INTERVIEW WITH MR. J. MOULD YOUNG OF THE NATIVE AFFAIRS COMMISSION IN THE OFFICE OF NATIVE LABOUR AT 11. A.M. ON MONDAY 31st OCTOBER, 1938.

PRESENT: Adv. H.J.B. Vieyra and Mr. E.L. Benjamin.

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It was the intention of the Commission, at a later date, to meet interested bodies and hold private discussions, as it travelled round the country. No public sessions would be held.

Mr. Young pointed out that any "simplification" would probably involve abolition of one or more of the present Passes and while the Government would not consider complete abolition of all Passes it might consider abolition of a few of the separate passes. In submitting evidence the Joint Council might, therefore, suggest abolition of one or more passes. It might also suggest less indiscriminate demanding of passes by policemen.

The Native Affairs Commission would be in Pretoria from the 16th - 24th November and evidence could then be presented.

/MM

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Terms of Reference (b) - Answers to Questionnaire -
Statement on the Pass Laws by

Rev. Z.R. Mahabane.
Mr. R. Cingo.

STATEMENT ON
P A S S L A W S, TERMS OF REFERENCE (bX.

The African people of the country, except those specially exempted, are, for various reasons, required to carry all or some of the following documents:-

(a) A Travelling Pass in the Orange Free State and Transvaal,
(b) A Permit to look for work,
(c) A Registered Service Contract,
(d) A Special Night Pass,
(e) A Tax Receipt,
(f) An Identification Card for farm labourers,
(g) A Ledgers Permit, in urban areas,
(h) A special pass for Miners or factory labourers.

The question of Pass Laws has not only exercised the minds of the African people but has also engaged the attention of Government Committees and Commissions for over a quarter of a century. These Committees and Commissions -- The Moffat Commission of 1919, The Inter-Departmental Committee on Pass Laws, 1930, The Native Economic Commission of 1930-1932 and The Young Report of 1930 - have recommended that radical changes should be made in Native Pass Laws with a view to the introduction of a simplified form of Registration for Identification,

The advocates of the Pass System have advanced, inter alia, the following reasons for its existence and enforcement, viz:-

(a) The Pass affords protection to the rural African , who is introduced into new and strange surroundings,
(b) It prevents absconding from farms or other places of employment,
(c) The Pass is a means of identification,
(d) It represents a Service Contract, and thus protects the African against exploitation by unscrupulous employers,
(e) Generally, it prevents the commission of Crime,
(f) It prevents the wholesale Influx of Africans into Towns, many of whom would obtain no employment, and then become a danger, a public liability and nuisance.

Re PURPOSE OF PASS.

It might be conceded that some useful purpose is served by the Pass, that is, as far as identification is concerned, also that some protection is offered to Africans against the malpractices of many employers of African labour, in so far as the Service Contract is a legal document, which represents an agreement, between employer and employee, enforceable in a Court of law. Be that as it may, it must be borne in mind that, generally, the African labourer is, for various reasons, most reluctant to resort to litigation or to any legal machinery to enforce his rights against an European employer. He neither remains stoically silent or absconds to escape from the clutches of his master. In the last analysis he is the sufferer even when he has a sound case against his employer. In such cases the Service Contract is no protection to him at all.

ABSCONDING.

If the conditions of employment, especially farming conditions, would be improved and made more attractive no African labourer would abscond from one farm to another, and the Influx of Africans into urban areas would be curbed, or at any rate, considerably curtailed. In any case, expert opinion on the matter, e.g., the Native Economic Commission of 1930-1932, considers it undersirable that the liberty and movement of the Natives should be further restricted, p.107, para. 733.

CRIME:

/Regarding...

conditions of life

Regarding Crime, the Pass Laws have failed hopelessly to prevent the commission of Crime. On the contrary there has been a definite increase in the crime wave. It would appear that in Pass Law Provinces Crime figures are higher than in Non-Pass Law Provinces. The argument that the position might have been worse without the Pass does little or nothing to commend the system. Nowadays, with the increase of elementary Education, the intelligent African criminal against whom protection is sought, but that knows the tricks of his trade, finds no difficulty in procuring or forging a safe pass to facilitate his movements and manouvres. It is usually the illiterate, the ignorant and innocent African who is arrested for failure to produce a pass. Further, if it is claimed that the Pass System is effective in preventing the commission of crime, it would seem reasonable and logical to apply it to all sections of our South African population. Such, however, is not the case; yet Criminals are, and have been, found in large numbers amongst all sections of our population. Why, then has the African been encumbered with these documents?

RACIAL TENSION.

The task of demanding the production of Passes devolves on the Police and on certain Railway officials, that of trying 'technical offences' against the Pass Laws devolves on the Magistrates, and that of issuing Passes to Africans rests on certain Government Officials and Employers (European) or their duly authorised agents. The net result is, and has been that the African regards the Police, even the African Police, the Magistrate and all Government Officers as a gang of heartless oppressors. An unhealthy state of affairs. The tragic outcome of all this has been the engendering of racial feeling and hostility between White and Black. The African, as it were, smarts under a burning sense of grievance and injustice. Where recognized constitutional methods and channels have lamentably failed to secure relief when relief is sought, the sufferer, in desperation, often resorts to other and perhaps more drastic and costly means to gain his end. The Africans are not far from that stage as far as the perpetuation of the Pass System is concerned. Campaigns against the Pass system are not a new development amongst Africans. The years 1919, 1931 and 1942 have witnessed mass struggles against these Laws; while the National Anti-Pass Campaign of 1945-1946 and similar upheavals, having as their objective the Burning up of Passes and similar documents, are no freak or abortive efforts of the so-called agitator. They are the outward manifestation of an inner and deep-seated resentment of, and opposition to, all forms of Passes. The recent failure of the Campaign is merely a temporary setback, but is certainly due to no change of heart and attitude towards the Passes or on the part of the African.

improving conditions on the land

As the relationships between White and Black have been fundamentally and seriously strained by the operation of these Laws we consider that nothing short of their total abolition can stop and stem the determined, but spontaneous movement and tide for relief and release from them.

PRICE PAID.

The application of thsee laws has the undesirable feature of introducing large numbers of law-abiding Africans to the Prison and making them gaol-birds at an early age. These laws create technical offences which involve little or no moral disgrace. In perpetuating the laws, the country is paying a tremendous price;- Firstly, in the actual costs of administration Secondly, in the loss of labour when the African is detained during imprisonment and arrest; thirdly in the actual loss which the African himself suffers in paying heavy fines which he can ill

afford to pay form his meagre earnings, and last but not least in the moral deterioration which the African experiences.

It is unstatesmanlike to dump law-abiding persons, convicted for the contravention of pass laws, into prisons where they are able to learn the wiles of the hardened and heartless criminal. In any case imprisonment in any form leaves an indelible stigma on the moral, spiritual and social life of the prisoner. This results in irreparable loss in human values. That is the lot of the African who suffers arrest and imprisonment for failure to possess or produce a pass.

In view of the abovementioned brief considerations, and in view of the fact that the Pass System involves the constant and undesirable interference with the freedom of movement of the African, we strongly recommend

(a) The Abolition of Pass Laws,
(b) That citizens of all races should carry an Identification Card bearing such particulars as are essential for protection, e.g. Service Contract,
(c) That this Identification Card should not be demanded by the Police unless there are reasonable grounds for suspecting that some offence has been or is about to be committed.

We note with concern and alarm the fact that the Government has passed these Laws without the consent of, and against the expressed voice and definite Protests of the Africans.

Signed.

Signed.

c/o Beicheke Parsonage,

B. Location,

KROONSTAD. O.F.S.

February, 1947.

pass ? 63,000 working migratory squatters housing

report bureaux depot exchges. Lab.

CONFIDENTIAL - AND NOT FOR COMMUNICATION.

REPORT OF INTERVIEW WITH A.L.BARRETT ESQ. RE - EXEMPTIONS FROM PASS LAW.

1. Since the coming into force of the Native Administration Act (Act 38/1927) no exemptions have been legal. The Police Department could,therefore, question them at any time and if they were upheld, as would certainly be the case, all exemptions would be out of order,which would entail much hardship on respectable Natives who have had exemptions for years. It is therefore essential that this legal aspect should not be openly discussed. If the Joint Council forced publicity it might have the above consequences.

2. Nevertheless, exemptions are issued as an administrative matter and the Police have not yet challenged them.

3. But,while this method holds it is the intention of the Department to limit strictly the number of exemptions so issued.

4. And it is very important that those holding such exemptions should be of a very steady type.

5. It is therefore the custom of the Chief Commissioner,in dealing with each case on its merits,to give preference to older,well known Natives of established good character,even though these have not high education standards.

6. It is his own personal opinion that it is well for young men to so establish their characters before

expecting/

expecting exemption on mere school standards.

7. Nevertheless, no renewal of exemption is refused unless new evidence against the character is brought forward.

8. New regulations for exemptions are in draft, and Mr.Barrett does not know why they have not been released for the Gazette.

SIMPLIFICATION OF THE PASS LAWS

The Johannesburg Joint Council of Europeans and Africans has been informed that Mr. J. Mould Young, a member of the Native Affairs Commission, who has been appointed to enquire into the present position of the Pass Laws with a view to their eventual simplification, will be in Johannesburg at the Office of Native Labour at 11 a.m. on Monday, 31st of October.

Interested bodies who would like to give evidence in this matter should embody their representations in the form of a memorandum which can be handed to Mr. Young at the time mentioned above.

/MNE

J.C. 32/38

JOHANNESBURG JOINT COUNCIL OF EUROPEANS AND AFRICANS

MEMORANDUM ON THE SIMPLIFICATION OF THE PASS LAWS TO BE SUBMITTED TO THE NATIVE AFFAIRS COMMISSION

Whilst deprecating the discrimination which exists between Europeans and Africans in regard to the matter of passes, we welcome this opportunity of presenting the following memorandum in the hope of ameliorating the present position.

(1) Evidence to previous Government Commissions has shown it to be in the interests of the Native that he be in possession of a document by means of which he may establish his identity. (Inter-departmental Committee on Pass Laws 1920. Paragraphs 29-31. Native Economic Commission 1930-32. Paragraph 728). It would also be of advantage if the form of document and conditions of issue were uniform throughout the four provinces of the Union.

(2) We, therefore, recommend that all existing Pass Laws be repealed and a Union measure substituted to be entitled the "Native Registration Act" and that each male Native be registered in his district of domicile at the age of eighteen years or earlier if he leaves his home before reaching that age.

(3) Upon registration the Native shall be issued with a certificate to be called an "Identification Certificate" which shall be a small book similar in form to a passport and shall be printed in both the official languages and at least one Bantu language, the Bantu language to vary with the district. The book shall contain particulars of the holder's name and personal identity and shall be signed or impressed with the thumb-print of the holder.

(4) The mere carrying of a pass, at present, is no guarantee of identity. Numbers of Natives when arrested are in possession of passes other than their own and cases are known of passless Natives who hire passes for limited periods of time from their more fortunate neighbours.

(5) We recommend, therefore, that it shall not be compulsory for a Native to carry his Identification Certificate on his person.

On the other hand should a Native be arrested for some trivial offence it would obviously be to his advantage to have his Identification Certificate as the Police would then be in a position to issue a summons. The only alternative, should the arrested Native not have his Identification Certificate on his person and should he be not known to the Police would be summary arrest.

(6) We, therefore, recommend that Natives be encouraged to carry their Identification Certificates at all times and that a short notice setting forth the advantages of such action be printed in a prominent place in the Identification Certificate.

(7) Abolition of the compulsion to carry a large number of documents on his person (as at present) would do away with the present indiscriminate harassing of Natives by police officials which is to-day the real grievance against the Pass Laws. This would be a step towards the promotion of a better relationship between Natives and the Police.

- (8) -

(8) It might be argued that the abolition of compulsion to carry a pass or Identification Certificate would prevent the tracing of deserters from farms or other employment. But the present system of indiscriminate demanding of passes from Natives on the chance that an occasional deserter or other form of malefactor will be found, is too haphazard to be of any value and as mentioned above and below (paragraphs 4 and 11) the experienced Native can always procure sufficient passes to ensure his safety.

(9) The official Government policy of segregation of residence in urban locations leads to a very simple form of control of Natives in urban areas and we feel that this renders the system of control by means of passes redundant.

(10) It has frequently been pointed out that night passes are of no value whatsoever. They can easily be forged and the genuineness of handwriting or signature can not be checked.

(11) This Council, therefore, recommends that all curfew regulations be abolished. As mentioned above (paragraph 9) the proper provision of accommodation and recreational facilities in the locations will replace the attractions offered by the towns in the evenings.

(12) A Native shall produce his Identification Certificate for the inspection of a prospective employer when soliciting work and it shall be an offence on the part of an employer to engage a Native who is not in possession of an Identification Certificate. The employer shall report to the Native Commissioner the engagement of a Native within seven days of engagement. Failure to report such engagement shall be an offence on the part of the employer not of the employee.

(13) The terms of the engagement shall be inscribed in the Certificate by the Native Commissioner. Monthly renewals shall be by revenue stamps, as at present, which may be affixed below the conditions of employment.

(14) In rural areas a system of registering service contracts must be devised to meet the special conditions.

(15) Passes controlling the movements of Natives shall be registered in the Certificate by means of rubber stamps denoting the destination of the Native and the length of time for which the pass is valid.

(16) No mention shall be made in the Identification Certificates of any criminal offence for which the bearer has been convicted; nor shall any mark be made on the certificate indicative of any such conviction.

(17) Payment of the Poll Tax shall be recorded in the Identification Certificate by means of a revenue stamp (or series of stamps, should a means be adopted for payment of the tax in instalments) and no other receipt for this payment need be given.

(18) This Council recommends that provision be made for the issue of Identification Certificates to foreign Natives who are now permanently resident in the Union.

(19) This Council recommends that exemptions be granted to the following classes of Natives:-

(a) All Natives at present holding letters of exemption under any existing law, such requisites for exemption to remain.

(b) All Natives in possession of a Std. VI certificate.

(c) Registered Parliamentary voters.

(20) This Council recommends that Native women shall be exempt from all the provisions of this Act. But any Native women shall be entitled to receive an Identification Certificate should she apply for one.

/MNE

JOHANNESBURG JOINT COUNCIL OF EUROPEANS AND NATIVES

1931

THE NIGHT PASS SYSTEM

The legal position with respect to night passes as indicated by the Government Department of Native Affairs, confirms the view taken by the Johannesburg Joint Council. In applying the law there can be no distinction as between male and female natives.

This means either (a) that both men and women must carry passes, that is, that through an acknowledged mistake so far as the Johannesburg City Council is concerned, women are brought under the curfew regulations; or (b) that the whole proclamation be repealed and night passes for both men and women abolished.

TIME RIPE FOR EXPERIMENT IN ABOLITION.

The Joint Council is of opinion that the time is opportune for experimenting along the lines of complete abolition of curfew regulations. This suggestion is not so revolutionary as it may appear to be. We call attention to the following facts:

I. The suggestion is in harmony with the declared policy of the Government Department of Native Affairs. i.e. simplification of the pass system as soon as public opinion will allow.

II. Joint Councils and Native Welfare Societies all over the country, which represent not only native opinion but also informed European opinion, have for years pressed for this reform.

III. Such organisations as the Johannesburg Chamber of Commerce and the Johannesburg Rotary Club have joined in requesting the adoption of a single life-long identification certificate in place of the multiplicity of passes in vogue in the Northern Provinces.

IV. In some of the cities and larger towns of the Union there is no night pass system.

DIFFICULTIES WHICH EXSIST TODAY.

The present system is unsatisfactory from many points of view.

I. The efficient administration of Justice is rendered difficult, if not impossible, for the following reasons:

a) The energies of the police are dissipated in the enforcement of these technical regulations and the police force as a whole is unable to concentrate on the detection of actual crime.

b) Magistrates' Courts are congested with petty cases arising from breaches of pass regulations. Johannesburg courts have established a record of eight hundred cases in one day. Many of these could only be of this trifling nature.

II. Thousands of natives every year become acquainted with prison life through this means. Many drift into a life of actual crime. The ease with which natives are imprisoned for what is not in any sense a moral offence has robbed the idea of imprisonment of its stigma until it produces no sense of shame.

III. Arrests of native workers under the pass laws are a cause of great inconvenience to employers.

INEFFECTIVENESS OF THE SYSTEM.

The fact that night passes do not diminish the prevalence of crime is again emphasised. Highly placed police officials support this view. Others who are familiar with the conditions know how widespread is the traffic in forged passes on which there can be no possible check. In addition, criminals, whether men or women, easily can and often do reach the scene of their operations previous to the curfew hour.

The police have full powers under the common law for dealing with criminals of any race. Possession of a piece of paper written upon by anyone who can write does not convert a criminal into an innocent person whose innocence is established by the production of such a paper; yet it enables such a person pass freely at night. Non-possession does not change an innocent person into a criminal; yet it renders him liable to arrest by any policeman he may meet. In the case of respectable women in particular such liability to be frequently accosted in the streets is a source of irritation impossible to exaggerate; and it is this class of woman who, being seldom in employment, would experience the greatest practical difficulty in obtaining permits.

History shows that a policy of continual pin-pricking and petty annoyance is much more likely to produce resentment even than legislation on larger and more general matters of policy such as those which absorb so much of the time of Parliament.

APPEAL TO CITY COUNCIL AND TO PUBLIC OPINION.

According to the Department of Native Affairs no change can take place unless all Reef municipalities come into line, though there is no legal necessity for this condition. We appeal to the Johannesburg City Council to lead the way with a bold and generous policy. We are confident that this would result in the weight of native influence being strongly exercised on the side of law and order, and that the experiment would certainly not result in any increase of crime.

To sum up, the community is faced with two alternatives:

I. Women must carry passes. The result if this course is eventually decided upon, will be the creation of a strong resentment among the native people against a policy which is not favoured by any responsible European body.

II. An experiment must be tried in the abolition of night passes for all natives. The result of this would be a feeling of relief among natives and renewed confidence in the good intentions of Europeans.

A very large body of European opinion is indifferent to the question of night passes for men. In general it rather vaguely approves of them. But the same body of opinion is generally against night passes for women. We are not in a position to leave matters as they have been in the past. Our appeal is to the general mass of European opinion since it is faced with two courses neither of which it may entirely approve, rather to choose that one which will lead to greater freedom from restriction than that one which can only result in increased friction and animosity.

Johannesburg.
June 29th, 1931

Odd notes on Pass Laws (used for notes reverse)

with stolen goods appears to be on the increase .

(c.) Much time is wasted at Pass Offices registering natives, If the native is sent in the mornings the Employer is at a disadvantage even if he takes the native himself. In the afternoon, Pass Offices close at 3 p.m. and in our industry most servants are off duty from 2 p.m. to 6 p.m., and resent being sent to the Pass Office in their spare time. Natives paying taxes also waste a considerable amount of time at Pass Offices.

(d.) The present system of passes does not appear to be fool-proof against casual identification. Cases have come to our notice of natives losing or being dispossessed of their passes. It is then possible for them to go to a Pass Office and obtain a copy of the lost pass. The stolen or lost pass can in the meantime be used by anyone else and produced, when asked for, to the police, etc.

(e.) The gaining of exemption certifcates seems to be beyond the grasp of the majority of natives.

Suggestions:

Our Association expresses its hope in the possibility that passes as such will eventually be done away with. It feels however that the time is not yet ripe for this to be done, but it feels that the present system can be greatly improved, enlarged and made less odorous to those carrying the passes. It hopes therefore that the present scheme can be re-organised and that the hope can be held out to the natives that there is a chance in the future for the entire removal of the Pass Laws.

It is appreciated that the problem is a complex one as such a wide divergence of people is to be dealt with- from the extremely intelligent and educated- to the almost opposite. The Association feels firstly that despite the extra work it would entail that all natives should be obliged to carry an identification certificate. That such certificate should contain a photograph of the bearer, name, age, district of domicile, certificate of health (if working in certain classes of industry e.g. in preparation of food, in bedrooms etc.) It suggests this as a general measure but realises that many natives are sufficiently advanced to be above such a system. But to the great bulk of natives in towns this would be a great advancement on the present system. The Card could be something that they would be proud to carry, and the registration every time that they did enter new employment would be done away with. Moreover if taxes could be paid by the employers

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deduction from servants' wages) the system of queues in Pass Offices could be almost eliminated.

Natives should be allowed to move freely within an area like the Witwatersrand. At present natives not exempted have to carry "Specials" if moving from say Johannesburg to Germiston and back. The relaxation of the curfew would also be a measure calculated to improve the lot of the native.

The number of documents to be carried by natives should be reduced to a minimum. It is felt that the carrying of an identification card as stated above would satisfy all purposes, unless tax receipts have to be carried as well. A native tends to become confused(in mostncases) through having to carry too many papers. To-day he has to carry, in addition to everything else, his ration book and, when, he leaves employment, an Unemployment Insurance Card. This latter card serves as an "identification" card to prospective employers but it is hardly comprehensive enough, and in normal circumstances is retained by the employer.

We wonder in this connection if the possibility exists for the Department of Labour and Native Affairs to evolve one card which might be suitable for both Unemployment Insurance and Identification purposes?

SUPPLY OF LIQUOR TO NATIVES

Our industry finds that the bulk of its native servants want liquor and that they usually manage to find it. Often servants are arrested for drunkenness and the proprietor deprived of their services for half a day or more. We would welcome a scheme under which proprietors of private hotels and baording houses were enabled to supply their native staffs with a certain quantity of ~~liquor~~ kaffir beer per ~~month~~ week. We feel this would be a deterrent to drunkenness and if assured of a regular supply of "legal" drink, the native would diminish his search for "illicit" Liquor.

S. 127 act 30-1928

101

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As a result of numerous complaints by African members of the Council that exemptions were not being issued to many applicants who possess the necessary qualifications, The Director of Native Labour was approached ~~communicated with~~ and asked to state the position re - the granting of exemptions. In ~~this~~ reply the Director of Native Labour mentioned that ~~the~~ new regulations are being drafted and will probably be gazetted shortly.

A letter was then written to the Minister of Native Affairs asking him to let this Council see the draft provisions before being gazetted.

A reply has now been received from the Secretary for Native Affairs.

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