# Government Blackprint

## THE NEW PASS LAW:

# The Black Community Development Bill

**SHEENA DUNCAN**

THIS Bill was published on 31st October 1980 in Government Gazette, Vol. 184, No. 7282 as Notice 776 of 1980. There is a printing error on Page 1 where the Bill is mistakenly entitled the 'Laws on Co-operation and Development Amendment Bill.' Reference to 66(1) makes it clear that the correct title is the 'Black Community Development Bill.'

**The current controversy and public debate on the Bill once more emphasises the fact that Pass Laws of any kind cannot be just. Pass Laws are designed to control the movement and presence of persons in certain areas and to exclude some from full and free participation in the common South African economy and society.**

Dr Koornhof has announced that the Bill has been changed since it was first published and that it will be substantially different when it is introduced in Parliament. It seems that the new form will not be released until the Parliamentary session has begun. Whatever changes have been made there is no way in which such legislation can be acceptable. However, it is still of value to analyse the legislation as published, so as to be able to formulate some idea of what to look out for in the next version. There will probably be very little time for analysis and public discussion once the process of making it law has begun.

### ● THE REMOVAL OF LEGAL RIGHTS

Section 10(1) confers certain rights upon black people who have lived continuously in one town since they were born, or who have lived continuously and lawfully in one town for fifteen years or who have worked continuously in one town for one employer for ten years, and upon their wives and unmarried daughters and sons under the age of eighteen years. These are legal rights of permanent residence in urban areas and if they are unlawfully removed by bureaucratic action the aggrieved person can approach the Courts for redress.

Many attempts have been made in the past to remove Section 10 or to reduce the number of people who qualify — for example, through the 1964 Amendment Act and the 1968 Regulations for Labour Bureaux in the Bantustans which introduced the one-year contract system. In 1969 when the first draft legislation to establish Administration Boards was designed, Section 10 was removed, but there was such extensive public outcry from all sectors that the Act which was eventually passed did not include this provision. Then in 1978 an amendment to Section 12 of the Urban Areas Act was passed which removed Section 10 rights from the descendants of all black people whose nominal homelands had taken independence. Now the Section is removed altogether and no comparable rights are written into the new Bill.

### ● THE 72 HOURS PROVISION

Much has been made of the removal of this restriction which is also contained in Section 10 and reads: "No Black shall remain for more than seventy-two hours in a prescribed area unless . . .' Dreadful as it is, it at least provides a defence for those who are arrested and charged if they can prove that they have not been in the area

for that length of time. In the new Bill it is difficult to identify areas which will form the basis of a clear cut defence.

## ● THE DEFINITIONS

**'A disqualified person means . . . a Black.'**

The Bill provides that all black persons are disqualified persons in relation to any immovable property, land or premises outside a township (and outside a Bantustan). However, certain categories of disqualified people will not be prosecuted for being in a controlled area. These categories are bona-fide employees, bona-fide visitors and bona-fide dependants.

**A bona-fide employee is:**

(a) a person who is not a prohibited immigrant who is in lawful regular employment and has approved accommodation. The Minister decides what is regular employment. Approved accommodation is defined only as accommodation approved by a competent authority. *There are no legal rights here, only permits and authorisations.*

The availability of accommodation is already one of the major tools of the influx control machinery and will be even more so under the new legislation.

(b) a person who had permission as Section 10(1)(a) or (b) at the time the new Act comes into force. This excludes everyone born after that date and all those thousands of people who have not yet completed the full fifteen years' residence or the full ten years in one job.

(c) a person who qualified as 10(1)(a) or (b) when the Act comes into force and who is taking up lawful regular employment and has approved accommodation in another area. This is the clause that is claimed to provide freedom of movement. It does not introduce any new principle as the provisions were included in the amendments to the Black Labour Regulations gazetted on 13th June 1980. It is a curious definition of *freedom* which requires a person to prove that he is 10(1)(a) or (b), that he has regular employment (which will be defined by the Minister) and accommodation (which must be approved by a competent authority) before he is *free* to enjoy not being prosecuted for being disqualified.

(d) a person who rents a house or owns a house on lease-hold title in a township. At the moment the only people who are allowed to rent a house are those who are 10(1)(a) or (b) and have dependants in the area and this will remain the position under the new law until new Regulations are published.

(e) a person who is a prohibited immigrant who has a passport in which permission to work is endorsed and who has approved accommodation.

A Prohibited Immigrant in the definitions means a black person who is in possession of, or required to be in possession of, a passport. This includes all those people who are now in law citizens of Transkei and Bophuthatswana, as well as real foreigners. (It is such a wide definition that it would include South Africans who have South African passports and this is presumably something which will be altered in the final form).

As it is the policy that all the Bantustans shall eventually become independent, and as it is law that all black South Africans are citizens of one Bantustan or another, all black people will eventually be *prohibited immigrants.*

This legislation as it relates to being employed is in line with all that has gone before. Black people are not wanted in so-called 'white' South Africa unless their labour is required and those who are presently outside the urban areas will find it more and more difficult to obtain 'lawful regular employment' and 'approved accommodation.' Recruiting procedures are written into the new Bill and remain much the same as they were before in effect. Even the limited urbanisation which was controlled by the Section 10(1)(b) provisions will no longer take place by right.

**A bona-fide visitor is:**

(a) a person who has been given permission to be in an urban area or a township and to be in approved accommodation there.

(b) a person in a rural area who has the permission of the owner of the land to visit someone who is lawfully resident on that land.

(c) a prohibited immigrant who has permission stamped in his passport.

A person who is visiting someone lawfully resident in a township shall not require permission provided he does not visit for more than a total of 30 days in any one year, and provided suitable and adequate accommodation is available for the visitor. It is impossible to imagine how this will be enforced. Perhaps someone will decide to visit at weekends — two days at a time once a month with the odd bonus for public holidays.

How does he prove he has not been visiting for more than 30 days if he is arrested?

*The onus of proof is on him.*

Permission is also not required for visitors staying in hotels (international ones, of course), hospitals.

asylums, prisons or inebriate homes, or in educational institutions with boarding facilities.

Permission must be obtained for, but shall not be refused to, a visitor who is the dependant of a person who is not domiciled in a Bantustan and is not a prohibited immigrant, provided that there is approved accommodation.

Nor will commuters require permission to visit. A commuter is defined as being a person who commutes from his home in a Bantustan, or from land or premises he owns or legally occupies, and who does not stay overnight.

**A bona-fide dependant is:**

(a) a person who has a 10(1)(c) qualification when the Act comes into force. That is, someone who is the wife, unmarried daughter or son under the age of 18 who is living with a 10(1)(a) or (b) husband or parent in an Urban township at the time the Bill becomes law. This does not apply to those wives who come to town after the new Act. In future wives and children will have no legal rights. They will be dependent on permission as in (b) below.

(b) a person who is a dependant of a person resident in a township and in accommodation approved for him and his dependants. The critical shortage of family accommodation in urban areas, which is the direct result of the Government's policy between 1968 and 1978, is not showing any signs of being resolved on the necessary scale. Legal rights in terms of Section 10 cannot be denied merely because a person does not have accommodation. In future people will have no rights to residence and will be entirely dependent on housing being provided if t ey are to get permiss'cn to live as families. This will prove to be a much more effective control than any which have gone before. There will be no more KOMANI judgments because there will be no more legal rights. There will only be dependency on some official's agreement to approve accommodation specifically for a person and his dependants on an individual basis.

(c) in a rural area a person who is the wife of, or who is wholly dependant upon, a man who owns the land on which he lives or is in the regular employment of the owner of the land.

**A disqualified person** is someone who is not authorised to be in a township.

Those who are authorised are those who now hold Site or Residential Permits or Certificates of Occupation or Accommodation Permits together with those dependants who are listed on those permits, and people who live in the hostels.

*There is nothing in the new Bill which confers a right on any person to demand authorisation and it remains to be seen who will be so authorised in the future.*

## ● THE PENALTIES

Any black person who is in a white area and is not exempted from the disqualification conferred upon him by his blackness, and who is found in unauthorised employment or in unauthorised accommodation, can be fined up to R250 or sentenced to three months imprisonment for a first offence. The person who employs him, or introduces him into the area, or allows him to remain or to be accommodated is liable to a maximum fine of R500 or imprisonment for six months for a first offence, and for a second offence to a minimum fine of R250 (maximum R500) or at least three months imprisonment (maximum six months), or to both the fine and the imprisonment, or to the imprisonment without the option of the fine.

*The onus of proving himself innocent is on the accused person.*

The Court convicting a person who is found guilty of 'unlawfully occupying' may suspend the penalties on condition that he is repatriated to his home, or renders such community service as may be determined, or is enrolled to be trained as an artisan for a period stipulated by the Court.

## ● ENFORCEMENT

To enforce all this, inspectors may be appointed by the Department of Co-operation and Development, by a Development Board (the new name for an Administration Board), by a Village or Town Council (the new name for Community Councils). *Such inspectors shall have all the powers conferred on members of the South African Police* in terms of Section 43 of the Group Areas Act to 'without warrant at any time during the day or night without previous notice enter upon any premises whatsoever and make such examination and enquiry as may be necessary; at any time and at any place require from any person who has in his possession or custody or under his control any book, document or thing, the production to him

*(Continued on page 24)*

ces, resentful, frustrated and, increasingly, hungry. In 1969/70 most of the ex-labour tenants could become full-time migrant labourers in Johannesburg, Kimberley, Durban to support themselves and their families. During the 1970s, mounting unemployment in the cities has closed this safety value for many.

**LABOUR TENANCY TODAY**

In this way labour tenancy was formally ended in Weenen in 1969. Yet the system has not been eradicated. Both farmers and tenants have clung to it tenaciously and, despite its prohibition, it continues to operate under different guises throughout the district. In the ten years that have elapsed since the first removals many of the former tenants have drifted back to their previous homes or to farms nearby. The number of homesteads on many farms has crept up from the limits imposed in 1969/70. Some tenants are working full-time for their landlords, but many are working some variation of the old 'six months' system. Sometimes the whole family is under an obligation to work for the farmer, sometimes only one member is required to do so. In some cases only the children of the tenant are taken on as labourers. There are also instances where a family hires a substitute to work for the farmer to pay for their rent, while they work elsewhere or stay at home.

The people living at Weenen are currently struggling to bring permanence and stability into their lives. Under present conditions they have no security of residence at all. They are completely dependent on the good intentions and well wishes of the farmer. If he chooses to evict them, they have no means of contesting this, no matter how arbitrary or unfair the notice may be. Their presence on the farms is illegal, their 'contracts' outside the law. Many tenants have alleged that they have been able to stave off threatened evictions in the past only by paying their farmer a 'fine' in the form of a cow or a goat. Others recite a story of constant removals. Evicted from one farm, they approach the neighbouring farmer for permission to settle on his land, only to be forced to move on again at some later date.

The details vary but the general predicament remains the same. And so does the response of tenants when asked what they want — the right to live on the land and in the communities that they know, the right to keep their cattle and their fields and build for themselves a future where they are now.

**CONCLUSION**

The above report on three different areas in Natal, serves to highlight the broad spectrum of housing issues which require a just and humane response in Natal and, indeed, throughout the country.

At the same time, it is as well to remember that unless the structures of our society are changed situations such as these will not disappear. They are a result of **planned, ordered** and **legislated** oppression.

---


REFERENCES

1. Report on Richmond Farm Survey. Diakonia and Black Sash, November 1979.
2. Daily News, November 19, 1979.
3. Memorandum presented to the Honourable Minister of the Department of Community Development, Mr Marais Steyn, on the sale price of homes in Croftdene, Chatsworth, by the Croftdene Residents' Association.


---

*(Continued from Page 19)*

of that book, document or thing then and there or at a time and place fixed by him . . .'

**● RULE BY REGULATION**

**The trend in South Africa whereby the making of law is removed from Parliament to the Executive, which has been particularly evident since Mr Botha became Prime Minister, is inherent in legislation. The Minister is given wide powers to make Regulations, and the Bill leaves the majority of people at the mercy of the rules he may choose to make because so few legal rights are specified in the law itself. In addition the State President is given wide powers which in effect would allow him to amend the law by proclamation.**

*Editor's Note: We welcome the announcement that Dr Koornhof has withdrawn the Bill for referral to a committee for revision. We trust that it will bear no resemblance to the above.*