

A DIGEST OF THE

FACAN REPORT

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ERRATA.

- P. 2. Transpose lines 20 and 21 in first paragraph.
P. 13. 4th line - for "weary" read "wary".
P. 14. 6th line - after "form" delete "that".
9th line - for "compliment" read "compliance".
P. 25. 25th line - for "in deteriorating" read "is deteriorating".

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A DIGEST OF THE NATIVE
LAWS (FAGAN)
COMMISSION

(Prepared by Helen Suzman)

A DIGEST of the 1947/1948
BROOME COMMISSION

(Prepared by Maurice Webb)

"One of the main objections to the Native Laws Commission Report is that those who have criticised it most bitterly have not read it. That means 99.9 per cent of the European population in South Africa."

Mr. Justice H. A. Fagan,
Cape Town, July 13th, 1948.

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS
P.O. BOX 97. JOHANNESBURG.

Model Printing Co.

This digest of the Native Laws Commission is the first in a new Blueprint series bearing the name of Col. James Donaldson, D.S.O., It has been made possible by the generosity of the Bantu Welfare Trust founded by Col. Donaldson.

Six are planned in this series which will comprise handy, authoritative digests of important Governmental Commission reports which have direct bearing on the economic structure of South Africa. In this way it is hoped that a very much wider section of the ordinary public will have access to facts upon which to form judgments and opinions concerning the planned developement of their country.

DIGEST OF THE FAGAN REPORT

THE Native Laws Commission under the chairmanship of Mr. Justice H. A. Fagan, K.C., was appointed by the Government in August, 1946, with the following terms of reference:—

To enquire into and report upon—

- (a) The operation of the laws in force in the Union relating to Natives in or near urban areas, and in areas where Natives are congregated for industrial purposes other than mining;
- (b) the operation of the Native Pass Laws and any laws requiring the production by Natives of documents of identification;
- (c) the employment in mines and other industries of migratory labour; its economic and social effects upon the lives of the people concerned; and the future policy to be followed in regard thereto;

and to draft such legislation as may be necessary to give effect to the recommendations of the Commission.

The report of the Commission was submitted in February, 1948, and signed by Mr. Justice Fagan, Mr. A. S. Welsh, K.C., Messrs. A. L. Barrett and E. E. von Maltitz who, with Mr. S. J. Parsons as secretary, formed the personnel of the Commission.*

Corresponding to the terms of reference, the report is divided into three sections which are all, however, closely interrelated, and should be read and interpreted on this basis.

* Mr. T. J. Chester, who was originally appointed to the Commission in place of Mr. H. P. Smit, died in 1947.

SECTION I.

The Operation of the Laws in Force in the Union relating to Natives in or near Urban Areas, and in Areas where Natives are congregated for Industrial purposes other than Mining.

The necessity for uniform legislation relating to Natives in urban areas exercised the minds of authorities long before the passing of the Natives (Urban Areas) Act of 1923, which is the foundation and text of existing legislation. Prior to Union, various Commissions pondered on the conditions of urban Natives; while from the time of Union, authoritative Commissions such as the Assaults on Women Commission 1913, the T.B. Commission 1914, Native Affairs Commission 1920, and the Transvaal Local Government Commission 1922, advanced suggestions with a view to strengthening and unifying legislation. In particular, the findings of the latter body, familiarly known as the Stallard Commission, established the basic premise on which subsequent legislation was framed:—"It should be a recognised principle of Government that Natives—men, women and children—should only be permitted within municipal areas in so far and for so long as their presence is demanded by the wants of the white population and should depart therefrom when they cease to minister to the Natives in urban areas as was so required, the same principle needs of the white man." (1) And where the presence of residential segregation should be followed as was laid down for rural areas by the Native Land Act of 1913.

In pursuance of the policy enunciated by the Stallard Commission, the Natives (Urban Areas) Act was passed in 1923, whereby the Government while retaining some measure of control over local authorities, legislatively entrenched the principle that each municipality is responsible for Natives within its area.

Various duties and powers were handed over to municipal authorities under the Act, the chief of which were:—

- To provide adequate housing accommodation for all Natives within their areas;
- to set up Native Advisory Boards within Native villages;

(1) Annexure 5 Para. II. (Fagan Report)

- to set up Native Revenue Accounts which were to collect and utilise funds for the benefit of Natives;
- to reserve trading rights within the village for Native residents or the Municipality;
- to control the influx of Natives into the areas and remove "redundant" Natives i.e. those Natives whose labour is not required within the municipal boundaries.

Furthermore, the Government recommended that the setting up of a Native Affairs Department in each urban area would be desirable, and undertook to utilise its powers under the Gold Law in order to obtain suitable land for the municipalities for the provision of accommodation.

The powers vested in the municipal authorities were strengthened and extended—particularly those relating to the control of the influx of Natives into the urban areas—by numerous amendments to the 1923 Act, which was subsequently superseded by the Natives (Urban Areas) Consolidation Act of 1945, as amended.

A review of the existing conditions in urban areas makes it clear not only that legislation drafted 25 years ago has been inadequate to meet the situation, but also that the very premise on which such legislation was based is untenable to-day.

DRIFT TO TOWNS.

Despite all the efforts of municipalities to utilise their powers, they have been unable to control the urban drift of the Natives, nor provide adequately for them once they have arrived in the area. This is borne out by the overcrowded conditions in the municipal locations and the peri-urban townships, and by the development of shanty towns on the perimeter of the large industrial towns.

The present situation has, in some measure, been accentuated by the great industrial expansion associated with the war, and the labour requirements of these industries attracting Natives to the towns, coupled with a reduction in the building programme during the war years.

But in the main South Africa has, in the past 25 years, witnessed the economic phenomenon associated with industrialisation throughout the world—the movement of population from the rural to the urban areas. This movement

is by no means confined to the Native section of the population, but has occurred to a far greater extent among other sections of the population. Thus between 1921-46 the percentage of European population in the rural areas decreased from 44.22% to 27.54% i.e. by about $\frac{2}{5}$. In the same period the percentage of Natives in rural areas decreased from 87.50% to 77.01% or by about $\frac{2}{17}$; Asiatics from 69.10% to 29.72%; Coloured from 54.18% to 41.85%.

This fact is often overlooked in studying the great increase of Natives in the urban areas. Between 1921-36 the urban Native population increased by 94.48%; between 1936-46 by 57.16%. This increase of Native urban population is not due to the natural rate of increase which, contrary to popular belief, is practically the same as that of the European population—18.32% in 10 years. It is the result of the drift of population from three sources:—

- from the Native Reserves;
- from the rural areas outside the Reserves;
- from the Territories beyond the Union's borders.

The Natives have come to town and in many cases they have come to stay. Economic forces have proved stronger than legislation—Natives have been pushed out of the rural areas because the Reserves are over-populated, because conditions on European farms are not sufficiently attractive to offset the seemingly higher wages and educational opportunities in the towns, and because the territories outside the Union are economically backward; and they have been pulled towards the urban areas because of the labour requirements of the expanding industrial centres. Nor has it been possible to keep the Natives in town as migratory workers only, for conditions in the rural areas have forced many hundreds of thousands of Natives to regard the towns as their permanent home.

To-day there are about $1\frac{3}{4}$ million Natives in urban areas, as against $\frac{1}{2}$ million in 1921 and 1 million in 1936. Just what percentage of this figure is permanently settled in the urban areas is difficult to estimate—about 340,000 Natives come from territories beyond the Union's borders, the great majority of whom are migrant workers employed in the mines and other industries. Many of the Natives to-day in urban areas who come from the Union's Reserves are also temporary absentees. But it must be accepted as a

fact that the Native population of our urban areas consists not only of Native migrants but also of a settled population. This is borne out by the great increase in the number of Native women in the urban areas to-day; thus in 1921 there were some 150,000 Native women in the urban areas; in 1936 some 360,000, and in 1946, 640,000—an indication of a considerable settled population in the towns.

Although the rural to urban movement of the Native population has been in excess of immediate requirements in certain centres, it must be realised that it is an economic impossibility for the land to continue to carry an increasing population—it is necessary for numbers of Natives to transfer themselves to occupations other than farming. A similar process alleviated to a great extent the Poor White problem that was so acute two decades ago.

The important aspect is the absorptive capacity of the industrial centres. There is no evidence of widespread unemployment in the towns—a census taken of the squatter population on the borders of Johannesburg revealed that only 4½% of the adult male population were not employed in the city. Thus the appearance of a shanty town is no indication that its residents are “redundant.” Rather is it evidence of the inability of the municipal authority to provide the necessary accommodation for the workers in its area—hence the undesirable conditions which have arisen.

The chief difficulty facing municipalities has always been finance, for even with sub-economic schemes aided by the Government, the local authorities have always had to bear a considerable share of the loss involved.

It would appear then that an entirely new approach to the problem is called for—it can no longer be left to the municipalities to be responsible for the Natives within its area—in other words what is urgently necessary is “a shifting of the emphasis from the local to the central authority, so that comprehensive, co-ordinated plans for the whole terrain can be devised and put into operation.” (2)

2. Para. 4. (Ibid)

PRINCIPLES OF POLICY.

Having assessed the nature and extent of the problem it is necessary to decide on *principles of policy* before suitable remedies can be suggested. Three possible policies are considered.

1. *Firstly, that of apartheid or total segregation which would involve a complete territorial division between Europeans and Natives.*
2. *Secondly, that of no racial discrimination either in law or in administration.*
3. *Thirdly, that of accepting the co-existence of European and Native communities side by side, but recognising their intrinsic differences in legislation and administration.*

As far as the policy of total segregation is concerned economic arguments against its practicability are overwhelming.

Over half the Natives in the Union are to-day in the so-called European areas. Of the existing families in the Transkei and Ciskei, one-third have no land. Those that do have land find it inadequate to support themselves and their families, and therefore find it necessary to sell their labour in other areas to make up the shortfall.

Thus in their present condition the Reserves are incapable of supporting the existing population, let alone provide for the vastly increased numbers that would result if all the Natives at present residing outside the Reserves were to be sent back.

Nor would improved methods of agriculture mean that the territory could carry a greater population, for the Natives are becoming accustomed to higher standards of living. They are leaving the Reserves because they no longer provide even the minimum subsistence requirements. Greater productivity can only come about in an overpopulated and overstocked area if both population and stock are reduced in numbers.

Greater industrialisation of the Reserves would increase their carrying capacity, but such possibilities are limited by economic considerations and would provide no solution to the main problem. In any case, under total segregation such industries would be deprived of the invaluable use of European directive and skill.

Figures and other data "lead to the irresistible conclusion that it would be utterly impossible to put the Native population which is already outside the Reserves, back into the Reserves, or even to keep the whole of the increase there in future." (3)

A consideration of the practical application of total segregation from the other side of the question leads one to the same conclusion—it is an economic impossibility. For just as South Africa's economy requires European initiative and skill, it is equally dependant on the availability of Native labour—a fact recognised by European employers throughout the country and borne out by their unwillingness to dispense with Native labour. "What would happen if one of these two pillars is knocked down or even weakened is pure speculation." (4)

Summing up the situation the following emerges:

1. *That the idea of total segregation is completely impracticable.*
2. *That the rural and urban movement is a natural economic phenomenon engendered by necessity—one which possibly can be regulated but cannot be reversed.*
3. *That the Native population in the urban areas consists not only of Native migrant workers, but also of a settled permanent Native population.*

With these important premises established it is clear that the old cry "Send them back" is no longer a solution to the problem, and that legislation based on the concept laid down by the Stallard Commission is no longer able to cope with the situation which has materially altered during the past 25 years.

A consideration of the second possible policy—that of *no racial discrimination in law or administration* leads one from the realm of reason and logic into the realm of sentiment and emotion, tempered by a realistic acceptance of the fact that in South Africa concepts of democracy have to be adapted to suit the heterogeneous make-up of its population.

3. Para. 22. (Ibid)

4. Para. 25. (Ibid)

Not only are there racial differences between European and Natives to be taken into consideration, but also the fact that the Natives themselves are not a homogeneous group, consisting as they do of raw tribal Natives, Natives who are in a transitional stage—partly urbanised yet retaining tribal ties, and Natives who have settled permanently in the towns and are themselves in all stages of development.

Thus, for example, the question of representation of Natives on town councils must be considered with these facts in mind and in all honesty it must be admitted that the reason for excluding the Native from the franchise is the difference in race and not because he cannot be considered as a permanent town dweller—as suggested by the Stallard Commission.

There remains, then, the third policy as the only practical line of action: namely the acceptance that European and Native communities will permanently exist side by side, bound together by economic ties, but whose intrinsic differences necessitate recognition in legislation and administration, while allowing sufficient machinery for consultation on matters of mutual concern.

Where the implementation of this policy necessitates new measures, these should be introduced gradually, thus ensuring that the changes will be evolutionary and will respect established institutions, their historical background and the “mentality which is linked with them.” (5)

Such a formula while admittedly very vague and general, has the advantage of being sufficiently elastic so as to allow adjustments to a situation which is always dynamic. The task then is “constant adaptation to changing conditions, constant regulation of contacts and smoothing out of difficulties between the races, so that all may make their contribution and combine their energies for the progress of South Africa.” (6)

RECOMMENDATIONS.

Two types of Native townships or villages in urban areas are considered:—

1. Those which fall within a municipal area.
2. Those which fall outside a municipal area.

5. Para. 31. (Ibid)

6. Para. 31. (Ibid)

Insofar as municipal Native villages are concerned, it is recommended that the old Native Advisory Board System, which has proved a failure, be replaced by a Native Village Board, consisting of members elected by the residents, or nominated by blockmen who themselves are elected to represent residents of a particular ward or block consisting of some 500 families.

The Board should, subject to municipal control and supervision, be given certain responsibilities and executive functions such as the collection of rents, expenditure of certain revenue, provision of amenities and improvements, control of production and distribution of Kaffir beer.

A strong liaison should be maintained between the Village Board and the Town Council, and regular conferences held between the Native Affairs Committee of the council and the board committee. These proposals are based on the hypothesis that existing provincial legislation as regards municipal franchise for Natives does not change. In view of the fact, however, that nearly all municipalities object to the extension of direct representation of Natives on the Council, it is not possible to propose changes which will not be supported.

Existing provisions of the Natives (Urban Areas) Consolidation Act compelled the municipal authority to demarcate separate areas for each of the three types of occupational rights for Natives in urban areas i.e. tenancy of houses owned by the local authority, leases of lots owned by municipalities on which Natives build their own houses, and ownership of the ground by the Natives themselves. Insofar as the third type is concerned, the urban authority is deprived of control in certain respects. These factors act as deterrents to Natives who desire to build their own homes, and to municipalities in granting rights of ownership.

Amendments are proposed which will do away with such anomalies.

Further amendments extend protection to the Native leaseholder or landowner if, for any reason, the municipality desires him to move, and provide that where the shortage of available land makes pecuniary compensation unsatisfactory, it may be necessary for the municipality "in lieu of the amount payable as compensation or any portion

thereof, to provide the Native with other land corresponding, as far as it is reasonably possible, in value, convenience of situation, and conditions of tenure with the land from which he is being removed." (7)

It must be noted, however, that it is not possible to compel unwilling municipal authorities to extend freehold areas to Natives; to utilise beneficial building schemes such as the Bloemfontein system; and to grant general dealers licences to Natives within Native villages.

OUTSIDE MUNICIPAL CONTROL.

It is necessary to frame elastic legal provisions and to encourage Natives to seek opportunities for advancement in the second type of village, i.e. Native village outside municipal control. At the present time such villages are controlled by whatever local bodies the Provincial Administration creates. These organisations as a general rule have neither the funds nor the administrative machinery to cope with the sprawling townships and squatters camps that have sprung up around the large centres owing to the overcrowding that has taken place in municipal villages and the subsequent efforts of the municipalities to exclude or expel persons whom they are not able to accommodate, or whose employers cannot house them, or who are unemployed. The result is that there are large numbers of Natives who legally have no place to reside, and for whom no authority will take responsibility. Thus deplorable conditions have arisen due "rather to deficiencies in our legislation and our administrative machinery, than to wrong action or neglect of duty on the part of any person, body or State department." (8) What is necessary then, owing to the financial implications and administrative difficulties involved, is to remove the responsibility for such areas from the Provincial authorities, and to establish a Government sub-department—possibly by expanding the Urban Areas Section of the Department of Native Affairs—which should be given the statutory powers, requisite personnel and adequate funds to control and supervise Native villages outside municipal areas and, if the necessity arises, to acquire land and set up such villages.

7. Annex. 7. Para. 10. (Ibid)

8. Para. 37. (Ibid)

A Village Board should be appointed either by the Government or by the residents "when they are considered to have reached sufficient maturity,"⁽⁹⁾ which shall be responsible to the sub-department, receive monies advanced by the sub-department for expenditure on housing, health services, transport facilities and other amenities, which will have been allocated by the Treasury to the proposed Native Villages Division.

Where existing local authorities are functioning efficiently in areas outside municipal jurisdiction, it will not be necessary for the Government sub-department to intervene.

It is considered that a scheme such as that outlined above would materially relieve the problem by providing the sorely needed financial resources, by making the expropriation of necessary sites a simpler matter, and by ensuring that "room is provided for all who have a reasonable claim to accommodation."⁽¹⁰⁾ At the same time, it will be possible to take more effective steps against idle and disorderly persons and criminal elements.

9, Para. 37. (Ibid)

10. Para. 38. (Ibid)

SECTION II.

The Operation of the Native Pass Laws and any Laws requiring the production by Natives of documents of Identification.

A pass is defined as a document

- (a) " which is not carried by all races, but only by people of a particular race and which either
- (b) is connected with restriction of the freedom of movement of the person concerned, or
- (c) must at all times be carried by the person concerned on his body, since the law lays the obligation on him of producing it on demand to the police and certain other officials, and the mere failure to produce it is itself a punishable offence." (11)

Various documents fulfil this definition, most of them falling under either the Proclamatoin 150 of 1934, the Native Service Contract 24 of 1932, the Native Labour Regulation Act of 1911, and the Natives (Urban Areas) Consolidation Act. There is no uniformity about pass regulations, some applying to the Transvaal and Natal, others to the Transvaal and Orange Free State, some only to certain towns within each Province.

Three queries present themselves in a consideration of the principles involved in the Pass System:

- (1) " Is it necessary in this regard to have special laws for the Natives?
- (2) Are restrictions on the freedom of movement necessary? and
- (3) Is it necessary to make the mere non-production of some document a punishable offence?" (12)

The first question must be answered in the affirmative in recognition of the fact previously stressed i.e. that racial differences necessitate the regulation of contacts between European and Native. But in so arguing two concepts of equity and justice must be borne in mind, firstly, discriminatory legislation should not be introduced

11. Para. 39. (Ibid)

12. Para. 40. (Ibid)

where general legislation would suffice, and secondly, in view of the fact that Natives are to be found "in all stages of development and all stages of adaptation to European life and thought" (13) legislators should be weary of utilising the wide term "Native" and, where possible should distinguish between the different classes of Natives in framing legislation.

The second question must also be answered in the affirmative for the difficulties which at present accompany the large-scale movement of Natives would be accentuated without control and regulation. Moreover, maintenance of the principle of residential segregation, where Natives have settled in the vicinity of European communities (rural and urban), necessitates a certain amount of regulation in the interests of both sections of the population.

LABOUR BUREAUX.

It is possible, however, both to improve the effectiveness and to mitigate the objectionable features of the existing pass system by shifting the emphasis from local to central regulation, and from compulsory and restrictive measures to voluntary measures for guidance and control, by ensuring that every person has a place where he is legally entitled to go, by a stronger action against idlers and disorderly persons, and by instituting a really efficient identification system.

The first essential is the setting up of a country-wide, centrally organised network of labour bureaux, functioning as a voluntary guide to employers and employees. Such bureaux would be of invaluable assistance in the better distribution of labour resources throughout the country by means of the collection, correlation and dissemination of information, and might also act as training centres for workers.

Secondly, it is proposed that an identification system be set up, which would provide for the voluntary registration of all adult Natives, the keeping of central records and the issue of identification cards. Such a system would, have many advantages. In the case of the Native, it is hoped that the widespread use of identity cards, by establishing his bona fides will, in the long run, dispense with the necessity for the present pass system.

13. Para. 41. (Ibid)

Insofar as the third question is concerned, i.e. whether it is necessary to make the mere non-production of some document a punishable offence, it is proposed that, while no penalty should be imposed simply for non-production, since the retention of the pass system is still required in some form, that the law makes special provision to ensure that the regulations are being complied with: thus the police must be empowered to call on any person to furnish proof of compliance, and if such proof is not forthcoming, charge, keep in custody, and bring to trial any such person, the onus of proof to rest on the accused.

It is hoped in this respect that identity cards will reduce this necessity, and that the "well-known" Native will be at an advantage in that he will be able to give a proper account of himself and so satisfy the requirements under the law. A Standing Committee of the Departments of Justice and of Native Affairs should be established to consult with representative bodies in order to reconsider any new situation which might arise and to make proposals where necessary.

As far as the respective documents that serve as passes at present are concerned, the following recommendations are made:—

- (1) The registration of Service Contracts under Natives (Urban Areas) Consolidation Act has so many advantages that it should remain, but should possibly cover only all service contracts in which the weekly wage is not more than £4, and be extended to the rural areas also.
- (2) Laws relating to the entry of Natives into urban areas can materially remain the same, provided that Natives who are excluded from municipalities because of lack of room, and who have no other place to go, will be provided for by villages falling under the Government sub-department mentioned in Section 1 of the Report. Two amendments to the Natives (Urban Areas) Consolidation Act are suggested:—Firstly, that the powers at present vested in municipalities to admit the worker himself into the urban area and to refuse

to admit his wife and children be abolished, except in the case where no suitable accommodation can be found for the latter. For it is considered that the present law in this respect is instrumental in breaking up family life, is based on the misconception that in its absence the urban areas would be overrun by Native women, and, while it is aimed at the Reserve Native, in practice it affects, in the main, the so-called detribalised urban Native.

Secondly, that the provision of the Act which empowers a municipality to expel a Native from an area merely because he is not in employment in that area be abolished.

The benefits of these amendments are to be extended only to Natives who were born in the urban areas concerned, or who are Union nationals.

- (3) Native Labour Regulation Act No. 15 of 1911—by which recruitment and discipline of mine Natives is governed, should remain, subject to periodic review.
- (4) Other passes—some consolidation of regulations as regards control of vagrancy, trespass and cattle thieving is necessary for rural areas.

For the rest, the provisions of the Masters' and Servants' Laws should be sufficient to trace deserters, especially if the registration of contracts and identity card system are introduced into rural areas.

Again, the identification system should eventually nullify use of tax receipts as passes. The night pass is no deterrent to criminal elements, but the European section of the population is very opposed to slackening of control in this respect; however, it is hoped that once conditions are more orderly and settled, ordinary common law should provide sufficient protection to the public without the necessity for curfew documents.

In every respect the great essential is to keep the law flexible enough to allow for whatever amendments may be desirable as regards the existing pass system.

With these main objects in view—relieving economic pressure in the Reserves, guiding and regulating the flow of labour from the Reserves and distributing it beneficially in the employment centres—certain active steps may, however, be taken.

First: continuing the policy of development of the Reserves, and, where possible, intensifying this policy by combating soil erosion, improving agricultural methods, stock reduction and by establishing industries in the Reserves.

Furthermore, where land is neglected, such land should be re-allocated and the families of landless men should be collected in villages inside the Reserves, such villages to be set up and administered either by the Government sub-department mentioned in Section 1 of the Report or by the South African Native Trust. These families are to subsist on the earnings of absent migrants and thus will not be a burden on tribal land.

Second: the labour bureaux will be of great assistance in guiding and regulating labour, and the identification card system will, it is hoped, gradually replace the pass system.

Third: in the towns, relations between the municipal authorities and Native villages within their areas can be improved by better liaison and by the delegation of authority to the Natives themselves; while villages outside the municipal areas should be controlled and financed by the sub-department of the Department of Native Affairs.

As regards the contentious question of the financial responsibility for the provision of housing for Natives in urban areas, it is anticipated that the position will be eased in the future by the Government's decision (announced on February 11th, 1948) that it will itself be prepared to build sub-economic houses for Natives and to hand them over on long lease to municipalities.

But, in any case, whether the Government steps in or if employers are made liable for part of, or all of the rentals of employees, in the long run the only wholly satisfactory solution to the housing problem will lie in the ability of workers to increase their productive capacity so that they will be able to pay economic rentals.

In the meantime, in the interests of national welfare, the urgency of the situation demands immediate action on the part of the Central Government in those areas where local authorities have been unable to cope with the situation efficiently. Thus apart from financing and controlling villages outside municipal jurisdiction, it is suggested that the Government should make substantial grants—up to 100% if necessary—to the municipalities for the establishment of homes for aged and invalid Natives within their areas.

Finally, it is necessary to stress again that “legislation with regard to the administration of Native Affairs should be wide and elastic, leaving room for experimenting, and for trying out new methods (e.g. the delegation of executive powers to Native boards), and allowing consideration to be given within its framework to different stages of development of the Natives and to circumstances that vary from place to place and from time to time. A course of events that can no longer be changed has made South Africa the common home of races differing so radically from each other that there can be no question of assimilation, yet economically and territorially so intertwined that they are simply compelled, from moment to moment, to regulate their contacts to bridge their differences, and to settle their disputes.” (16)

APPENDIX.

Below are appended some significant and relevant statistics for 1946 (which are still provisional.) taken from the Fagan Commission Report.

I. POPULATION: 1946.

European.	Asiatic.	Coloured.	Native.	Total.
2,372,690	285,260	928,484	7,805,592	11,392,026

II. DISTRIBUTION BETWEEN URBAN AND RURAL AREAS 1921 - 1946.

Europeans	Urban	Rural	Total.
1921	847,508	671,980	1,519,488
1936	1,307,386	606,471	2,003,857
1946	1,719,338	653,352	2,372,690
Native			
1921	587,000	4,110,813	4,697,813
1936	1,141,642	5,455,047	6,596,689
1946	1,794,212	6,011,380	7,805,592
Coloured			
1921	249,968	295,580	545,548
1936	414,907	354,754	769,661
1946	539,939	388,545	928,484
Asiatic			
1921	51,209	114,522	165,731
1936	145,596	74,095	219,691
1946	200,494	84,766	285,260
All Races			
1946	4,253,983	7,183,043	11,392,026

III. Percentage increase or decrease of (1) the urban and
(2) the rural population in the periods 1921-1936
and 1936 - 1946.

	(1) Urban.	(2) Rural.
Europeans		
1921-1936	+ 54.26	+ 3.64
1936-1946	+ 31.51	— 6.19
Naives		
1921-1936	+ 94.49	+ 32.69
1936-1946	+ 57.16	+ 10.19
Asiatics		
1921-1936	+ 184.31	— 35.3
1936-1946	+ 37.71	+ 14.40
Coloured		
1921-1936	+ 65.99	+ 20.02
1936-1946	+ 30.13	+ 9.53

IV. ANNUAL PERCENTAGE RATE OF INCREASE
OF URBAN POPULATION 1921 - 1946.

	European.	Native.	Coloured.	Asiatic.
1921-36	3.6	6.3	4.4	12.3
1936-46	3.1	5.7	3.0	3.7

V. NATIVES, MALE & FEMALE : NUMBERS IN
URBAN AREAS, 1946.

	Male.	Female.	Total.
Cape Province	171,846	160,248	332,094
Transvaal	776,055	338,343	1,114,398
Natal	138,742	69,561	208,303
O.F.S.	65,379	74,038	139,417
Totals	1,152,022	642,190	1,794,212

**VI. NUMBER OF NATIVES IN RURAL AREAS
EXCLUDING NATIVE AREAS.**

1936	2,492,650
1946	2,905,380
Increase	16.5 per cent.

**VII. DISTRIBUTION OF NATIVES AS BETWEEN NATIVE
AREAS AND REST OF PROVINCE, 1946.**

	In Native Areas.	%	Rest of Province.	%	Total.
Transvaal	610,000	19.61	2,500,743	80.39	3,110,743
Natal	940,000	55.17	763,979	44.83	1,703,979
O.F.S.	26,000	3.94	634,493	96.06	660,493
Cape Prov.	1,530,000	65.66	800,377	34.34	2,330,377
					<u>7,805,592</u>

**VII. NATIVES IN NATIVE AREAS AND REST
OF UNION, 1946.**

Total.	Native Areas.	%	Rest of Union	%
7,805,592	3,106,000	39.79	4,699,592	60.21

DIGEST OF THE 1948 BROOME COMMISSION REPORT.*

BY

MAURICE WEBB

AS a result of representations made to the Prime Minister that serious dissatisfaction existed in Durban in respect of Native matters, and more particularly with regard to a large and growing Native "shanty town" within the area of the Durban Municipality, the Government appointed on October 10th, 1947, Mr. Justice F. N. Broome, K.C., to be a commission

"to enquire into the legitimate needs and grievances of the Native population in the City of Durban in respect of housing, health, welfare and recreational facilities and the respective responsibilities of the Government, the Provincial Administration, and the local authority and to report on the action to be taken in reference thereto." (1)

The Commissioner regarded his task as an urgent one. "Time was the essence of the matter. His diagnosis had to be accurate but it had also to be quick. He was required to prescribe first aid rather than a prolonged course of remedial treatment." (3)

The report was issued on January 31, 1948. In it there was no attempt to apportion blame. It considers it wisest for all concerned "to let by-gones be by-gones and to set about putting things right." (7)

The report accepts the figure of 104,100 as being approximately the Native population of Durban in 1946 made up of 26,600 permanently urbanised and 77,500

* Numbers in brackets indicate the relevant paragraphs in the Report.

migratory (23). Distribution of employment shows (24)

Industry	..	..	..	..	31,449
Domestic Service	..	..	..	..	16,776
Commerce	..	..	..	..	14,680
Municipal or Government	..	..	..	..	9,440
Flats, Hotels, Boarding Houses	..	..	..	..	3,152
Miscellaneous	..	..	..	..	1,056
					<hr/>
					76,553
					<hr/>

Between 1936-1946 the Native population of Durban increased by 64%. (22)

“ Figures confirm the opinion that there is a large and steadily increasing number of Natives who are permanently settled in urban areas . . . this population trend calls for a complete re-orientation of Native policy.” (26).

The report quotes an estimate of the number of Durban Natives living in shacks as 23,000. It negatives the popular idea that these are criminal elements redundant to the needs of the city.

“ To attribute the growth of shanty towns to Natives of this class (vagrant criminals) and to prescribe as the remedy the demolition of the shacks and the repatriation of the shack dwellers to the reserves is nothing but loose talk ” . . . “ The great majority of the male shack dwellers are usefully employed in the city.” (29)

“ The paramount grievance of the Durban Natives is that there is not sufficient housing accommodation for them.” (31)

Some guesses at the number of houses required are given (one is 12,800) but,

“ one fact clearly emerges: the problem has reached such dimensions that no building programme, within the limits of practicability, can be too ambitious.” (32)

Houses are preferable to hostels: Durban's need is for the sub-economic houses and at once (70); but both are needed.

“ There is at present an urgent need for further hostel accommodation for women.” (33)

The suggested solution of the shack problem is two-fold: a large-scale housing programme carried out with a minimum of delay and, as a temporary expedient, the removal of the present shack dwellers to a controlled squatting area or transit camp. (36/7) For the transit camp the use of the Umlazi Glebe is suggested: for the housing programme the Umlazi Mission Reserve, the extension of the present Chesterville and Lamontville locations and certain other areas within the borough. (65/7)

The need to control the further influx of Natives, is recognised, but this should be positive by way of rehabilitation of the reserves. (40) The special needs of educated Natives, estimated at about 8% of the whole, are mentioned, as also the need to employ Native artisans, even if to do so does not save cost,

“for the Native Housing problem in Durban is as much a question of time as of money.” (52)

The contentious question of the use of the Umlazi Mission Reserve is considered at length, the Commissioner finding that it would be in keeping with the Trust to bring this area into use for Native housing if it is “dedicated for all time to the use of Natives” and provision is made for some titles in freehold. (59)

Turning to health: the report quotes medical opinion that Natives' health in Durban is deteriorating, due mainly to malnutrition and bad housing. (75)

“Malnutrition probably shares with venereal disease the responsibility for two shameful facts: that 70% of Durban's Native children are in need of care and that Durban's infant mortality is pretty near the highest in the world.” (76)

More and decentralised hospital accommodation is needed. (81) The present divided control in matters of health is deplored. (89)

Other matters dealt with include the need for Native Labour Exchanges and Native Juvenile Affairs Board (92); the smallness of the amounts paid in respect of disability grants, pensions for the old and blind is noted and the report says:

“Under existing conditions it is probably impossible to eliminate racial distinctions in making provision for the physically or economically handicapped but

it is permissible to look forward to the time when emphasis will be upon the handicap and not upon race." (93)

The Report emphasises the need for indoor and outdoor recreation (99) including access to the Indian Ocean.

"The Non-European, two-thirds of (Durban's) population are entitled to more of the Indian Ocean than they get."

The need for further transport facilities for Natives is mentioned and the whole question of transport, it is suggested, requires an investigation of its own. (107) The comment is made regarding the present provision of 50% of seats on public service vehicles for Non-Europeans that

"This sounds very liberal until one realises that what it comes to is that half the seats are available for two-thirds of the population, and that that two-thirds is, in fact, the section of the population to which public transport is most important." (106)

The special restrictions respecting the use of public transport in Durban North by Non-Europeans is declared to be "intolerable" and "should be put an end to by legislation if necessary." (108)

The importance of Native Advisory Boards is stressed:

"It must be remembered that Durban Natives, comprising one-third of the city's population, have no representation on the City Council. It may be that the time has not yet come when such representation is possible. But until then the Native Advisory Boards represent a vitally important link between those who govern and those who are governed" (117).

and a comment is made on the need to furnish explanations of refusal or delay,

"To give explanations to Natives is often a matter requiring great patience and much repetition, but your Commissioner believes that time and trouble taken in this respect will in the long run pay good dividends."

As to which authority is responsible, the report holds that a local authority is responsible for local needs.

“A local authority’s responsibility does not begin and end with its legal responsibility; it is under a moral responsibility in regard to all needs and grievances which arise within its area” (125) . . . “the fact that legally the financial responsibility may rest upon some other authority will not relieve the (Durban) City Council of the moral duty to take action in the interests of its citizens.” (127); but the Commission is of the opinion that “the Durban City Council has made out a case for some relief from its present burden of Native sub-economic housing.” (134).

The report concludes with a summary of its recommendations with an indication of priority or urgency.

RECOMMENDATIONS.

Those of first priority are:

- (a) That the City Council lay out a transit camp or controlled squatting area, provide access, water, sanitation and drainage, remove the occupants of the shacks to the transit camp, demolish the shacks and prevent the erection of further shacks.
- (b) That the City Council proceed with its housing programme at Lamont and on a portion of the Umlazi Glebe; that a scheme be prepared for the urbanisation of the Umlazi Mission Reserve.

Then as secondary priority or defined as “urgent” are:—

- (a) That the City Council extend the boundaries of Chesterville location, further extend Lamont;
- (b) That the premises of the City Fever Hospital be transferred to King Edward VIII Hospital; health centres be established at Chesterville and Lamont;
- (c) The provision of accommodation (apart from treatment) for incurable Native tuberculotics.

The other recommendations are classified in degrees of lesser priority or urgency.

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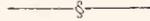
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News item: Sunday News,
Dec. 7th 1947.

"South Africa requires 154,000 Native houses, of which 142,000 are needed in urban areas. But in the last 12 months only 7,000 have been built under Government-financed schemes."

The Star, October 17, 1947.
