THE LEGAL STATUS OF URBAN BLACKS IN SOUTH AFRICA

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ABSTRACT

The article deals with the principles underlying the official policy with regard to urban Blacks in South Africa as formulated by dr. H.F. Verwoerd. The implications of these principles with regard to political processes, citizen rights, influx control and freehold of land are outlined, and a more comprehensive survey is provided of the issue of Black citizenship in tems of various acts; the non-participation of urban Blacks in the central political process; the influx control system, with referense to the background of the system, the contents of the most important statutory measures; the modes of possession of fixed property available to urban Blacks; and reference is made to the system of local government as practised in areas inhabited by urban Blacks.

The article closes with an indication of which options might conceivably become realisable in future - and the author expresses his personal views on the issue.

INTRODUCTION

The official South African policy with regard to urban Blacks is based on two fundamental principles which were formulated as follows by a former South African Prime Minister, Dr. H.F. Verwoerd:

- In the first place that urban Blacks are present only temporarily in (so-called) white urban areas and thus have no claim to property and citizenship rights in White areas; and

- secondly that determination of policy and control is

in the hands of the central government.

From this it emerges that the Black (can) form no part of the *central political process*; political participation can only take place by means of institutions linked to the traditional Black territories and territories set aside in 1913 and 1936 for the exclusive occupation of Blacks, or to territories earmarked for eventual Black occupation.

A *second* implication of this is that *citizen rights* may only be exercised in those territories; and upon attainment of independence of those territories the citizens of those territories *automatically* forfeit their South African *nationality*.

A *third* implication is that there is *control of the movement of the Blacks* from the (less developed) traditional territories (homelands) to the (more developed) urban areas *and* between various urban areas. This system of control is known as *influx control*.

A *fourth* implication is that Blacks who are legally present in the so-called White urban areas have to live in *separate, designated residential areas*. The prossesory modes exclude - because of the basic policy foundation of non-permanence of urban Blacks - the freehold of land.

In the following outline I shall attempt a concise survey of:

- Firstly, the issue of citizenship and nationality in so far as it has to do with the (compulsory) linking of urban Blacks to the geographical territories created in terms of the *Native Lands Act 27 of 1913, and the Native Trust and Land Act 18 of 1936;*

- secondly, the non-participation of urban Blacks in the central political process as against the participation in institutions set up in territories under the provisions

of the above-mentioned 1913 and 1936 Acts;

- thirdly, the influx control system with reference to the background of the system, the contents of the most important statutory measures, reports of commisions, recent court decisions such as the well-known *Rikhoto* decision, and envisaged new measures. Seeing that this system is probably (and justifiably so) regarded by urban Blacks as the most basic datum with regard to their continuing presence in the so-called White urban areas, a greater ideal of attention will be devoted to this system;

- Fourthly, attention will be directed to the modes of possession of fixed property available to urban Blacks; and

- fifthly, reference will be made to the system of local government as practised in areas inhabited by urban Blacks.

Finally, I will indicated which options might conceivably become realisable in future - from which you might then also deduce what my personal view in this matter constitutes.

CITIZENSHIP AND NATIONALITY

With the establishment of the Union of South Africa in 1910 it was a fixed principle that all persons designated then as being South African would have South African citizenship and nationality. The fact that a large number of Blacks were excluded from political participation, made no difference to this. The fact that the Cape Blacks were excluded in 1936 from the limited political participation that they had had up to that time made no difference to this basic point.

In 1913 the South African Parliament approved the *Native Lands Act 27 of 1913*, in which certain areas or territories (so-called

scheduled areas) of which most were already inhabited by Blacks anyway, were reserved for the exclusive occupation of Blacks.

In 1936 the *Native Trust and Land Act 18 of 1936* was promulgated which added certain territories (*released areas*) to the previously reserved 1913 scheduled areas. These released areas were practically all purchased from White landowners. In the process of consolidation of the so-called homelands (consisting of the 1913 and the 1936 land) deviations from the provisoes of these Acts do occur.

The *National States Citizenship Act 26 of 1970* made provision for the compulsory award of so-called *homeland citizenship* to all Blacks. Urban Blacks, too, are linked in this way politically to those relevant national states to which they are most closely tied (this is determined on the basis of ethnic descent).

South African *nationality* is *automatically* lost at the moment of the voluntary attainment of independence of the national state or homeland (as delineated above) of which the Black in question might be a citizen. In this way, then, urban Blacks who had previously had South African citizenship, but who could be ethnically linked to Transkei, Bophuthatswana, Venda and Ciskei are now by way of legal process made citizens of these independent territories.

It is not necessary to argue that this - by its nature idealogically inspired - in voluntary loss of South African nationality affects the lives of many urban Blacks. The concept of *stateless citizen* emerges strongly then, especially because the constitutions of the four independent Black states, viz, Transkei, Bophuthatswana, Venda and Ciskei do not necessarily encompass the automatic compulsory acceptance of nationality. However, a Cabinet Committee has been appointed to go into inter alia this matter.

NON-PARTICIPATION IN THE CENTRAL SOUTH AFRICAN POLITICAL DISPENSATION

Although Cape Blacks did, in accordance with the provisions of the 1910 Constitution, have representation in the central Parliament, they were - as part of the *trade-off* for the extension of the areas set aside for exclusive Black occupation - placed on a separate voters' roll in 1936 in accordance with the *Representation of Natives Act 12 of 1936*, and they could then elect four so-called Native representatives. This Act then made provision too for the establishment of a *Natives' Representative Council* - which only had advisory capacities and which had been in constant conflict since the early forties with the then *United party* government.

With the advent of the Nationalit Party government in 1948 there was a shift of emphasis: the viewpoint that all Blacks had to enact their aspirations in the so-called traditional areas (that is, the 1913 and 1936 designations) became formal policy. In accordance with this the *Natives' Authorities Act 68 of 1951* was promulgated which made provision for

- the abolition of the *Natives' Representative Council*; and

- the establishment of *tribal authorities, regional authorities* and *teritorial authorities* in those territories (homelands).

The *second phase* in the National Party government policy started in 1959 with the approval of the *Promotion of Native Self-Government Act 46 of 1959*. In that Act provision was made for

- the eventual realization of the principle of so-called separate freedoms;

- the gradual development of the self-governing black territories; and

- the abolition of the four Native representatives in the

Central Parliament. Blacks were thus deprived of even indirect participation in the central political process in South Africa.

The *third phase* dawned with the implementation of the *National States Constitution Act 21 of 1970.* This Act makes provision for the establishment of legislative assemblies and executive councils in Black areas and provides for the powers, functions and duties of such assemblies and councils. It also provides that the State President may declare any area for which a legislative assembly has been established to be a self-governing territory.

The *fourth phase* is at present in full progress: four homelands have already, since 1976, requested independence, and it is expected that a fifth, KwaNdebele, will accept independence early next year.

As has already been stated, all Blacks in South Africa are linked to one or the other homeland, and with the achievement of independence of this territory then they automatically lose their South African nationality and obtain compulsory nationality of the territory in question.

Political participation in the institutions of the independent territories and of the other homelands is promoted by the South African government: many urban Blacks, however, are negative about political participation in governmental processes in those areas. A significant group of urban Blacks seek their political salvation within the central South African dispensation, seeing that they regard themselves as being through and through permanent residents in South Africa - and they feel that any possible linguistic, family or cultural links with people living in the homelands are totally irrelevent to the fulfillment of their political aspirations.

INFLUX CONTROL (REGULATION OF MOVEMENT)

Introduction

Although migration in the direction of the cities is a world-wide phenomenon, it manifests itself most strikingly in the developing countries. For the purposes of this discussion South Africa will be regarded as a developing country. Migration towards cities has already been apparent in South Africa for some considerable time and this is true to varying extent for Whites, Indians, Coloureds and others of mixed blood, and Blacks. *Control measures* to regulate such migration (and to keep it within bounds) have existed since the implementation of the current *Group Areas Act 33 of 1966,* and its predecessor, *Act 41 of 1950* with regard to the Indians and other Coloured and then by way of the refusal to proclaim additional group areas for these population groups.

For purposes of the following outline reference will be made only to the control measures applicable to *Blacks* (these measures being known generally as *influx control*).

Definition of concepts

Although there are differences of opinion among practitioners of the humanities and also among members of the ordinary public about concepts (both as to meaning and implications) such as *migration to the cities* and *urbanization*, the concepts will be described in this introduction in the following terms:

Migration towards the cities is a permanent or a semi-permanent change of habitation. Although labour migration and migration towards the cities can often be regarded as being synonymous, this is not always so of necessity: it is not only labourers who migrate, and labour migration can take place to areas other than cities.

With the decrease in the atraction of the traditional territories, the repeating nature of labour migration is decreasing, and the migrant then settles in the city.

Urbanization, according to Mitchell, implies the following three phases (1956):

- a physical (geographical) move to the city (societal urbanization);

- a shift from typically agricultural patterns to typically urban activities; and lastly

- a corresponding change in behavioral patterns and views of life (personal urbanization).

Control measures in South Africa

PRIOR TO 1910

The great stream of the city-ward migration of Blacks started during the industrial development which accompanies the discovery of diamonds and gold (since ± 1870).

The control of the migratory stream was placed in the hands of the urban local authorities. Measures were promulgated for the compulsory carrying of passes (permits) which had to be showed on demand. Blacks were also compelled to live in the Black residential areas (formerly known as *Native Locations*).

Davenport, in his *The beginning of urban segregation in South Africa* (1971:6), summarizes the period prior to 1910 in the following terms:

> "Regulations for the control of Africans ... were drafted and enforced, partly because they were not as White men were, partly to cushion their unfamiliarity with

the culture of White men's cities, partly to control and canalize their labour, check their ill-health and prevent its contagion, deal with their misfits and contain crime".

AFTER 1910

The objectives of the *Natives (Urban Areas) Act* 21 of 1923 were as follows:

> "... for the improvement of living conditions of natives in or near urban areas and of the administration of native affairs in such areas; for registration of and better control of service contracts of natives in certain circles and the regulation of the entry of natives to such circles and their residence therein ..."

This Act transferred the final control and determination of policy to the central government. Municipalities would henceforth act on the basis of being agents for the Department of Native Affairs. Statutory control of the movement and influx of Black men (with regard to the demand and supply of labour opportunities) was instituted by this Act. Influx of Black women and foreign (non-South African) Blacks was not affected by this.

In conclusion reference also has to be made to the viewpoints of the then Prime Minister, General J.C. Smuts, as they appear in the 1923 Hansard Reports:

> "... there has been a great influx of natives from other parts of South Africa into towns, and in fact the most tremendous social and political phenomenon of our day and our generation has been just this - the pressure of the larger industrial centres of South Africa. The nature population has increased by leaps and bounds ... for the influx which has taken place in the large industrial centres all over South Africa

we have been entirely unprepared ..."

General J.B.M. Hertzog (a later Prime Minister) in the course of the same debate let it appear that to his mind Blacks could only have temporary residence in White urban areas:

> "... the nature thinks that he will be placed on an equal footing with us in the White areas ... The native has to understand that he is only a temporary resident in the White areas ..."

In 1937 the Minister of Native Affairs spelled out the policy underlying influx control in the following terms:

> "... one of the main objects of this bill is to ... establish once and for all the policy that natives should only be permitted in the towns in so far and for so long as their presence is demanded by the White population ..."

The Natives (urban areas) Consolidation Act 25 of 1945

In 1945 the *Natives (Urban Consilidation) Act 25 of 1945* was promulgated. This was in the main a measure of consolidation. It has the following main aspects as its subject:

- the making available of land within so-called prescribed areas - that is, urban areas (under section 9 *bis*) for habitation by urban Blacks, and the government thereof by competent institutions (initially urban local authorities, later administration boards (instituted under the *Act on the Administration of Black Affairs 45 of 1971*) and community councils (instituted under the *Act on Community Councils 125 of 1977* and the *Black Local Authorities Act* 102 of 1982); and

- allowing Blacks into prescribed areas and the exercise of control over Blacks present there. This aspects of

the subject will constitute the body of the further discussions.

INFLUX CONTROL

Influx control has, since the promulgation of the Act, been applied mainly under the provisions of sections 10 and 12 of the Act. Section 12 determines that foreign Blacks may not enter a prescribed area and/or work there unless a concession permit has been issued by the Department of Co-operation and Development (the state department responsible for the administration and the control of Blacks).

The single section of the Act of which all urban Blacks are deeply conscious and which, I think I could assume with confidence is also known, if not notorious outside the borders of my own country, is section 10. This specifies that non-foreign Blacks, that is, Blacks who either

- have South African nationality; or

- formerly had South African nationality, but now have (compulsory nationality of one of the independent homelands (Transkei, Bophuthatswana, Venda and Ciskei) *may* not,

for a period longer that 72 hours be present in an urban area (prescribed area) unless they comply with the demands as outlined in sub-sections (a) - (d):

"(1) No 'Black shall remain for more than seventy-two hours in a prescribed area unless he produces proof in the manner prescribed that -

- he has, since birth, resided continuously in such area; or

- 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 thereafter been sentenced to a fine exceeding five hundred rand or to imprisonment for a period exceeding six months; or

- such Black is the wife, the unmarried daughter, or the son under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of this subsection and, after lawful entry into such prescribed area, ordinarily resides with that Black in such area; or

- in the case of any other Black the case of the contract labourer (migrant labourer), permission so to remain has been granted by an officer appointed to manage a labour bureau.

Section 10(5) specifies that in a prosecution under section 10(1) the *onus of proof* rests on the Black to indicate that he

- had either been present in the relevant area for less than 72 hours;

- or that he did have the necessary permission in terms of section 10 (1) (a) - (d).

EFFLUX CONTROL

There are mainly five sections (one of which is to be repealed) applicable to the removal of Blacks from *prescribed areas* back to their *areas of origin:*

- Section 24 makes provision for the removal of Blacks living illegally in a prescribed area;

- section 28 makes provision for the removal of redundant

Blacks (thus also article 10(1)(a) - (d) cases) from a prescribed area;

- section 29 *bis* makes provision for action towards Blacks whose presence in urban areas or proclaimed areas might be detrimental to the maintenance of peace and order. This also involves the cases under article 10(1)(a) - (d);

- section 38 *bis* makes provision for summary procedure (by way of sworn evidence/declaration and (sometimes) oral evidence) for the removal of residents from a location, Black Township and Black hostel.

Illegal *squatters* coming from the four independent countries, Transkei, Bophuthatswana, Venda and Ciskei are nowadays repartriated without benefit of court procedure - to their countries of origin.

OTHER IMPORTANT ACTS ARE

The *Blacks (Abolition of Passes and Co-ordination of Documents) Act 67 of 1952* provides for the abolition of passes and specifies the institution of a new reference book. This reference book, however, is still called a pass and is known as such popularly.

The *Black Laws Further Amendmend Act 79 of 1957* made it a crime to employ Blacks without their having valid reference books (men: after February 1958, woman: after February 1963).

The *Blacks (Prohibition of Interdicts) Act 64 of 1956* has abolished the power of the Supreme Court to provide interdicts in the case of the removal, eviction or arrest of Blacks who have been instructed to leave the relevant urban (prescribed) areas. The legal consequences of such eviction order are then also not (in contrast to normal procedure) suspended

pending an application for review or an appeal. The relevant administration also cannot, in the case of a successful review or appeal, be forced to restitution of the previously existing condition, but can only be called on to make good actual losses.

Committee and Commission Reports: Recommendations with regard to influx control

DEPARTMENTAL COMMITTEES

Previous (departmental and inter-departmental) reports had been in favour of the *tightening of control measures:* the *Van Rensburg Committee* (1967) was in favour of the total abolition of the article 10 qualifications and of the opinion that Blacks are simply labour units whose admission had to be determined solely on the basis of approved housing. The *Meyer Committee* (1974) worked on the premise that the Black worker was merely a guest labourer and that this had to be the sole criterion for residence. The *Vermeulen Committee* (1975) recommended that article 10 be adapted to keep account of the relevant factors of work, accommodation and citizenship.

RECOMMENDATION OF THE VILJOEN COMMISSION (1976)

The *Commission of Investigation to the Penal System of the Republic of South Africa* (the *Viljoen* Commission) has found that it is

> "... indubitably true that the use of the penal code to handle the situation (the illegal influx to the urban areas) should be restricted as much as possible in the interim (the adequate provision of satisfactory labour opportunities in the homelands".

The Commission therefore recommends that:

"... the liability to punishment of influx control and curfew laws be suspended, that these laws in other words should be modified to administrative and regulative measures (where necessary supported by penal sanctions) as far as possible in order to avoid large-scale arrests, court hearings and convictions of trespassers of these laws (in the light of the fact that such convictions constitute the main reason for the over-population of the prisons in the Republic of South Africa by short-term prisoners)."

RECOMMENDATIONS OF THE RIEKERT COMMISSION (1979)

The *Commission for the Investigation of Legislation of Legislation concerning the Implementation of Manpower (with the exception of legislation administered by the Departments of Labour and of Mining)* - the so-called Riekert Commission - in 1979 recommended that

(a) influx control be linked only to the availability of work and approved housing;

(b) the provisions of section 10(1)(a), (b), (c) and (d) of the Act be incorporated in applicable form and without the 72-hour restriction in the proposed act on the development of Black communities, with the intention of regulating residence by Black persons in Black residential areas;

(c) Black persons who obtained qualifications under section 10(1)(a) or (b) and who marry or who are already married should be allowed to have their families join them, on condition that suitable housing is available, with no regard to the area of their origin;

(d) Section 10(1)(a), (b) and (c) qualifications have to be transfereable from one urban area to another subject to the approval of the relevant labour bureau,

and with the understanding that approval may not be witheld if approved housing and jobs are available.

Institution of new measures with regard to influx control

The *Bill to Amend the Law on Co-operation and Development* was published in October 1980 for commentary by interested parties. In the following Session of Parliament this bill, which made the principles of the *Group Areas Act 36 of 1966* applicable also to Black urban areas, was withdrawn, and an interdepartmental committee (the *Groskopf Committee*) was appointed to consider the relevant bill in the light of the recommendations of the *Riekert Commission* (and the government White paper on it) and to use these as the point of departure for the (re)consideration of the bill before making suitable recommendations.

This Committee (consisting of ten member, of which two were Blacks, submitted their unanimous report to the Cabinet in 1981, but it has not (yet) been published. It is known, however, that the Committee made the following recommendations:

- Full right of ownership of property (land) for urban Blacks;

- that existing conditions under which African acquired permanent rights to be in urban areas under Section 10 of the Urban Areas Act be repealed;

- that the right of residence in an urban area should be made dependent on a job and 'approved housing';

- that permanent residence rights should be granted to Africans who had come within five years of obtaining qualification under the existing Section 10 provisions;

- that the provision preventing Africans from remaining for longer than 72 hours in an urban area be scrapped;

- that it should be replaced with a provision granting Africans the right to remain in areas for three months if they have acquired a permit to do so;

- that the R500 fine applicable to employers who employed Africans who were not qualified to be in the urban area should be increased;

- that the passbook system under which Africans could be asked to show their passes in public places be abolished; and

- that this should be replaced with a system of control at the workplace and in township home.

The orderly movement of settlement of Black persons bill (W 113- '82)

This Bill was published in 1982 for general commentary and would by all accounts embody the recommendations of the *Groskopf Committee.*

CIRCUMSCRIPTION OF THE CONCEPT OF AUTHORIZED PERSONS: INFLUX CONTROL

This Bill (which is at present under submission to a Parliamentary Seclect Committee) eliminates the old Section 10(1) "privileges" and states that *residence* in an urban area is *only* permissible if a Black complies *with both* the following two conditions:

- if he has *approved housing*; and

- if he has the *necessary authorization. Authorized persons* are those persons classified either as

(a) *permanent city residents* or

(b) those who have a permit (on the basis on an approved

service contract).

It is also stipulated that *no unauthorized person* may be present in an urban area between 22h00 and 05h00. The old 72-hour concession has now been cut to a 17-hour concession.

The *permanence of urban Blacks* is conceded for the first time in this Bill. There are the following categories:

Category 1: Persons who are South African citizens at present and who have resided in an urban area for an uninterrupted period of at least ten years.

Category 2: Persons who are or were South African citizens *and* who comply with Section 10(1) (a) and (b) qualifications.

Category 3: Persons who are or were South African citizens *and* who are registered owners of immovable property in an urban area (this category does not yet exist, however, seeing that no Black may hold ownership rights to immovable property in urban areas).

Category 4: Persons born in an urban area from parents who both qualify under the provisions of categories 1 or 2.

The *alleged permanence of urban Blacks*, however, is only *temporary*: This interpretation rests on the following motivations:

- In the first place, if the policy of independence of the homelands succeeds fully, there will be practically no-one who would qualify under the provisions of category 1.

- In the second place, if the policy succeeds fully, there will later be no more Blacks who used to be South African citizens formerly and who will then be eligible under category 2.

- In the third place, Section 10(1)(a) and (b) is revoked through the new Bill, so that nobody could, subsequent to its promulgations, achieve new category 2 rights.

- In the fourth place, children are only permanent urban residents should both their parents be holders of category 1 (which is a finite category) or if they are holders of category 2 qualifications (this also being a finite category).

It is also important to note that authorization alone is not sufficient, the relevant Black also has to be in possession of approved housing.

Illegal (unauthorized) Blacks may be convicted on the basis of their presence in an urban area and sentenced to a fine of about R500 or to imprisonment of six months or both.

The *offering of employment* to unauthorized persons is also a misdemeanour: the maximum fine is R5000 and the maximum jail sentence is 12 months (or both).

The *onus of proof* as to whether he is an authorized person rests with the relevant Black - as it is in the case of Section 10.

The *common law capacity* of the courts to suspend eviction orders and to issue interdicts is once more suspended.

The *efflux control measures* provide that *unauthorized persons* who have been convicted of a contravention of clause 3(2) (presence in urban area between 22h00 and 05h00), or who, in the

judgment of an appointed official are living or residing in an urban area in contravention of the provisions of the Bill, may, following an *investigation by a commisioner,* be removed to their homelands or any area designated by the Director-General.

From the analysis of the *Orderly Movement and Settlement of Black Persons* Bill, it appears that there is no question of the relaxation of influx control: on the contrary, there has been a real intensification of the control measures in the light of the

- 17-hour stipulation (22h00 to 05h00) instead of the old 72-hour concession;

- demand for approved allocated housing (clause 3 (1));

- the abolition of Section 10; and

- the temporariness of the alleged permanence of Black urban residents.

It should therefore cause no surprise that practically all the English-language churches, multi-racial organizations such as the *South African Institute of Race Relations*, trades unions and various community organizations have strongly opposed the promulgation of this Bill. In fact, these churches have informed the south African government that they will incite their members to civil disobedience with regard to the observance of the Bill. It is expected that this Bill - in amended form - will be dealt with fully in the course of the 1984 Session of Parliament.*

* In April 1984 the Minister of Co-operation and Development announced that the Government had decided to withdraw this Bill. A new Urbanization Bill is presently being drawn up.

Recent court judgments around Section 10

Under Section 10(1) of the existing main Act, non-alien Black (South African, see section 12 supra) may obtain *immunity of prosecution* and now ever perhaps a right to live in a prescribed area if he falls within the provisionary stipulations as encompassed in Section 10(1) (a) - (d).

In the Appeal Court Judgment of *Komani* v *Bantu Affairs Administration Board* 1980 (4) SA 488 (A) it was ruled that the dependents (wives and children) of Black men - who were authorized under the provisions of article 10(1) (a) or (b) to live in urban areas - could, under article 10(1)(c), enter that area to join the breadwinner.

An interesting legal point arose in *Rikhoto v East Rand Administration Board and Another*: Does the fact that a contract worker who had to return annually to his "home area" (though he had worked more than ten years for the same employer) to renew his contract, imply that he did not any more comply with the requirements of Section 10(1)(b)? In a judgement with far-reaching implications (which was on appeal) Judge Donovan held to the viewpoint that such return did not imply that the labourer had not worked for an unbroken period. He decided as follows:

> "It cannot have been the intention of the legislature that an exception under section 10(1)(b) cannot be earned only by workers who remain physically present and actively engaged at their place of work within the prescribed area for ten years without any interruption of any kind without attempting to define the continuity required by this legislation, it may be said that such continuity is not broken by temporary absence due to illness or injury, or by occasional departures for some legitimate purpose unconnected with a change of work".

The Appeal Court upheld this decision.

The Minister of Co-operation and Development, Dr. P.G. Koornhof, initially expressed sharp criticism of the *Rikhoto* decision on account of the expected increase of urban Blacks, but, when it emerged that only 144 000 contract labourers would be able to apply for re-classification, he announced that this decision would be honoured. The government, however, launched an amendment bill through Parliament which now cancelled the effect of the *Komani* decision with regard to the dependents of the new Section 10(1)(b) persons (that is persons who had formerly dispossed of article 10(1)(d) qualifications, but who now, on the basis of the decision, could be reclassified as article 10(1)(b) persons). Such dependents may *now* only come in from outside the urban area in the event of suitable housing being available. As already indicated, there is an enormous backlog in the provision of suitable housing in the urban Black areas.

Application of influx control

The arrests in the most important urban areas have increased in the last two years:

1970	:	360366 (total SA)
1979	:	81448 (Administration Boards)
1980	:	66849 (Administration Boards)
1981	:	88333 (Administration Boards)
1982	:	112646 (Administration Boards)
	:	93376 (South African Police)
Total	:	206022

Statistics with regard to Black urbanization

In 1904, 353626 Blacks had been urbanized
1911, 494275
1921, 649314

1936, 1219892
1946, 1863277
1951, 2381592
1960, 3466583
1970, 4989371
1980, 6033443

Black urbanization: The road ahead

The erstwhile non-acceptance of the recommendations of the *Tomlinson* Commission - with regard to the creation of job opportunities in the traditional areas themselves through the admission of so-called white capital - has greatly contributed to the increased stream of citywards migration and later urbanization.

In its 1981 Report the S.A. Economic Development Corporation has mentioned that:

- annually 130 000 Black job applicants enter the job market in the *homelands*. Of these 130 000 only one-sixth (± 22 000) can be accommodated within the homelands themselves. The other 108 000 enter the South African job market, either legally or illegally.

- annually, 260 000 Blacks look for work in South Africa as a whole;

- by the year 2 000 AD the number of Black annual entrants to the labour market will have increased to 320 000.

By the *end of the century* Blacks will constitute about 75% of the total *urban population* of the country! The estimated population composition will then look like this:

Assians : 1,05 million (93%)
Whites : 5,53 million (95%)
Coloureds : 3,28 million (91%)

Blacks : 25,28 million (low projection) (75%)
26,18 million (high projection) (75%)

By the year 2 000 AD 75% of the total Black population will have become urbanized. 21 000 000 Blacks will, within the next 17 years, be settled in the urban areas. The most important growth will take place in the four large South African metropolitan areas.

The inevitable result of this will be:

- the lowering of standards of housing and of services;
- more homes will have to be built from 1983 - 2000 than have been built in South Africa between 1652 and 1982; and
- controlled squatting will have to be allowed.

The words of an erstwhile Prime Minister, uttered 60 years ago, with regard to the failure to construct a properly planned urbanization policy have even more immediacy and impact today:

> "... there has been a great influx of natives from other parts of South Africa into towns, and in fact the most tremendous social and political phenomenon of our day and our generation has been just his - the pressure of the larger industrial centres of South Africa. The native population has increased by leaps and bounds ... for the influx which has taken place in the large industrial centres all over South Africa we have been entirely unprepared.

THE URBAN BLACK AND IMMOVABLE PROPERTY

Although a small number of Blacks did have Western property rights outside the traditional areas, the policy of the non-permanence of urban Blacks of necessity implied that

this anomaly would be elimiated. Since 1948 such persons have then been dispossessed.

In the second place, up to about 1980 it had been the policy that the central government only would be responsible for the creation of housing. From 1968 to 1976 there was a deliberate decrease in the construction of new houses. The housing shortage in the urban Black areas is at present something like 160 000 units.

The acquisition of housing hangs together intimately with the possession or non-possession of a qualification that enable a Black to remain in an urban area. People who were either born (section 10(1)(a)) *or* have worked for more than ten years for one employer (or for a period exceeding fifteen years for various employers - section 10(1)(b))

- obtain a permit to erect a private residence. The land, however, remains the property of the state;

- obtain a lodger's permit to rent a house erected by the state;

- obtain a certificate of occupation to occupy such a house erected by the state; and

- since 1978 they have also been permitted to obtain leashold for a period of 99 years. These leasehold rights are freely transferable to other section 10(1)(a) and (b) persons who either are South African nationals or who previously had South African nationality but who now have the nationality of one of the four independent territories. If only imparts a limited rights, however, since property rights remain vested in the state.

Employers have been permitted since 1978 to erect housing themselves for their authorized Black workers in the Black residence areas. Although such employers do enjoy legal

protection, property rights remain vested in the state.

Section 10(1)(d) persons - the so-called *migrant or contract workers* - may only be housed in hostels for singles. Such hostels are erected by the state, and, to an increasing extent, by employers.

It is clear that the system of leasehold has not yet come off the ground properly. The reason for this is obvious - many urban Blacks see it only as another step in the deployment of the policy that they are only settle temporarily in the urban areas. For that reason they are insisting on being granted full property rights. In response to the demand for full ownership, the South African government has announced that as from next year leashold will be in perpetuity. The government has also announced a major policy shift - i.e. the acceptance of the permanency of the urban Black.

A recent - encouraging - development has been that almost 400 000 houses built with state funds are now being sold to the incumbent lessees at reasonable prices. Prices usually vary between ± R700 and R2000. Although the buyers will not yet obtain full property rights, the security linked to this new system is stronger than in the preceding period when such houses could only be rented.

PARTICIPATION IN LOCAL GOVERNMENT INSTITUTIONS

Since 1923 provision has been made for the institution of *Advisory Native Councils*. They did not have any executive powers and were thus very ineffectual and utterly unpopular.

The Urban Black Councils Act 79 of 1961 had the objective of instituting urban councils. Although the relevant Minister could transfer certain executive powers to these Councils, they remained, in practice, purely advisory rubber stamps.

In 1971 the White local authorities lost their competence to control urban Black affairs, and Administration Boards were instituted under the *Black Affairs Administration Act 45 of 1971*. Their chief function was (and still is) to deal with the municipal administration functions in the urban areas.

Since 1978, however, significant changes have occurred at the level of local government:

- Community Councils were instituted from 1978 onwards under the *Community Councils Act 125 of 1977*. They have significantly more powers than the old Urban Black Councils;

- under the *Black Local Authorities Act 102 of 1982*, a town council or city council (or, in smaller areas, a village council) *can* be instituted which will have exactly the same powers, functions and rights as a normal local authority has. The functions of administration boards will then accordingly be scaled down to those of developments councils.

Urban Blacks, however, were negatively disposed towards the idea of community councils. The new Black Local Councils, too, for which the first elections are due to be held in November, are regarded in some circles with a fair amount of scepticism.

RECAPITULATION

From the foregoing exposition it should be clear that the Verwoerdian concepts around the alleged temporariness of the urban Black still play a significant - although diminishing - role in the *present* policy with regard to this group.

In contrast to this, there are more and voices to be heard urging the reconsideration (and alteration) of these concepts. The opinion that urban Blacks are here to stay (and their

numbers, in any event, will not be reduced) is heard more and more frequently nowadays, and from government circles as well. This *new* approach has then (partially) had the following implications:

- the new investigation of the issue of the loss of nationality (which has not been made public);

- a revaluation and increasing awareness of the inevitability of increasing Black migration and urbanization;

- a gradual movement to offer more security to urban Black residents in respect of housing (without yet offering property rights: that would, the argument runs, deviate too radically from the Verwoerdian concept at this stage); and

- the upgrading of local government bodies.

In all fairness to changes that have already taken place, mention *must* be made of the fact that two of the cornerstones of the old apartheid policy, namely the non-recognition of Black trade unions and job reservation, no longer exist.

You are probably all aware of the fact that a particularly influential section of the ruling National Party broke away in 1982 - because of alleged liberalising tendencies. One of the most important issues at stake between the Government and the new group, the Conservative Party, revolves around the new Constituion, in which, for the first time, the principle of power sharing with the two other groups, the Coloured and the Indians, has been accepted at the central government level. This approach, of course, is in opposition to the Vervoerdian ideology. In order not to lose votes at present in view of the coming referendum on the new Constitution,* to be held among White voters,

* The new Constitution was in November 1983 overwhelmingly approved by the White electorate, and has since then been put into operation.

there has been no movement with regard to the destiny of the urban Blacks. It has been announced, it is true, that an influential Cabinet Committee has to investigate the matter, but nobody expects that important policy amendments will be made in the immediate future.

There are many South Africans, however, who realize and accept that urban Blacks will have to be involved in the central political process, and that this process of involvement will have to be initiated soon. The alternative to this will inevitably be increasing polarization and a possible escalation of violence.

To my mind a growing realization of the unalterable realities will force the incumbents of power in South Africa to give, in one way or the other, concrete shape and expression in terms of political content to the permanence of urban Blacks - with accompanying policy amendments with regard to nationality, influx control and housing.