normal healthy people may expect. Apart from the unhappiness caused by the failure to keep them in society the treatment they receive causes further anxiety and distress to their families.

Old people on White-owned farms who have become "super-

fluous" because they can no longer work must move to the homelands — to relatives if they have any, or to resettlement villages or to an old aged home.

It is very hard for old people whose families are living in the urban areas and who themselves have probably lived for the greater part of their lives in urban areas. Old people, as a rule, are happiest living with their own families and this separation and the resulting insecurity together with the poverty which results from the very inadequate pension is poor reward for a lifetime of labour.

Ex-prisoners

Africans who have acquired rights in terms of Section 10(1) (b) lose them if they are sentenced to a term of imprisonment exceeding six months or to a fine exceeding R100. They thus no longer qualify for permanent urban residence. But if they can prove that they have no other area in which they can register as workseekers they may be allowed to accept employment in the place where they previously had rights.

Those who qualify in terms of Section 10(1)(a) do not lose this right but may have lost the tenancy of the house they lived in previous to the imprisonment.

At one time prisoners had difficulty in obtaining reference books and permits to work when they were released but the authorities appear to have taken steps to avoid these difficulties during the past two years. The number of ex-prisoners coming to the Advice Office to seek help for these reasons has dropped. The work of Nicro is to be greatly commended in this regard.

factors which cause the break-up of african family life

Migrant labour

Government policy is to reduce the number of Africans living in the urban areas. As many workers as possible are to be migrants and to return to their homeland once a year.

Service contracts are for a maximum of one year and migrant workers can never acquire Section 10 rights. They cannot bring their wives into the areas where they work. These men spend from three weeks to a month each year with their families until they are again recruited for work in the "White" areas.

Influx control

This involves:

- The enforcement of a total embargo on the entry of women into the urban areas other than those on a short visit with permission. Men cannot bring their wives to live with them because of this embargo.
- The enforcement of Section 10(1)(c) which provides that wives and children can only reside with their qualified husbands and fathers after lawful entry and provided that they ordinarily reside with their husbands and fathers.
- Children who have left the area temporarily in childhood and whose parents have not fulfilled the requisite conditions to ensure that the children's names are kept on the housing permit, lose their domiciliary right and are endorsed out.
- Children of qualified parents lawfully living in the urban area, but who happened to be born in a rural area, often cannot obtain permission to live with their parents.

Efflux enforcement

This involves:

- Women who are lawfully married but who entered the area unlawfully and who have been unlawfully with their husbands for some years, are found and endorsed out with their children.
- Women who are foreigners may have to leave their homes, husbands and the country.

Case

MRS MONTSHIWE was born in Louis Trichardt and came to Johannesburg in 1945 when she married a man who was working in that city. He took her to live in Pimville where she has remained ever since. Her reference book which she took in Johannesburg in 1960 was stamped that she was refused entry into the area in December of that year. She did nothing about this at that time, probably because she is illiterate and, having lived in Johannesburg for 15 years, did not realise that she was supposed to leave her husband and return to Louis Trichardt. She remained in Pimville from then until June 1970, when she was "ordered to leave the prescribed area of Johannesburg within 72 hours".

Four months later she came to the Advice Office for help. Old Pimville where she lives, is being demolished and the families who are living there legally, i.e. with permits, are being moved to other housing. Those people who have no permits are being endorsed out and are unable to escape the notice of the authorities because of the evictions. She had been arrested and fined for being in the area illegally and this made her seek help.

She has never worked and is a member of no church, nor had she ever been in hospital or treated at a clinic. So it was extremely difficult to find the necessary proof of her long stay in Johannesburg. Eventually the son of the man who had owned the house she and her husband lived in from 1945 to 1967 swore an affidavit saying that he knew her to have lived there; also the man who owned the house she lived in thereafter swore an affidavit covering the years from 1968 to 1970.

These affidavits were corroborated by another woman who had also lived in the first house for many years and had also been endorsed out but had other proofs of her long residence in the form of employment registrations and references.

These two women acted together and went to see the Appeals Officer. Both of them had their endorsements out cancelled and were given permission to remain in Johannesburg in terms of Section 10(1)(d).

But Mrs Montshiwe's troubles are not yet over. She still cannot get permission to live with her husband nor can they have a house together. He has been working in Germiston for many years and has been living with his wife in Pimville — unlawfully because she has no permit to live there. He is registered in his

employment in Germiston. But he cannot transfer his wife from Johannesburg to Germiston and apply for a house there because she does not qualify under Section 10(1)(b) because her long residence was not "lawful" and a transfer would not be allowed.

Although she has been residing with her husband since 1945 this residence has not been in the area where he has rights so she cannot qualify to live with him under Section 10(1)(c). Mrs. Montshiwe will have to live in lodgings in Soweto while her husband accepts accommodation in "bachelor" quarters in the Germiston area.

foreign africans

Africans from countries outside South Africa's borders must :

- Be in possession of a valid passport from their country of origin.
- Have permission in terms of Section 12 of the Urban Areas Act to work in the Republic. Section 12 permits are issued for a very limited period. The employer must pay a non-returnable deposit of R20 before the permit is issued. The permit expires automatically if the man leaves his employment.

According to a Guide to Employers issued by the Bantu Affairs Commissioner of the Witwatersrand :

- 'A. 1. In terms of the International Labour Agreements existing between the Governments of the Republic of South Africa and certain neighbouring States the following foreign Bantu may be employed in Prescribed Areas provided that the Municipal Labour Officer has no objection :
- a) Rhodesian Bantu in registered employment as at 1st March, 1968.
 - b) Malawi Bantu in registered employment as at 1st November, 1967.
 - c) Portuguese Bantu in registered employment as at 1st July, 1966. (Provided they qualify for suspension of Repatriation — see paragraph B.1).
 - d) Lesotho, Botswana and Swaziland Bantu in registered employment as at 1st July, 1963.
2. It is reasonable and fair to expect that Local Bantu should be given preference over foreign Bantu and, therefore, the Bantu Affairs Commissioner will always bear this in mind when considering applications for employment of foreign Bantu.

3. Foreign Bantu who have not been in authorised employment on the above dates can no longer be employed in prescribed areas in terms of Act 25 of 1945 as amended, *but* if the employer or previous employers declare under oath that a specific Bantu has been continuously employed in the Republic since the dates applicable, the Bantu may be allowed to take up employment but **ONLY IN MINING OR AGRICULTURE**. If he refuses employment in mining or agriculture, he is to be repatriated.

B. 1. SUSPENSION OF REPATRIATION.

The Department has agreed in principle that all Malawi, Rhodesian and Portuguese Nationals who have been legally or illegally in the Republic of South Africa for 15 years or for ten years with one employer as at December 31, 1967, may apply for five yearly suspension of repatriation, which will be considered by the Department on merit.

2. In order to enable the Department to consider such applications, applicants must produce documentary proof of employment in the Republic for 15 years or for ten years with one employer as at December 31, 1967.

The following documents will be considered as proof of employment:

- a) X documents or MX documents.
 - b) 50 cent Temporary Immigration permits.
 - c) Permits in terms of Section 12(1) of the Bantu (Urban Areas) Act No 25 of 1945.
 - d) Proof of Registration with the Local Authority.
 - e) Testimonials issued at the time applicants left previous employers.
 - f) Sworn affidavits from previous employers.
 - g) Old tax receipts, etc., etc.
3. Cases do arise where applicants who qualify for suspension of repatriation may not be employed in a prescribed area, i.e. those persons who were not in authorised employment on the dates mentioned in paragraph A.1. Such persons may only be employed in mining or agriculture.
 4. In the event of a foreign Bantu having to be repatriated in terms of paragraph A.3., his wife and family are expected to accompany him to his country of origin.
 5. Should an employer be notified that he or she may no longer employ a specific foreign Bantu, the Immigration Section of this office will refer the employer to the Municipal Labour Officer for the necessary assistance to obtain suitable labour either locally or from a Bantu Homeland *in the Republic*.

That is the official wording. The practical effects for a foreign man working in South Africa are that he :

- Cannot bring his wife and children to live with him.
- Can never become the tenant of a house — although there are still some foreign men who rent houses in the urban areas because they were allotted a house many years ago.
- May become a lodger in someone else's house if his wife and children already live lawfully in the area.
- Can never acquire South African citizenship, however long he may have lived and worked in the Republic.

The screws have been tightened on all black foreigners in South Africa. They have no security whatsoever.

Cases

MRS MABASO is a citizen of Lesotho who came to Johannesburg in 1958. She married a man who is a South African citizen and qualifies to remain in the prescribed area of Johannesburg in terms of Section 10(1)(b). There are three children of the marriage all under the age of seven and all born in Johannesburg.

In August 1970, she was told to leave Johannesburg and return to Lesotho before August 26, 1970.

MR SELEPE is a foreigner, therefore he is not entitled to have a house for himself, his wife and their four children although the whole family is lawfully in Johannesburg. They have been trying to find lodgings in someone else's house for months but are finding it very difficult. Not only are people unwilling to take another six bodies into a small house but one of the children is paralysed and people are not willing to be inconvenienced by having a sick child in the house.

MRS DYANTYI has been working in Johannesburg for 30 years with the same family. She has never been registered in her employment. Because she was born in Botswana she can never be a South African citizen and can never qualify to remain in the prescribed area of Johannesburg.

Difficulties over citizenship

No Black person is deemed to be a citizen of the Republic by virtue of his birth in the Republic unless, at the time of his birth, his mother was a South African citizen or his father had a right of residence in the Republic.

Children of two foreign parents are therefore deemed to be citizens of their parents' country of origin even though they were born in the Republic. The question of what constitutes a right of residence is very complicated and an attorney's assistance should be sought if there is doubt. But it is clear that a

permit in terms of Section 12 does not constitute a right of residence.

There are many cases where the children of foreign parents who are both lawfully in the Republic are ordered to return to the parent's country of origin as soon as they reach working age.

Foreign Black people working in the Republic used to carry reference books but they were supposed to hand them in and apply for a passport before December 1965. Many people are in great difficulties because they have always either assumed that they were citizens of the Republic or are indeed South African citizens and have never questioned the fact. They never handed in their reference books or took passports because it never occurred to them to do so.

Trouble arises when their reference books become full or are lost and they then try to apply for a new one. The issue of a book is refused and they are told that they must get a passport. This is a particularly common problem where the ethnic group in the reference book is shown as Swazi. Some of them do as they are told without question and can rarely rectify matters at a later date because the acceptance of a passport of another country is acceptance of citizenship of that country. However, others query the decision and fight for their South African citizenship with varying degree of success.

Cases

MRS NTSOKO is now a very old lady who was born in the Transkei but has lived in Johannesburg for many, many years. Her reference book became full and she went to apply for a new one and was told to take a Lesotho passport. In order to appeal against this decision she had to prove her own birth in the Republic and her parent's citizenship. Her parents were long since dead and she had few surviving relatives who still remembered her family circumstances.

What saved her from being eventually deported to a totally strange country was that she only spoke Xhosa, could prove that her mother had also been a Xhosa from the Transkei although she did not remember where her father was born, and most important, one of her fingers had been shortened back to the first joint in infancy according to a local custom of her tribe in the Transkei.

MR LETHULI is a young man who was born in Johannesburg but whose parents are both citizens of Lesotho who have lived lawfully in Johannesburg for years. He is trying to establish that his father had a right of residence in the Republic at the time of Mr Lethuli's birth.

MRS NTABENI was born on a farm in the Amsterdam district. Her reference book showed her as a member of the Swazi group and when she applied for a new book she was told to take a Swazi-

land passport. She is an elderly woman and is at present engaged in trying to trace the owners of the farm where she was born in order to obtain proof that she was born in the Republic and that her parents were South Africans with no connections whatsoever with Swaziland. This is an almost impossible task after a lapse of 50 years and it must be remembered that the onus of proof is on her to prove that she is South African, not on the authorities to prove that she belongs in Swaziland as they maintain.

MRS NTLOKO was in the same position when she came to the Advice Office some years ago but she had a stroke of luck. She mentioned the name of the farm on which she was born and one of the voluntary workers in the office realised that the owners of the neighbouring farm were close friends who were able to submit the required proofs after tracing the previous employer of Mrs Ntloko's father.

the bantu affairs administration boards

The Bantu Affairs Administration Boards are now established in many different areas all over the Republic. Lists of prescribed areas which are combined under the administration of one Board are published in the Government Gazette No 3792, March 2, 1973.

It is impossible to make predictions as to what effect this will have on the African people who live and work in urban areas. The law remains the same and the rigorous provisions of Section 10(1) of the Urban Areas Act must still be complied with as before. Individual prescribed areas within one administration area remain separate prescribed areas and the right to remain in any prescribed area can still only be acquired by residence in that one area.

For example, a man who lives lawfully in Johannesburg for nine years and in Alexandra for seven years will not acquire rights in either area in terms of Section 10(1)(b), even though both fall under the same Administration Board and the total number of years of lawful residence comes to more than 15.

It will indeed be much easier for a man who has been working in Roodepoort, for example, to be registered in new employment in Johannesburg. But if he is not already qualified as a permanent resident of Roodepoort he may find he has prejudiced his chances of ever qualifying.

The Act says that any African who has already qualified in terms of Section 10(1)(a), (b) or (c) in one prescribed area or who becomes so qualified in the future may reside and work in

another prescribed area *within the same Administration Area* without losing his permanent right to remain. He will only lose his rights in the first area after he has acquired rights in terms of 10(1)(b) or (c) in the new area. He will, of course, lose his rights if he lives and works in any town outside the Administration Area to which he belongs. If he loses his right to remain in one prescribed area he is also disqualified from remaining in any other prescribed area administered by the same board.

Johannesburg, with Randburg and Sandton, is included in the West Rand Administration Area together with the districts of Krugersdorp, Randfontein, Roodepoort, Westonaria and that part of Kempton Park which falls in the Sandton magisterial district.

The East Rand area includes the rest of Kempton Park, Alberton, Benoni, Boksburg, Brakpan, Germiston, Heidelberg, Nigel and Springs.

It is a great pity that the whole of the Rand is not included in one area. There already seems to be tremendous confusion in the minds of the general public who seem to believe that they will be free to accept work anywhere or, in the case of employers, to move their labour to different areas. Employers may move their factories from one town to the next within the same Board area without investigating the position of each individual worker. Workers will be registered in the new area with no difficulty so the employer will be all right. But if a Black man who is not already qualified in the original area leaves his job before he has worked 10 years in the new area he may find himself endorsed out.

It is essential that Africans make sure of their position in terms of Section 10(1) before they accept work in another place or agree to be transferred to another factory or another branch.

We would like to see large notices in every labour office setting out these facts in all languages. Employers can help by making themselves familiar with Section 26 of the Bantu Affairs Administration Act and taking its provisions into consideration when transferring workers, and also by making the provisions known to workers.

It is not clear what will happen to a man who is the registered tenant of a house in one of the African residential areas. The housing regulations say that the tenancy will be cancelled if a man ceases to occupy the house together with his dependants. Until this is clarified a man who has a house and goes to work in another place would be well advised to commute every day rather than to find new accommodation. Even though he does not lose his *right* to rent a house, the shortage is so great that it might be many years before he reaches the top of the list again in his original area.

Secrecy

One of the worst aspects of the Act is that it makes it an offence for any member or employee of a Board to disclose any information acquired by him in the course of his duties. Considering the Boards have complete control of all aspects of the lives of urban Africans this is a very serious restriction on the right of members of the public to know what Government is doing.

conclusions

It is intolerable that people should have to live under restrictions such as are described in this memorandum. It is even more intolerable that these restrictions are imposed on one section of a community when other groups are free from such restraint.

In terms of the law, Africans need permits to seek work, to work, to reside, to rent a house, to live with a husband or wife, to have their children living in the same house, to visit relatives for a weekend, to change jobs, to move to another place, to be on the streets after curfew where this applies, to obtain a pension. A Black man can only be born and die without a permit from the White authority.

All the arguments for the retention of the pass laws are based on the selfish rationalisations of the White group. It is never quite clear, for instance, what people mean when they say "we will be over-run". When pressed they resort to generalisations but no one has yet produced any persuasive argument as to how Whites can justify their own freedom from restraints while exercising such all-embracing power and control over the meanest details of living for every Black person.

The practical arguments in favour of the pass laws, about slums arising and the difficulties of providing the necessary social facilities in large employment centres are more concrete and generally better thought out.

But South Africa is a country of enormous resources with a given population and a predictable population growth. Housing, hospitals, schools, transport facilities, employment, consumer goods and services have to be provided for our total population *wherever they are living*. These things are not the prerogative of urban dwellers only. The Government is building houses in the Bantustans and admits to the necessity for social services and

amenities. But what is happening now is that vast rural slums are being established in areas where the people can do nothing to release themselves from the cycle of poverty and unemployment, hunger and disease. They must have a permit to attempt to do so.

White South Africa is carefully shielded from all this. Slums out of sight are out of mind and poverty in rural areas means an endless supply of unskilled labour.

A country really committed to social justice and the fight against poverty would move fast to provide necessities for people wherever they live and to encourage growth wherever there is hope for real economic development in the future. It would then allow for people to move from disadvantaged areas to find work where opportunities are offered. All people should own their own labour and have the freedom of movement necessary to use it in the place and under the conditions of their own choosing. The right to freehold home ownership should also be granted to all citizens in the areas where employment opportunities lie.

In such a free society a large proportion of the Black population would move quickly out of the hated state of dependency on the White man's handouts and the White man could then stop complaining about "how much we do for the Blacks in South Africa".

There are practical steps which can be taken immediately. In December 1972, eight Christian priests and laymen walked from Grahamstown to Cape Town on a pilgrimage of penitence for the evils of the migrant labour system. They made six suggestions for action to effect relief:

- The Urban Areas Act must be amended to state unambiguously that any person who qualifies to be in town in terms of Section 10(1) has the right to have his family with him and remain permanently there with his family, even when he is too ill to work, or is unemployed, or retired.

- The 1968 Bantu Labour Regulations must be repealed so that migrant workers are not compelled to return to their homeland every year. This prevents them from qualifying to live in town in terms of Section 10 of the Urban Areas Act. They must also be repealed so that if the migrant worker does return for leave he will not be disqualified from acquiring rights to remain in town.

- Freehold tenure must be provided in at least the established African townships, so that anyone who qualifies to be in town and wishes to buy land may do so.

- Firms must be free to house their workers on a family basis.

- A target date must be set for the Urban Areas Act to be amended in such a way that it will be possible for an orderly and rapid transition to take place from the present situation and the current method of implementing the Act. The rate of change would

depend on the speed with which houses and amenities could be provided.

● A crash programme for building family accommodation, both houses and flats, must be launched once the target date has been set and the country firmly committed to a policy of phasing out the migrant system.

The pilgrims suggested that the Urban Areas Act be amended with effect from 1975 to stipulate that, each successive year, the length of urban residence which is required in order to qualify for permanent residence in town be reduced by one year.

At present men must live lawfully in one area for 15 years or work continuously for one employer for 10 years. If the pilgrim's plans were adopted the requirement would be 14 and nine years respectively in 1975, 13 and eight years in 1976, until in 1984 those coming to town to work would automatically be able to stay. These proposals at least provide a starting point.

The pass laws, influx control and the migrant labour system must be totally and quickly abolished. No system which causes so much suffering can be justified. A nation cannot be great when it is built on the misery of its people. The time has now come when we must use our intelligence, skills and wealth on urban, industrial and agricultural planning to allow for the complete removal of all restraints on freedom of movement, and the building of a free society in which no group will be privileged at the expense of another.

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