

The New Townsmen

*The Legal Position of the
African in the White Areas
To-day*

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*A guide for the employer and the layman to the effects of the
controversial Bantu Laws Amendment Acts, 1963 and 1964, and
the consolidating Bantu Labour Act, No. 67 of 1964.*

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WHAT IS IT ALL ABOUT?

Two-thirds of the people of South Africa—the Republic's 12,000,000 African citizens—have no secure right to live and work in the industrialised and developed parts of their own country.

Any security of residence or employment they may enjoy outside the Reserves is dependent on administrative discretion.

This, in the starkest and clearest possible terms, is the central fact about South Africa's legislation controlling the lives and movements of Africans.

This study of urban African legislation is prompted by the widespread public interest in the controversial Bantu Laws Amendment Acts—now in force as the Bantu Labour Act, No. 67 of 1964. It will seek to give a picture of the purpose and effect of this legislation.

72 Hours

The key provision of this legislation, introduced in 1952, lays down that no African may remain in an urban (now prescribed) area for longer than 72 hours without permission. If he does, and he is arrested and convicted, he may go to jail.

Some Africans are exempted from this restriction on grounds of birth or long residence or employment in an urban area. But this is not an absolute right, it is a privilege, say Government spokesmen. Merely an exemption from restrictions. And the grounds on which Africans can lose the protection of this exemption have been considerably widened by the Bantu Labour Act.

It is this provision that lies behind the stories of Africans being jailed and "endorsed out", of husbands being parted from wives and children, of hardship, frustration and bitterness—and anti-"pass" campaigns among urban Africans, of the "legally created limbo" we read of.

All South Africans have heard or read these stories. Not all South Africans are really in a position to make sound judgments about their validity, about the wisdom of Government policy or the rights and wrongs of it all.

Judgments

Any South African concerned about his country's future should be equipped with the facts about urban African legislation and its effects. On the ability of enfranchised South Africans to form sound judgments about these issues, much will depend.

We have said that the majority of Africans have no secure right to live and work, and no absolute security about their future, anywhere

in their own country outside the Reserves—areas for the most part poor and undeveloped, unable to support their existing population, and covering only 13 per cent of the land area of South Africa.

Put in these blunt terms, this seems an incredible state of affairs. The mind boggles. But it is a perfectly logical provision if one understands the thought behind it and considers statements of policy by Government spokesmen.

Mr. Froneman

A member of the Bantu Affairs Commission, Mr. S. F. Froneman, M.P. for Heilbron, is a senior government spokesman on Bantu Administration, and his remarks were a clear and unequivocal statement of the thought underlying Government policy.

He said, during the debate on the Bantu Laws Amendment Act, that the Deputy Minister of Bantu Administration, Mr. M. C. Botha, had made it clear “that the Bill contains only one single principle throughout, namely that the Bantu in the White area constitute only a temporary labour force and not a permanent part of the population of the White area.

“On the basis of the policy of separate development the Bantu is (*sic*) a citizen of the Bantu areas and there he must be given his rights, constitutionally, economically and socially, and when he is in the White area he is there only for the purpose of selling his labour in the labour market of the White economy, in the same way as the White man who is in the Bantu area is there only to render service to the Bantu.”

Assess Facts

In assessing this basic principle, the following facts should be borne in mind:

1. Two-thirds of South Africa's African population live and work outside the Reserves—in what Mr. Froneman calls the “White” area.
2. Many hundreds of thousands of these Africans were born in the urban areas or have spent most of their lives working there; they form a stable, permanently-settled part of the population of the urban areas.
3. Whites are outnumbered by non-Whites—in most areas by Africans alone—in what is described as the “White” area; that is, 87 per cent of the land area of South Africa outside the reserves.
4. The industrial labour force of the country is almost 70 per cent African and industry cannot exist without this labour.

Vast Labour Pool

Experienced political observers have come to the conclusion that the effect of Government policy is to transform the reserves into dormi-

tory areas for housing a vast pool of migrant labour—to be used where and when required in the South African industrial and agricultural economy. Migrant labour is entrenched as a permanent feature of South African life.

Strong arguments can be advanced to support this conclusion. It is sufficient here to note the large amounts set aside in the Government's development plan for building houses in the reserves—and to contrast this with the refusal to allow "White" capital in the reserves, which would lay the foundation for some real economic development of these areas.

It is hard to avoid the conclusion that the intention is to maintain the reserves in a state of economic dependence, so that migrant labour remains their life-line. One must also bear in mind the South African economy's labour requirements, accentuated by the present boom.

In assessing Government policy, one must examine the legal framework that has been instituted to give effect to the principle that the African in the "White" area is there solely for the purpose of selling his labour.

THE NEW LAW

The new law affecting the African came in three stages during which the provisions of all the previous legislation (particularly the Natives Urban Areas Act) were considerably extended to cover all Africans in the "White" areas and tightened up to prevent any possible loopholes.

In 1963 a controversial Bantu Laws Amendment Bill was presented to Parliament which raised such a storm of protest that it was withdrawn and a new Act passed omitting the contentious clauses.

Most of these contentious clauses were included in a new Bill which was passed by Parliament as the Bantu Laws Amendment Act, No. 42 of 1964. Later in the same session a consolidating Bill, incorporating both of these Acts and amending the Native Labour Regulation Act of 1911, was passed as the Bantu Labour Act, No. 67 of 1964. **This is the Act under discussion.**

Criticisms

The main criticisms of the Act were:—

1. The migratory labour system would be perpetuated;
2. All urban Africans would be reduced to the status of aliens;
3. No African would have the right to be in a town or city any longer;

4. Minor officials could break up the family life of such workers;
5. Wives could be prevented from joining their husbands;
6. Africans born in an area or living there for most of their lives could be sent away to areas unknown to them;
7. Any person declared "idle or undesirable" could be sent away even if born in an area;
8. Officials would be given wide and dictatorial powers over urban Africans;
9. The Government would have powers to direct the economy of the country through the regulation of jobs, homes, and the movement of all Africans outside the reserves.

The Principle of the New Law

Basically the new law is an extension of the principle underlying Section 10 of the Natives Urban Areas Act to cover every African outside the reserves.

Section 10 is based on one single principle, first introduced in 1952: **No African may remain lawfully in any urban (now prescribed) area for more than 72 hours.**

The Section exempts four groups of persons: Those who are able to prove that they:

- (a) were born in the urban areas,
- (b) have worked continuously for one employer for ten years or have worked for more than one employer for fifteen years in the same urban area,
- (c) are the wives, unmarried daughters or sons under 18 years who have lawfully entered the urban area and ordinarily live in the same premises as the husband or father,
- (d) have received permission to remain from a labour officer on condition that there is available accommodation in a Bantu residential area.

The onus to prove any of the above lies with the African and he is deemed not to be exempt unless he can prove the contrary. This has led to tremendous difficulty in places where the records of the urban authority do not extend for the required number of years, or where the registration of Africans was taken from a single authority and split between two, or where an African went on holiday and was unable to produce documents that its length did not exceed the prescribed limit.

Mr. Justice van den Heever in 1954, in the case *R. v. Kula and Others*, said that the prohibition is "directed *prima facie* against all natives . . . against millions of persons on the ground of race", and

exempts only a relatively small number, "who can usefully or satisfactorily be absorbed in the economic life of the urban community".

What the New Law Does

It enshrines the old Section 10 of the Natives Urban Areas Act in the new Bantu Labour Act, No. 67 of 1964.

It makes the principle applicable to *all* "White" areas which are now called prescribed areas.

It tightens up the provisions with regard to the residence of wives and children and makes it incalculably harder for families to live together.

It takes away the *right* of exempted persons to remain in the prescribed areas and gives officials discretion to apply these exemptions.

It gives wide powers to officials to declare persons "idle or undesirable" and therefore to remove them from prescribed areas.

It makes it much more difficult for "foreign born" Africans, even if they have been in an urban area for very many years and have married and brought up families there, to remain in South Africa.

It sets up labour centres to which certain classes of persons may be referred and from which they may be directed to go to any place specified by the officials.

It also deals with a number of other matters such as released areas, taxation, urban locations, Bantu authorities, urban councils and the rights of wives married by "customary union".

THE EFFECTS OF THE NEW LAW

On the Labour Force

The number of stable labourers permanently living in urban areas has been drastically reduced. An African who loses his job or who wishes to change his job or whose job finishes with the completion of a building project is now liable to be endorsed out. In other words, his reference book is endorsed with an order to remove himself from the prescribed area within a certain time to his home (which he may not have seen for a very long time).

His family may similarly be endorsed out with him.

He is replaced by other Africans who are admitted under contract to work for a specific firm for a stated period, after which they must similarly return to their homes.

As a result the towns and cities are today more and more inhabited by migratory African workers, accommodated in "bachelor" quarters, who are here only for a specific job for a specific time and then have to return.

On Family Life

The number of men living with their wives and children in urban areas has been drastically reduced. In Cape Town the ratio of adult men to adult women has now reached approximately 7:2. The Medical Officer of Health of the City of Cape Town, e.g. reports regularly that the number of illegitimate births in the locations exceeds the number of legitimate ones.

Wives and children who are unable to prove that they *lawfully* entered the urban area are endorsed out and often find themselves back in areas they have not seen for ten or more years, or, in the case of children, they have never seen.

African men who were married, often for twenty years, to Coloured women and who have children who are classified as Coloured who go to Coloured schools and are unable to speak any vernacular language, are ordered to remove themselves from areas where they have lived for years and to go to an African township.

Previously wives and children were allowed to be with their men if there was sufficient accommodation. Now women are only to be admitted if their labour is required in the urban area.

To get into town, a woman must get the written permission of her guardian if she is under 21 years of age, a certificate of approval from the Native Commissioner of her home area, a permit from the urban labour officer, and a certificate from the local authority that there is accommodation available. The permission to work is then endorsed in her reference book, which also states the contract of service.

In 1963 2,331 women were endorsed out of Cape Town and 4,851 out of Johannesburg.

On Foreign Africans

The census in 1960 gave the number of Africans born outside the Republic as 586,000; the Froneman Commission of 1961 estimated the number as nearer 836,000.

Most of these entered the Republic unlawfully, but have been allowed to remain here under permit for up to thirty years.

The permits were issued in the interests of the mining industry, and those still so employed are still exempt.

For all these years permits were easily issued in view of the war-time labour shortage and the economic development which ensued. Since 1952, however, the regulations have been gradually tightened up, except for those born in the High Commission Territories. In 1955 even these were no longer exempted, and thousands who had been in

South Africa for most of their lives and had set up stable families suddenly found themselves ordered out.

The 1964 legislation lays down that no African who was not born within the borders of the Republic of South Africa may be here, or may be employed by anyone here, without the written permission of the Secretary for Bantu Administration.

On Those Qualified to Remain in the Towns

Under the present law an official has discretion to declare any person redundant, idle, undesirable, or otherwise unsuitable for employment or residence in the town.

If this is done, he loses his right to remain there, even if he was born there or has lived there for the specified period of time.

Redundancy can be applied to any area where the Minister proclaims that there are more Africans than he considers necessary for reasonable labour requirements. In this instance the local authority must submit to the minister a list of persons to be removed with their families to any place where accommodation has been provided for them.

"Idle" persons under new legislation are any persons (except *bona fide* housewives) between the ages of 15 and 60 for women and 65 for men who are unemployed at the moment, or have refused "suitable" employment on three consecutive occasions, or have failed through their own fault to keep their jobs for at least a month on two occasions within six months, or who have been discharged from jobs more than three times in a year because of misconduct.

"Undesirable" persons are defined in a very wide manner and consist mostly of persons who have had some sort of political conviction or who were found to have taken any part in any disturbance which involves damage to property.

Idle and undesirable persons may be detained in a variety of places away from the urban area and their dependants removed from the area.

Labour officers have been given very wide powers to prohibit the employment of any person or to cancel his contract of service. These powers are detailed in Section 22(6)(b) of Act 67 of 1964, and any person against whom these powers are exercised immediately loses any qualification he may have had to remain in the area.

On the Sick, Crippled and Handicapped

Every industrialised society, indeed any other society as well, produces the chronic sick, the crippled and handicapped, those suffering from such diseases as venereal disease, tuberculosis and other contagious or infectious diseases. All these now may be removed under this Act whether they qualified by birth or long residence and work or not.

The Labour Centres

Section 25 of the Act establishes "Aid Centres" to which disqualified persons may be referred. This is a species of labour depot to which any person convicted under this Act or various other Acts may be committed.

From here, after due inquiry, the inmate may be issued with documents, be placed in employment or repatriated to his home or other place with his dependants. Those who fall foul of the influx laws are to be given a choice between prosecution, repatriation and employment under conditions which the administration fixes. Thus is the system of forced labour, against which there was an outcry a little while ago, now entrenched by statute.

CONCLUSION

This, then, is the position in which nearly 12,000,000 Africans within the borders of South Africa find themselves.

They have no right to be anywhere in the country they have helped to build with their labour, except in some 13 per cent of its land area, where the opportunities for productive work simply do not exist and where the unemployment figures are already extremely high.

This is the background of the "legally created limbo" referred to by a Judge of the Supreme Court when a woman appearing before him was found to be illegally where she was and was not allowed to be anywhere else; there are very many others who are also in such a "legally created limbo" and more who will find themselves there.

No employer can any longer hope to attain a stable trained African labour force, or choose his men, train them, or keep them as long as they perform adequately. Few Africans can hope ever to achieve a position of skill and responsibility in the land of their birth.

More than two-thirds of the industrial labour force of the country are now legally at the mercy of an administration which, however carefully it may try or wish to administer the law, must still carry out its provisions.

The only family life for by far the greater proportion of African men and women in the country is the short period they are at "home" in the reserves.

Any African who has lost his job, even through no fault of his own, or who becomes disabled in any "White" area is liable to removal to a place not of his choice.

Does South Africa realise what has happened and what the effects of this legislation are?

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