

(13)

NATIVE TRADE UNIONS.

The definition of "employee" under the Industrial Conciliation Act No. 36 of 1937 excludes Natives (or purports to do so) from the scope of the Act. The result is that a Native cannot be a member of a statutory Trade Union under the Act and therefore cannot^{be} directly represented on an industrial council or a conciliation board. Provision is, however, made for a Native employee's interests to be represented by an Inspector of the Department of Labour and any conditions fixed in an industrial council agreement or a conciliation board agreement can be extended to apply to Natives. A Bill for the registration and regulation of Native Trade Unions was introduced towards the end of the recent Session of Parliament. This Bill will remedy the above deficiencies and will provide for the statutory recognition of Native Trade Unions and will set up machinery for the settlement of disputes between Natives and their employers.

Owing to the special conditions of employment of Native Mine labourers and that they are in a different category from other industrial workers, special provision is made to safeguard their interests. The labourers on the mines are engaged under definite contracts which are entered into at their homes before coming to the mines. They are legally bound by such contracts, breach of which is enforced by law.

The labourers are contracted chiefly from rural areas and without the Union (e.g. Portuguese East Africa under the the Mozambique Convention) and their future is not bound up with the Industry. Usually when the period of contract of a labourer expires he desires to go home for a time and returns when it suits him.

LOCAL GOVERNMENT AND POLITICAL REPRESENTATION.

The "District Council" system for the local administration of Native areas had its origin under the Glen Grey Act No. 25 of 1894 (Cape of Good Hope). The Glen Grey District Council was established in January, 1895, for the administration of local affairs within the District of Glen Grey.

The Council consists of twelve Natives as members of whom four are nominated and appointed by the Minister of Native Affairs, while eight are elected. The Magistrate of the district is an additional member of the Council and its Chairman.

Native Councillors receive fees and allowances in terms of a tariff for the performance of their duties.

The District Council system adopted in respect of the Glen Grey District Council was extended to the Transkei shortly after the passing of the Glen Grey Act No. 25 of 1894. The Transkei system, however, also provided for the creation of a combined body representative of the various district councils of the Transkei. District Councils were established from time to time and a combined council was formed. The position to-day is that there is one General Council for the Transkei and twenty-six District Councils functioning under it.

Each District Council consists of six Native members with the Magistrate of the district as Chairman. Of the six Native members, two are nominated and appointed by the Governor-General and the remaining four are elected.

The United Transkeian Territories General Council consists of the Chief Magistrate, who is the Chairman and Chief Executive Officer, the Magistrates of the districts in which there are district councils, the Chiefs of Tembuland, Eastern Pondoland and Western Pondoland, and the Chief of the Auro-Gcaleka ex-officio, and three Native representatives from each District Council.

A Standing Executive Committee was established in 1932 - This Committee consists of the Chief Magistrate together with three Magistrates and four Native members. This Committee is responsible for the administration and control of all Council affairs falling within certain defined categories.

The Transkeian General and District Councils are constituted as auxiliaries to the administration, their primary and most important function being to associate the people with the control of local funds, to give them a voice in the conduct of affairs intimately affecting their own interests, to train them to constitutional methods of expressing their wishes in regard to general and local policy and to keep the Government and its officers in touch with Native feeling.

Generally the debates cover a wide range of subjects, including the revision of laws particularly affecting the Native population.

In local administration the various district Councils stand to the General Council in the relation of individual parts of a single body. They are the executive organs of the General Council, which distributes among them such duties as road maintenance, dipping operations and supervision of commonages, but remains financially responsible for their actions. Strictly speaking, they have no separate income or expenditure, but there is one common treasury into which all revenues flow and which is chargeable with the cost of the different services authorised. This arrangement has the two-fold merit of allowing for local variations and ensuring, under central control, the accumulation of funds which enable the undertaking of projects beyond the means of any single district organisation. Generally speaking, district councils are responsible for the initiation of expenditure proposals which are collated and laid before the General Council, in the form of annual estimates of expenditure. The estimates are considered and voted upon by the General Council and are ultimately submitted for the approval of the Minister of Native Affairs. At present the annual revenue of the General Council is approximately £190,000 with an equivalent expenditure.

The operations of the General Council cover a very wide field and embrace the construction of bridges and causeways; maintenance of some four thousand five hundred miles of road at a cost of approximately £60,000 per annum; the construction and maintenance of dipping tanks of which there are now 714 for cattle and 867 for sheep in the twenty-six council districts; the dipping of cattle; the establishment and upkeep of wattle plantations; the subsidising of Mission hospitals until such time as the Cape Administration assumes responsibility under the Government's proposed National Health Scheme; the establishment and maintenance of Agricultural schools and experimental farms for the teaching of agriculture to Natives; the employment of Native Agricultural Demonstrators by means of whom a steady and continuous campaign is waged in the interests of agricultural development amongst the Native people and various other services of a local nature

Other forms of local Government in certain Native Areas prior to the passing of the Native Affairs Act, No. 23 of 1923, were the four Native Reserve Boards constituted under Ordinance No. 6 of 1907 of the Orange Free State. The Boards consist of a Chairman and Vice-Chairman (European) and not less than five and not more than seven non-European members.

The Ordinance authorises the Boards to deal with matters of local interest, such as roads, fences, sanitation, water rights, dipping tanks, schools, etc.

During the 1920 Parliamentary Session, the Native Affairs Act, No. 23 of 1920, was passed providing for the establishment of local councils in areas where, in the opinion of the Native Affairs authorities, the condition or stage of development of the inhabitants of the area concerned is such that the establishment of a council may be proceeded with. The Act stipulates that the members of any local council should not exceed nine in number and that they should all be Natives but an officer of the public service might be designated (and usually is) by the Minister of Native Affairs to preside at the meetings of and generally to act in an advisory capacity to any local council. But this Act provides not only for the establishment of local but also of General Councils whenever it appears that in any two or more local council areas the powers conferred upon those bodies can be more advantageously exercised by a body with jurisdiction over all those areas.

A General Council may exercise such of the powers conferred upon local councils by the Act as are allocated to it by the Governor-General upon the advice of the Native Affairs Commission and immediately upon such allocation it automatically becomes incompetent for the ~~for~~ constituent local councils to continue to exercise those powers.

A Local Council has statutory power within its area of jurisdiction to provide :-

- (a) for the construction and maintenance of roads, drains, dams and furrows;
- (b) for an improved water supply;
- (c) for the suppression of disease of stock by the construction and maintenance of dipping tanks and in any other manner whatsoever;
- (d) for the destruction of noxious weeds;
- (e) for a suitable system of sanitation;
- (f) for the establishment of hospitals;
- (g) for improvement in methods of agriculture;
- (h) for afforestation;
- (i) for educational facilities;

and generally for any purposes which can be regarded as proper to local administration, as may be committed to it by direction of the Governor-General.

Twenty-one local councils have been established under the Native Affairs Act.

Summarised the position is :-

(a) United Transkeian Territories General Council		: 26 District Councils.
(b) Ciskeian General Council :		
(i) Glen Grey District Council	1	
(ii) Local Councils	<u>8</u>	9 District and Local Councils.
(c) Reserve Boards	4	
(d) Further Local Councils	13	
	<u>52</u>	

There are, therefore, fifty-two Councils, whether one calls them District Councils, Reserve Boards, or Local Councils.

Representation of Natives.

(See separate memo. headed "Representation of Natives").

Section 35

In this Act, and any proclamation, rule or regulation made thereunder, unless inconsistent with the context-

"customary union" means the association of a man and a woman in a conjugal relationship according to native law and custom, where neither the man nor the woman is party to a subsisting marriage;

"house" means the family and property, rights and status which commence with, attach to, and arise out of the customary union of each native woman;

"location" means and includes-

(a) any area set apart or reserved for communal occupation by Natives;

(b) any area (other than a municipal location) set apart or reserved and made available for native occupation under separate title, together with any commonage included therein;

(c) land acquired by Natives for tribal occupation;

(d) any area proclaimed by the Governor-General as a location for the purposes of this Act;

"marriage" means the union of one man with one woman in accordance with any law for the time being in force in any Province governing marriages, but does not include any union contracted under native law and custom or any union recognized as a marriage in native law under the provisions of section one hundred and forty seven of the code of native law contained in the schedule to law 19 of 1891 (Natal) or any amendment thereof or any other law.

"Minister" means the Minister of Native Affairs, or any other Minister of State acting in his stead;

"Native" shall include any person who is a member of any aboriginal race or tribe of Africa: Provided that any person residing in an area proclaimed under section six (1) under the same conditions as a Native shall be regarded as a Native for the purpose of this Act:

"native commissioner" includes an additional and an assistant native commissioner;

"partner" means any spouse of a customary union;

"pass area" means an area defined by proclamation within which all Natives may be required to hold and carry passes.

Act No. 9. of 1929:

Amendment of Section thirty-five of Act No. 38 of 1927:

9. Section thirty-five of the principal Act is hereby amended-

- (a) by the deletion of the definition of "customary union", and the substitution of the following definition-

" ' customary union' means the association of a man and a woman in a conjugal relationship according to native law and custom, where neither the man nor the woman is party to a subsisting marriage".

- (b) by the insertion after the definition of "location" of the following definition of "marriage" -

"marriage" means the union of one man with one woman in accordance with any law for the time being in force in any Province governing marriages, but does not include any union contracted under native law and custom or any union recognised as a marriage in native law under the provisions of section one hundred and forty-seven of the Code of Native Law contained in the Schedule to Law 19 of 1891 (Natal) or any amendment thereof or any other law.

- (c) by the insertion of the words "an additional and" after the word "includes" in the definition of native commissioner.

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