

# 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

**M**ost 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

**T**hese 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

**E**very 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

**T**he 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

**B**ecause 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.