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PROPOSALS CONCERNING THE LAWS CONTROLLING
THE PRESENCE OF AFRICANS IN URBAN AREAS

1. The Institute of Race Relations welcomes the invitation extended by the Deputy Minister of Bantu Administration and Education, the Hon. T.N.H. Janson, to all those concerned to make positive proposals to amend the system of influx control of Africans in the urban areas. It is appreciative of the Deputy Minister's understanding of the complex and overlapping nature of the relevant laws and regulations, the anomalies to which their administration gives rise, and the hardships they occasion.
2. In making the recommendations and suggestions which follow, the Institute wishes to emphasise that while it confines its discussion to such changes as can be made within the existing framework of what are commonly known as the pass laws, this in no way implies acceptance, much less approval, of these laws.
3. As long ago as 1948, the Native Laws (Fagan) Commission pointed out that the townward movement of Africans from the rural areas must be regarded as a normal economic phenomenon. With growing industrialisation, the migration of people from rural to urban areas, where the greatest concentration of industries takes place, is as necessary as it is inevitable. This is a world wide trend and is certainly occurring in South Africa among all population groups.
4. The overwhelming majority of the economically active African population is employed in the urban or prescribed areas of South Africa. The numbers in this group, exclusive of mining and agriculture, rose from 1 887 000 in 1960 to 2 647 000 in 1970. This clearly demonstrates that the number of African workers required as part of the regular labour force in the urban areas is continuing to increase, even if the rate of this increase has slowed down as a result of Border Areas development and the application of the Physical Planning Act.
5. The productivity of permanently employed workers is likely to be considerably higher than that of labour employed on a temporary basis for two main reasons. First, a worker employed on a permanent basis will acquire greater skills at work through practice and routine. Secondly, if employers know that their workers are likely to be reasonably permanent, they will find it worth-

while to give them training for increased productivity and improved skills. It is therefore clear that a reasonable degree of permanence for the regular labour force is highly desirable from the economic point of view, and is likely to lead to optimum use of the workers employed.

6. Workers required to work permanently in urban areas should live there on a permanent basis, though they could well be citizens of a homeland if they so wished. But permanently employed workers should not spend more than, at most, three hours per day travelling to and from work, i.e. a maximum of $1\frac{1}{2}$ hours per trip. Any longer journeys will result in fatigue and lowered work efficiency.
 7. It is therefore clear that workers required as part of the permanent labour force in urban areas should be able to obtain housing, family and social life and education for their children on a basis that will promote contentment, security and the gradual acceptance of the ways of settled, ordered and stable urban workers.
 8. The Institute wishes to discuss six aspects of the laws controlling the presence of Africans in the urban areas, namely:
 - A. qualifications for permanent residence in a prescribed area;
 - B. entry of wives and children of Africans qualified to remain in a prescribed area;
 - C. laws affecting contract workers;
 - D. laws affecting work-seekers;
 - E. the control of identity documents;
 - F. regularising the position of "illegal" workers and other Africans in the urban areas.
- A. i. The Institute is of opinion that, in the light of the proven requirements of commerce and industry for a steadily increasing number of African workers and in view of the desirability of encouraging Africans to achieve the status of permanent workers with the rights such status entails, the time has come to review the qualifying periods laid down in the present Bantu (Urban Areas) Act. It is of opinion that reduced periods in respect both of continuous employment with one employer and of regular employment with a number of employers would serve as significant incentives to Africans to perseverance and lawful living by making the goal of

status relatively more attainable. It believes that the reduced periods it proposes provide a sufficient test of the adaptability of the African concerned to the conditions of work and life in an urban area.

The Institute accordingly urges that Section 10(1) (b) of the Act be amended to provide for the reduction of the ten-year qualifying period of continuous employment with one employer to five years, and of the 15 year period of lawful residence (which in effect means regular employment) to ten years.

- A. ii. "Entitled to permanent residence" should be noted in the person's reference book, and should entitle him or her to be put on a list for housing in accordance with his or her family circumstances.
- B. i. The Institute points out that no restriction on the choice of marriage partner on the grounds of her previous residence elsewhere is made in the case of White foreigners or immigrants or of the Coloured people. State interference in the choice of a marriage partner cannot be morally justified by the wish to limit the number of people of a certain population group living in a particular area.
- B. ii. The Institute strongly urges that any man who has qualified under Section 10(1) (a) or (b) of the present Act should have the unrestricted right to have his wife with him, whether he married her before he came to the town in which he lives, while he qualifies, or after he has qualified for permanent residence, irrespective of the residential qualifications of his wife or wife-to-be.
- B. iii. As the law now stands, a qualified African who marries a woman not herself qualified for permanent residence in a town, is not given the right to have her enter the town in which he lives. In 1972 the then Deputy Minister announced that certain concessions would be made to enable the entry of newly married wives into the urban areas, an announcement that was widely welcomed. In point of fact, from available evidence it appears that such concessions have not yet been put into practice, mainly, one is given to understand, on the grounds that "suitable housing" was not available. The Institute is of opinion that the suitability of the proposed housing should not be stringently assessed. While the Institute, which has for many years been clamant in drawing attention to growing housing short-

ages in the towns, obviously does not subscribe to overcrowding on principle, it considers the maintenance of family unity the over-riding priority. In other words, it believes that it is better for husband, wife and children to live together even if it be - hopefully temporarily - in overcrowded conditions, than for the family to be separated with all the undesirable results this may entail.

- B. iv. The desirability of keeping children under parental control wherever this is possible is generally recognised. Children should, therefore, be allowed and indeed encouraged to live with their parents, and adequate educational facilities should be progressively provided for them where their families live.
- B. v. In the same context, the Institute urges that women whose husbands die or divorce or desert them should have the right to remain where they lived while they were married, especially - but not only - where this will enable them to keep their families together after the always painful experience of the death or desertion of a husband and father.
- B. vi. The Institute reiterates its earnest plea that the wife and children of a man qualified for continuing residence in a town be allowed to join him.
- C. i. The contract labour system is an attempt to prevent an increase in the number of Africans qualified to remain in the urban areas while at the same time satisfying those demands for labour made by employers which cannot be met from local sources. It is, however, a system which satisfied neither the worker nor the employer, since the worker lacks security and the employer lacks stability of labour. It is economically wasteful and socially unacceptable in its present form.
- C. ii. The Institute suggests the amendment of the present labour regulations by the provision that, where an employer certifies after one year that the worker is still working for him and, having rendered satisfactory service, is required for a further year, he should be allowed so to remain without being compelled to return home in person and enter into what is virtually a new contract of service (thereby effectively interrupting continuity of employment) as is the case now.

Such extension should be permissible annually and, after five years, the worker should automatically qualify under A. i. above, since it has by then been demonstrated that his labour is permanently required in the area and he has rendered satisfactory service for five years.

D. i. The Institute recognises that uncontrolled entry into towns has created housing and employment problems in many parts of the world, and that influx control in South Africa is considered necessary in order to prevent urban unemployment and the slum conditions which might arise from the free entry of workseekers. It must, however, likewise be recognised that regulating access to the labour market solely by means of registration and attestation for employment by labour bureaux in the homelands is in many ways extremely unsatisfactory. Unless employers have a sufficiently large labour force to enable them to send a recruiting official to such a labour bureau, there is no contact between employer and potential employee and consequently there is no means whereby worker potential and job requirement can be assessed and matched. Africans are aware that the likelihood of finding work is greater if they apply in person for a vacancy. This puts a premium on illegal entry of work-seekers.

D. ii. The Institute considers that it would be of value to attempt to ascertain what the extent, in fact, is of the number of potential workers seeking to enter a prescribed area independently to look for work.

It therefore suggests that an experiment be conducted in one prescribed area along the following lines:

- (a) establish workseekers' hostels for both men and women in the area;
- (b) make provision for the registration of workseekers entitling them to look for work for a period of one month;
- (c) if they find work within this period, they should continue to reside in the workseekers' hostel not longer than six months, working either in their first or subsequently found two further jobs, provided they are not unemployed for longer than one month at a time;
- (d) they will be entitled to continue to live and work in the town if, during this probationary period of a maximum of six months, they find an employer

willing / . . .

willing to enter into a year's contract of work as outlined in C. ii above. The further procedure would be as outlined in that paragraph;

- (e) in the light of the experience, which should be carefully analysed, yielded by such an experiment, the system might be extended or modified.

E. i. It is common cause that the control of identity documents, in particular of reference books, constitutes one of the most time-consuming and difficult tasks assigned to our police force, and one of the greatest areas of friction between the police and the African population in urban areas.

The Report of the Commissioner of Police for 1970-71 states that 615 000 people (which is 24% of all those going on trial for various offences) were charged with infringements of reference book and influx control regulations. The establishment of Aid Centres appears to have reduced to some extent the number of offenders under these regulations.

E. ii. The Institute urges that police instructions should be amended to the effect that no person is to be arrested for failure to produce identity documents on demand. It considers that the police should only demand such documents if the circumstances are of a sufficiently suspicious nature to warrant police intervention. The mere presence of an African man or woman should not of itself constitute "suspicious circumstances". The law of trespass provides sufficient protection against undesirable intrusion of premises.

E. iii. In all other circumstances, persons unable to produce identity documents on demand should be given seven days to produce them to their nearest - or a specified - police station.

E. iv. It may be argued that the suggestions made above would allow some criminal elements to escape the police net. Against this must be weighed the strong probability that such changes would bring law-abiding African people more willingly onto the side of the forces of law and order than is the case at present.

E. v. The Institute believes that the changes suggested would assist in reducing the resentment felt by almost all Africans against laws requiring the production of

identity document on demand and against those who enforce such laws. It must be remembered that all other sectors of the population also carry identity documents and, when called upon to produce them, are usually given seven days to do so. Only African people are subjected to the indignity of being accosted in order to "produce documents or get into the police van". Such changes, in the opinion of the Institute, would contribute towards the improvement of race relations in South Africa and would considerably ease the task of our police force.

F. i. A matter of great concern, because of its far-reaching effects on the lives of the people involved, is the existence of what is probably an appreciable number of Africans in the urban areas whose presence there is classified as "illegal", but who in fact do qualify for urban residence although they lack the requisite proof to legitimize their claim. This often tragic situation arises from negligence, ignorance, the loss or destruction of the necessary documents (school reports, references, etc.) the death of or inability to trace relevant witnesses, and mistaken entries made in reference books.

F. ii. Negligence and ignorance are interwoven. There are many Africans who simply do not realise the importance of having every child entered on the house permit or of informing the township superintendent when a child goes to the rural areas for a period to stay with relatives, possibly because of a domestic crisis in the home or to go to school. Others know the importance of registering births, of entries on the housing permit, and so on, but for a variety of reasons fail to do so. The time involved in having even a straightforward entry made and the unco-operative (sometimes corrupt) behaviour of some of the clerks at these various offices often defeat the best intentions. As the Deputy Minister himself pointed out (Rapport, 14 October 1973) there are a number of employers who fail to register their African employees, even if their service has been as long as 12 or 14 years. Here again, negligence, ignorance and the daunting nature of the procedure involved are inter-related. Mistaken entries in reference books seem to have occurred particularly in respect of women in the early 60's when there was great pressure to take out reference books as the date on which these became mandatory approached. Instead of entering the birth-place of the women herself, that of her father seems not infrequently to have been entered. There are poignant cases on record of women being "endorsed out" to areas utterly unknown to them.

F. iii. The problem is how to deal with this tangled situation, with this unknown number of "illegals" among whom there are those who, were they not too frightened of being pounced on if they emerge from their hidden anonymity, could validate their right to be in town. The effectiveness of the Aid Centres could be greatly increased if the people affected knew more about the constructive aspects of the Centres and if these had a staff large enough to undertake the often painfully long process of validation.

F. iv. The Institute suggests that, in order to encourage employers who have failed to register their African employees and Africans who consider themselves qualified under Section 10(1) (a), (b) or (c) to come forward for registration, a moratorium be announced for a period of, say, two or three months during which period employers and Africans alike will not be charged with statutory offences committed in the past. Possibly such a moratorium might be introduced at different times in the 22 Bantu Administration Board areas and a team of specially trained officials to undertake the process of registration might assist in the different areas during the period of the moratorium. Clearly such a moratorium would have to be intensively publicised in all available media to make its purpose known.

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