

**AM34**

MEMO FOR U. J. K. WORKSHOP - 23rd May 1982

I have been asked to discuss the three Bills which constitute Dr Koornhof's so called reform package, - that is the Orderly Movement and Settlement of Black Persons Bill, the Black Communities Development Bill - both now referred to select Committees and the Black Local Authorities Act which first appeared with the other Bills and was passed last year.

These three Bills represent Dr Koornhof's second attempt to restructure legislation covering Urban Blacks. In 1969 as a result of the Riskert Commissions report he introduced a Black Communities Development Bill a Black Local Govt Bill and a Laws on Co-operation and Development Agreement Bill. All three were withdrawn and referred to the Crosskopf Committee.

I think it is important to see these Bills in their historical context, which is really to see them as a culmination of a series of increasingly oppressive and restrictive legislation. I hope to show that whatever reform can be discerned in these Bills is irrelevant because the Bills perpetuate the economic and political powerlessness of Black people at both local and gov't level. They exclude access to the land as well as participation in industrial commercial development. In other words they fall completely in line with policy of Apartheid and with the proposed new Constitution.

These three pieces of legislation are concerned with people who have legal rights to live and work in the prescribed area. The geographical boundaries of the prescribed areas are diminishing and the number of people qualifying for these rights are being steadily reduced. The direction of influx legislation for the past 20 years has been to this end and these three Bills are no exception. The Orderly Movement Bill is directly and blatantly exclusive and the other two by implication because it is clear that only the comparatively wealthy, with skilled jobs or access to capital will be able to afford to live in a prescribed area.

I would like to start with the Orderly Movement etc Bill. Although this has been shelved until next year it is possible, in the light of the behaviour of the Administration Boards and of Dr Koornhof, to make an educated guess at the direction this legislation will take when it reappears.

In 1964 Section 10(1)(c) of the Urban Areas Act was amended to exclude wives and children of qualified people from coming to town to live as a family unless these people had entered the prescribed area lawfully. This remained in force for 16 years until the Komani case in 1980

In 1964 the Contract Labour System was introduced with the specific intention of preventing further urbanisation by forcing people out of the prescribed area once their jobs were finished or their contracts had to be renewed.

In 1979 the fine for employing someone illegally was raised from R100 to R500. Also in 1979 Dr Koornhof's moratorium on illegal workers actually resulted in thousands being evicted out of the cities and the total exploitation of many others because as soon as they lost the job in which they were registered they had to leave the prescribed area and were never eligible for work in the city again.

June 1980 saw the beginning of moves to increase the privileges of the Section 10 people, in other words those with urban rights, and by giving them greater mobility and easier access to jobs. The gap between <sup>prescribed area Blacks</sup> urban and rural Blacks widened.

A perfect example of the diminishing numbers of people with Section 10 Rights is to be found in Durban where an estimated 5% of the total Black population retains these rights. Some 515,300 people lost them when Kwa Zulu took over some of the townships and hostels which were formally part of the prescribed area

At the risk of being repetitive I would just like to emphasise that Dr Koornhof's big new deal for urban Blacks applies, in Durban to the townships of Mxontville, Chesterville and, if it remains, St. Wendolins. Every other Black resident of Durban is a contract worker or a live in domestic.

I apologise for taking so long to actually get to the Bill <sup>itself</sup> but I feel it is very important when analysing it that we do so in the context of the realities of the present situation.

If the Orderly Movement Bill is <sup>passed</sup> in its present form it will result in the most efficient form of influx control that this country has ever experienced.

The Bill repeals sections of the Urban Areas Act and the 1936 Land Act and replaces them with one piece of legislation directed at urban and rural areas. Its intention is to minimise the number of Blacks residing permanently in the <sup>urban</sup> areas and by a system of permits and policing so far quite unparalleled to rid the white cities and farmlands of as many Black people as possible without upsetting the needs of industry or agriculture.

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The rights which Section 13 conferred on people will be abolished and replaced by a system based on the availability of accommodation and the Minister's discretion.

A new category of persons will be created the Permanent Urban Resident. Permanent Urban residence will be granted to the owners of fixed property. This includes 99 year leaseholders but not people renting their houses.

To people who presently have Section 13 - they will die out.

J.A. Citizens who have been lawfully resident in a prescribed area for 10 years may apply to be granted permanent urban rights - this excludes the 5 million people who are citizens of independent homelands.

Persons born in the prescribed area to parents both of whom are P.U.s may apply to become a P.U. - 60% of the children are estimated to be illegitimate. In order to apply the person must have approved accommodation.

It is clear that the Minister can control the number of P.U.s by controlling the availability of accommodation. In Durban a house was last built in the prescribed area in 1968. Any person with their names on the waiting list for a house in the prescribed area is given a house at Mtuzuma or kwa Manguzi, both kwa Mulu areas, kwa Zulu residents have no urban rights now nor will they have under the B.U. anyone who is not a P.U. will enter the prescribed area as a contract worker and may not remain in the area, without a permit, between 10pm and 5am. No one may have a visitors permit for more than 14 days in the year. People are required to produce on demand their permits to be in the area and will be presumed not to have a permit if they cannot do this.

Dr Koornhof's recent announcement that he will abide by the Rikhotso judgement but amend the Act to exclude the families of people qualifying in terms of this judgement unless they have approved family accommodation is I believe one of the many signs that the Bill we are discussing is in fact being brought in through the back door at the moment.

The rural areas are the areas which are not prescribed or part of the independent or non independent bantustans.

The Act provided that no black person shall be a resident in the rural area unless he or she has a permit to be there. A landowner may be called on to give details of the people on his land. It is a criminal offence to refuse to do this. A landowner may also be ordered to remove people from his land

and if he fails to do so he commits a criminal offence.

The Act provides for the setting up of farm tenement boards to determine whether the number of blacks in an area is too large. The board may order that a group of people in excess of the areas labour needs be removed.

There are numerous other provisions which relate to the removal of people. They all rest upon the discretion or the opinion of the Minister.

He may remove people if he thinks they are being a nuisance or are congregating in an area where it is undesirable or their presence may canvas support for a public campaign to change the law or that their presence is endangering the maintenance of law and order or a threat to public health.

The Minister may order that these people be removed with dependents to any place that the Director General may decide.

It is obviously the intention of the Minister to enforce this barbaric legislation with an even more barbaric system of penalties. These include R5000 or 12 months on employers who employ a person who has no permit to be in the area, R500 or 6 months on black people who are found in the prescribed area between 10pm and 5am without a permit and the same penalty for the person who provides accommodation for such a person. The Bill makes normal human activities such as offering someone a job or having a relative to stay into serious offences. We have already seen the introduction of this kind of penalty when the fine for trespassing was raised from R50 to R200 this year. Finally I want to point out that Clause 52 of the Bill gives the Minister the power to alter, nullify or apply the entire Bill as he sees fit. The Minister is in a position of absolute control with the possibility of legal action against him almost excluded by the fact that it is virtually impossible to contest an opinion or discretion in court.

I now come to the Black Local Authorities Act of 1982 which basically sets out how local government will take place in some black townships in the prescribed areas. For us in Durban it is potentially only applicable to Mxantville and Chesterville.

It is supposed to grant a substantial measure of autonomy to blacks on the local level and it is over this very issue of autonomy that people are divided. I don't believe we can properly assess this Act until we know how the black local authorities are to finance themselves.

This is absolutely critical to the viability of the local authorities and also to the status and recognition that they will receive. It has not yet been announced.

The structures set up in the new constitution to deal with local government maintain the separation within the cities of racially oriented local govts. Until everyone has access to the total revenue of a municipality I don't really think we can talk about viable autonomy.

Even were the black local authorities not to confer on blacks the same powers of local government which whites have, blacks would not have the same means for generating funds. For example the very high rates drawn from the central business district all go into white revenue. The black local authorities will be expected to exercise powers of local government without ownership of land or business. The local authorities are only able to allocate land, they have no power to expropriate white land and so increase the boundaries of their local authority. Whatever provision is made for the financing of these local authorities they will still have to raise money for improvements because they have no access to white revenue. *They have no access to white revenue because in order to pay for infrastructure in business areas which are mostly in white areas all the rates of business districts are going from white to black areas. This means that the act in its final form is certainly an improvement on the Bill as it first appeared but just like the Orderly Movement Bill it is dogged with the exercise of the Minister's discretion. And of course unlike other Indian Coloured and White local governments the black local authority will have no representation at government level.*

The act basically provides for the dissolution of the old community councils and the establishment of local authorities in the form of town or village councils. It provides for the appointment of a Director of Local Government and sets out how the local authority will be constituted, how members will be elected, the duties of the mayor, town clerk and executive committees. It details the powers, functions and obligations of the local authority and the powers of the Minister to intervene in the affairs of the local authority.

I will attempt very briefly to outline some of the discriminatory and unacceptable provisions of the act.

Only blacks can vote at local authority elections. This excludes members of communities living legally in black urban areas.

No one is eligible for election if he has ever been found guilty of an offence under any law to combat communism or terrorism.

The Minister determines the number of members in the local authority, and the basis for the election. If the community does not elect members or there are too few elected members the Minister can appoint persons until further elections.

The Director of Local Government lays down conditions and approves expenses relating to the Mayor and Deputy.

An official of the State can attend meetings of the local authority and can participate but not vote - in other words the State watches over the meetings.

The local authority must have the approval of the Minister before it can acquire stocks or borrow money or overdraw an account or invest money or make or accept donations and impose levies. Any by-law must be made with the approval of the Minister.

None of these provisions apply to white local governments.

If the local authority fails to perform its functions the Minister has the power to take action and costs incurred by him will be payable by the local authority.

If the Minister thinks that finances are unsound he can tell the local authority what should be done and if it fails to do this the Minister can remove any particular person from office or dissolve the local authority.

Appointment of law enforcement officers by the local authority is subject not only to the Minister's approval but he has also to get the approval of the Minister of Law and Order.

In spite of the extreme authority which the act gives to the Minister he has the power to delegate this authority to any other person in this department.

I feel I need not elaborate any further. This is a paternalistic and discriminatory act which has not been drafted with the intention of responding to the wishes of the communities but to the dictates of the apartheid system.

Finally the Black Communities Development Bill. I do not intend to comment in detail on this Bill. I believe it will be totally revamped by the select

committee and it is not so easy to make predictions as is the case with the orderly movement bill.

It repeals sections from no fewer than 47 acts, including those sections of the urban areas act not repealed by the orderly movement bill. It also makes considerable amendments to the black affairs administration act of 1971.

It basically deals with the functions of the development boards - the new name for administration boards - this includes the running of townships and hostels, the charging and collecting of rent, appointment of inspectors, registering of sites and so on.

It also sets out the position of the Development boards in relation to the local Authorities. The Board is the sole authority responsible for acquiring land and establishing townships and the local authority has no power in such matters. The Board will be the owner of the housing stock.

The Minister has the power to de-establish a township, this in spite of the long term rights granted to residents in terms of the 99 year leasehold system.

Certain powers are given to the board that should be in the hands of the local authority. For instance the vacating and demolishing of condemned buildings, the regulating of hawking and peddling within the township, the prohibition or permitting of any commercial or industrial undertaking within the township.

Only the Board may grant the right of leasehold and leasehold may only be granted to permanent urban residents as defined in the Orderly Movement Bill, or to a descendent of such a person or a person approved by the Minister. This excludes all citizens of independent homelands who do not actually have Section 10 rights at the date of the commencement of this Bill.

I think I have said enough to negate any suggestion that these Bills might initiate any meaningful reforms or autonomy for the urban black people.

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