

SOUTH AFRICAN APARTHEID LEGISLATION
I: FUNDAMENTAL STRUCTURE*

ELIZABETH S. LANDIS†

THROUGHOUT the world the integration of repressed and segregated racial and religious groups into the community is being fostered by modern legal theory and political philosophy—throughout the world, that is, except the Union of South Africa. There this almost universal trend has not merely been rejected, but a counter-philosophy has been developed and implemented with singular doggedness and devotion. This counter-philosophy is known as *apartheid*.

The purpose of this article is to describe and discuss the legislation by which *apartheid* is made effective, the complex of statutes which has been developed to ensure—and increase—the separation of the “races.” Although one can find clear antecedents in much earlier laws,¹ the majority of these statutes are less than two decades old.²

Apartheid—pronounced perhaps fittingly enough “apart-hate”—is often loosely translated as “segregation,” but the direct translation “aparthood” (or “apartness”) is probably closer to official South African usage. The word is so new that it did not even appear in a standard Afrikaans-English dictionary published in 1946;³ it was coined by the Nationalists after Prime Minister Smuts admitted in 1944 that the traditional policy of *segregasie* (segregation) had failed.⁴

*This article constitutes the first of a two-part discussion of *apartheid* by the author. The second part will appear in a subsequent issue of the *Yale Law Journal*. Since this article went to print, the Union has become the Republic of South Africa, and the Governor-General has become the State President.

†Member, New York Bar. Co-editor of Liberian Code.

1. Honored as often in the breach as in the observance, it would appear. See H.A. DEB., April 1, 1957, col. 3942 (Stanford, “Natives’ representative,” referring to “administrative relaxation”).

2. The Nationalist Party, which initiated much of the current *apartheid* legislation, came to power in 1948.

3. Commission on the Racial Situation in the Union of South Africa, *Report*, U.N. GEN. ASS. OFF. REC. 8th Sess., Supp. 16 § 399 (A/2505 and A/2505/Add. 1) (1953) [hereinafter cited as 1 UN COMM’N]. A note in the report on South Africa by the International Commission of Jurists states that the term appeared for the first time in the Afrikaans Dictionary in 1950. INTERNATIONAL COMM’N OF JURISTS, *Foreword* to SOUTH AFRICA AND THE RULE OF LAW 5 n.1 (1960) [hereinafter cited as INT’L COMM’N].

4. 1 UN COMM’N § 399.

It should be noted that *apartheid* is used abstractly or theoretically⁵ as well as in the (usual) concrete sense to describe the relationship among the "races" which the present South African government is trying to achieve.⁶ For the purposes of this study, which will not attempt any theoretical analysis or evaluation of the concept, it should be sufficient to indicate that the official and most widely accepted meaning refers to the "separate development" of the "races," each according to its own genius or inherent characteristics, in geographically delineated areas.⁷

According to this usage there is, in theory at least, no place in *apartheid* for *baaskap* (literally "boss-ship" or, in more familiar terms, "white supremacy").⁸ But traditionally white domination—or, in its most generous expression, "Christian guardianship"—has been the basis for government policy towards nonwhites;⁹ and the preservation of "White," "Western," or "Christian" civilization against numberless savage black hordes remains the under-

5. *Id.* at § 400.

6. *Id.* at § 400(4); INT'L COMM'N 5 n.1.

7. There is nothing new in the concept of Apartheid: Wherever there lives a nation which prizes its national separateness and entrenches its future existence behind political boundaries, there the fundamental *principle* of Apartheid is accepted and applied. The struggles of nations, races, religions and cultures to retain their separate identities is common politics all the world over. That, in its essence, is the philosophy of Apartheid. So, the teaching of Apartheid is the simple doctrine of nationalism

....

Basson, *The Case for Apartheid*, Africa South, Oct.-Dec. 1956, p. 14. See CARTER, *THE POLITICS OF INEQUALITY* 75 (1958) [hereinafter cited as CARTER]; 1 UN COMM'N § 404; INT'L COMM'N 5 n.1; Olivier, *The Case for Apartheid*, The Forum, May 1958, p. 26; H.A. DEB., April 1, 1957, col. 3951.

8. *Apartheid* in official theory is entirely different from a negative policy of oppression or exploitation: it is

a constructive policy, a policy of benevolence, protection and co-operation. In fact, according to this policy, "the supremacy (baaskap) of the European in his sphere" has a counterpart in the supremacy of the Bantu, the Cape Coloured or the Indian each in his own sphere.

1 UN COMM'N § 405. See Olivier, *The Case for Apartheid*, The Forum, May 1958, p. 26; Scrutator, *Grasping the SABRA Nettle*, The Forum, June 1958, p. 9. *But cf.* Pitout v. Rosenstein, [1930] So. Afr. L.R. 112 (1930), and Louw v. Kielblock, [1911] So. Afr. L.R. 209 (1911) (defamatory to call white man "Hottentot" or "coloured").

9. "We are, of course, the Christian guardians of the non-White races." H.A. DEB., April 17, 1956, col. 3784.

Under this apartheid the Afrikaners came to the fore as a nation with their Calvinistic-Christian philosophy, as the guardians of the non-Whites. Under their guardianship the non-Whites have always enjoyed safety and protection such as they have not enjoyed anywhere else in the world. . . .

Id., April 3, 1957, cols. 3994-95. See also 1 UN COMM'N § 278; BRADY, *DEMOCRACY IN THE DOMINIONS* 422 (1952) [hereinafter cited as BRADY]. *But cf.* HAILEY, *AN AFRICAN SURVEY* 168 (rev. ed. 1956) [hereinafter cited as HAILEY].

lying premise of government policy,¹⁰ as well as the most successful basis for electioneering.¹¹

These various concepts, all encompassed in *apartheid*, make it an exceptionally fuzzy term, with multiple meanings to speaker and audience.¹² Yet it may always be related to the fundamental acceptance of the concept of "race" and of inherent differences between races.¹³ The *apartheid* statutes discussed in this article can give more content to the term than any abstract discussion of its use.

These statutes are so closely interwoven that no mere analysis of individual measures can demonstrate to anyone unfamiliar with the South African scene

10. [The opposition] know very well that if they obtain victory . . . Christian civilization in our country must come to an end. . . . [T]he downfall of Afrikaners and of White civilization in our country . . . will also be the first step towards the doom of White civilization all over the world. We know that it is not only a struggle being waged against White civilization in South Africa. It is a struggle which is being waged over the whole world. Therefore it is our duty to keep burning the lights of civilization here. . . .

H.A. DEB., April 3, 1957, col. 3997.

I have never . . . found a "completely emancipated Native," however educated he may be. He may be learned, he may wear a white collar, he may have a string of titles behind his name, but he never renounces his tribal connections. . . . [W]hat the hon. Senators are forgetting is that one cannot and will never, and when I say never I mean till eternity, make a European of the Native. . . .

S. DEB., Mar. 16, 1955, col. 731. See also H.A. DEB., Feb. 1, 1956, col. 750; *id.*, March 27, 1957, cols. 3607-08; BRADY 422; KEET, *WHITHER SOUTH AFRICA?* 48 (1956).

11. See MAY, *THE SOUTH AFRICAN CONSTITUTION* 143 (1955) [hereinafter cited as MAY]. See generally CARTER, *op. cit. supra* note 7, for a definitive study of the Nationalist Party's success since 1948 based on exploitation of the race issue against an opposition hopelessly divided on both the morality and the politics of *apartheid*.

It has been shamelessly admitted by a government representative:

[I]t was always stated . . . that the total separation would be the ideal state of affairs. However, that has nothing to do with what is practical politics at the moment . . . except that it does indicate such an ideal course.

H.A. DEB., Jan. 25, 1957, col. 228.

12. Compare H.A. DEB., May 7, 1957, col. 5563 ("Our policy is . . . to place the power to govern the country in the hands of the White man so that he can retain or maintain his supremacy or baasskap."), *with id.*, April 3, 1957, col. 3976 ("[W]e endeavour to the best of our ability to ensure social justice for each group").

13. [Our philosophy] . . . rests on three main basic principles. . . . The first is that God has given a divine task and calling to every nation in the world. . . . The second is that every nation in the world . . . has an inherent right to live and to develop. . . . In the third place, it is our deep conviction that the personal and national ideals of every population group can best be developed within its own national community. . . .

This is the philosophic basis of . . . apartheid. . . .

South Africa . . . accepted . . . separate development as a basis on which the futures and the happiness of South Africa should be built. That applies not only in respect of Whites and non-Whites, but also in respect of the Bantu population groups in South Africa. . . .

H.A. DEB., May 18, 1959, cols. 6001-02.

how *apartheid* works. This study, which will be concluded in a forthcoming article, attempts to show, therefore, how all the various *apartheid* measures, operating together, control race relations in the Union. Naturally, the bare statutes do not tell the whole story; equally important, at least, are their administration, the regulations promulgated and enforced under them, and the interpretation of both by the courts. This study touches only lightly the multifarious regulations which are constantly spewed forth by various executive agencies in the Union. Similarly, it considers only in passing provincial legislation, which still significantly affects race relations despite the growing power of the central government. Nevertheless, it is believed that the information set forth is sufficient to explain *apartheid* as a legal institution and to demonstrate the method and effect of its operation in the Union.

THE "RACES" OF SOUTH AFRICA

Since *apartheid* is concerned with the races of South Africa and their separate development, it is essential to analyze the racial structure of South Africa to determine who is to develop with or separately from whom.

The most cursory study indicates that the prevailing South African concept of race is at least as ill-defined as that of *apartheid* and that it is also unrelated to any scientific meaning given to the term by geneticists.¹⁴ However, four racial groups are recognized by law and custom: white, black, yellow, and coloured.¹⁵

The "White" people (generally referred to as "Europeans" or in Afrikaans as *blankes*) are usually classified culturally as either Afrikaners or English.¹⁶ The former include the descendants of early Dutch and Huguenot settlers, Calvinists who fled religious persecution in Europe and who now generally belong to the Dutch Reformed Church and speak Afrikaans, a Dutch dialect. The Afrikaners or "Boers" ("farmers"), who gave their name to the wars by which the four provinces now comprising the Union were brought into the British Empire, constitute the hard core of the governing Nationalist Party.¹⁷ The English, descended from nineteenth century colonists and empire builders, are primarily city dwellers and until recently controlled most of the country's leading commercial interests. They generally adhere to the opposition United Party (or its splinters), but they also form the nucleus of the small Labor Party and of the minuscule Liberal Party, which supports integration.¹⁸

The "Black" people consist primarily of the Bantus, racially mixed descendants of Northeast African Hamitic peoples and Negroid people.¹⁹ "Bantu"

14. Shapiro, *Blood Groups and Skin Colour*, 1 J. FOR. MED. 2, 9 (1953); Tobias, *The Problem of Race Determination*, 1 J. FOR. MED. 113, 122 (1953).

15. H.A. DEB., April 3, 1957, col. 3975.

16. 1 UN COMM'N § 325.

17. *Id.* §§ 264, 266; PAGE, AN ATLAS OF AFRICAN HISTORY 33, 35, 37 (1958).

18. 1 UN COMM'N §§ 270, 272.

19. HANDBOOK ON RACE RELATIONS IN SOUTH AFRICA 8 (Hellmann ed. 1949) [hereinafter cited as HANDBOOK]; 1 UN COMM'N § 281.

itself, however, is properly a linguistic, not a racial term embracing all indigenous African people whose word for "man" has the stem *ntu*.²⁰ These people are habitually referred to as "natives" (considered by Africans as a derogatory term), and occasionally as "Bantus"; they call themselves "Africans." In addition to the Negroes, the "black people" include, by legislative fiat, the yellow-skinned Bushmen and the Hottentots, who apparently were the region's only aboriginal inhabitants.²¹

The "Coloured" people are the descendants of unions between Cape Malays or Europeans and Hottentots or Bantus.²² They have been largely assimilated into European culture, with 89.1% speaking Afrikaans.²³ Over 90% are Christians, less than 5% Moslems, and half of that small percentage heathens.²⁴

Most of the "Yellow" people in the Union are of Indian or Pakistani origin, but the term "Indian" is often used to refer to all Asians indiscriminately. Most Indians are descended from indentured Hindu laborers brought to Natal to work on the sugar plantations. The Indian trading class, however, is generally descended from Mohammedans, who came to the Union as merchants.²⁵ In addition, there are a few Chinese, descendants of Orientals imported into the Transvaal at the turn of the century to alleviate acute labor shortages,²⁶ and even fewer "Cape Malays," descendants of East Indians brought to the Cape Province at a very early date as coolie labor.²⁷

The current population of the Union is approximately 14,418,000, of whom 3,011,000 are officially classified as white, 9,600,000 as Africans, 1,360,000 as colored, and 441,000 as Asians.²⁸ The projected population for the year 2000 is 31 millions, of whom 4.6 millions will be white (14.7% of the total population), 21.3 African (68.4%), 3.9 colored (12.5%), and 1.4 Asian (4.4%).²⁹

20. HANDBOOK 8; HAILEY 29; 1 UN COMM'N § 281. Bantus in South Africa include the following major linguistic sub-groups: Xhosa, Zulu, Swazi, Sotho, Tswana, Venda, and Tsonga. HAILEY 93; 1 UN COMM'N § 318 gives a slightly different classification.

21. See HAILEY 40. The Hottentots (believed a separate Khoisan people) and the Bushmen have been driven by the advancing whites and Africans into the most desolate areas of the Union and its mandated South West Africa Territory where at least the Bushmen may be faced with extinction. HAILEY 40; HANDBOOK 8.

Early Dutch settlers enslaved captured Hottentots and Bantus and felt themselves wrongly deprived of their property when in 1834 the equalitarian English abolished slavery in the Cape Colony, which the British had recently seized. 1 UN COMM'N § 272.

22. HANDBOOK 9.

23. 1 UN COMM'N § 335. Less than 1% speak Hottentot or Bushman.

24. *Id.* §§ 335, 336.

25. HANDBOOK 9.

26. 1 UN COMM'N § 340.

27. *Id.* § 267; HANDBOOK 598. The Cape Malays are not reproducing themselves as a distinguishable sub-group among the non-Whites.

28. South African Bureau of Census and Statistics, cited in 5 AFR. DIG. 193 (1958).

29. This is considered the more probable of two projections. HOUGHTON, THE TOMLINSON REPORT: A SUMMARY OF THE FINDINGS AND RECOMMENDATIONS IN THE TOMLINSON COMMISSION REPORT 5 (1956) [hereinafter cited as HOUGHTON].

If these statistics suggest watertight, even if unscientific, racial categories into which the population of the Union has been immutably cast, they are entirely misleading. Three centuries of living in a racially mixed society have, as the courts have repeatedly recognized, produced a country in which few persons can vouch for the racial purity of their ancestors more than several generations removed, and in which the children of a single family may come in a variety of hues.³⁰ Responsible geneticists have thrown up their hands when asked for a scientific test of race which could solve the problem.

Where, for purposes of legal classification, the question arises whether a person is White, Colored, Negroid or Asiatic, the policeman and the tram conductor, unencumbered by biological lore, can make an assessment with greater conviction, and certainly with fewer reservations, than can the geneticist or anthropologist. Indeed, the evidence of the scientist on the subject of race can only prove an embarrassment to the Courts if not to himself.³¹

The South African Parliament has compounded these biological difficulties by enacting numerous differing, often arbitrary, and frequently contradictory definitions of race in various statutes.³² Definitions have varied according to immediate legislative objectives as well as to the relative sophistication of the statutes' proponents.

A primary source of confusion is the erratic variation from one statute to another in the extent or degree of racial differentiation that is recognized or required. In its most primitive form the law simply distinguishes between white and nonwhite.³³ Thus one statute³⁴ differentiates simply between a "white person" and a "coloured [*i.e.*, nonwhite] person."³⁵ In other cases the nonwhites may be divided into only two classes, Asians and coloreds being classed together. Thus a typical statute³⁶ defines a colored person as "a person who is not a white person or a native."³⁷ The statutes may, however, follow the customary division into four racial groups,³⁸ or go even further and empower an official to define any "ethnic, linguistic, cultural or other

30. *R. v. Ormonde*, [1952] 1 So. Afr. L.R. 272 (1951); *R. v. Gill*, [1950] 4 So. Afr. L.R. 199 (1950); *cf.* HANDBOOK 7.

31. Shapiro, *Blood Groups and Skin Colour*, 1 J. FOR. MED. 2, 9 (1953).

32. For a general discussion, see HAHLO & KAHN, *THE UNION OF SOUTH AFRICA* 793-98 (1960).

33. In Afrikaans the terms are *blanke* and *nie-blanke*. Even in prison "white and non-white prisoners shall be detained in separate parts thereof and in such manner as to prevent white and non-white prisoners from being within view of each other. . . ." Prisons Act, Act No. 8 of 1959, § 23(1)(b). Subsection (1)(c) adds that wherever practicable non-white prisoners of different races shall be separated.

34. Immorality Act, Act No. 23 of 1957.

35. Act No. 23 of 1957, §§ 1(ii), (ix).

36. Industrial Conciliation Act, Act No. 28 of 1956.

37. Act No. 28 of 1956, § 1(vi).

38. See, *e.g.*, Pension Laws Amendment Act, Act No. 47 of 1951; Work Colonies Act, Act No. 25 of 1949; Liquor Act, Act No. 30 of 1928.

group of [nonwhite] persons" and then to treat each as a separate *race or group* for the purposes of the particular legislation.³⁹

If the basic fourfold racial differentiation were universal and workable, the grouping together of two or three "races" for certain purposes would probably pose no insuperable problems. Unfortunately, many statutes are so drawn that the status of innumerable individuals can be determined only by judicial decision. Even more unsettling, there are thousands of persons who are classified as members of one race in one act and as members of another under another.⁴⁰

Who, then, are Africans, coloreds, Asians, and whites? Starting at the point of least dispute, we may consider first the Asians, who are the smallest and apparently the most easily definable racial group in South Africa. The traditional definition of Asian reads: "any member of a race or tribe whose *national* home is in Asia. . . ."⁴¹ This particular definition goes on to include Turks, but excludes Cape Malays, Jews, Syrians, and "any race, or branch of any race, declared by the Governor-General . . . to be excluded. . . ."⁴² A later statute⁴³ repeats substantially the same definition, but excludes Turks,⁴⁴ who thus find themselves in racial limbo. The cases interpreting the various definitions of "Asiatics" are limited, and for the most part appear to hinge on substantially pure descent as the qualifying (or disqualifying) factor. In at least two cases the offspring of marriages between an Asian and a Cape Malay ("colored") were held not to be subject to the statutory restrictions imposed on Asians;⁴⁵ hence one may assume that for the purposes of the restrictive legislation affecting Asians only, the protagonists of the actions involved had moved *upward* on the racial scale.⁴⁶

The traditional definition of an African is analogous to that of an Asian; "African" includes any "member of an aboriginal race or tribe of Africa."⁴⁷

39. Group Areas Act, Act No. 77 of 1957, § 10(2) (a). Some statutes are, of course, aimed at one race only, as the laws restricting landholding by "Asiatics."

40. H.A. DEB., June 13, 1956, col. 7777. According to the International Commission of Jurists, some years ago the Minister of the Interior appointed an Interdepartmental Committee to investigate whether it was possible to arrive at common definitions of the various racial groups for the purposes of all legislation. In 1957 the Committee reported the task was beyond its powers; but the Minister asked the Committee to try again. INT'L COMM'N 23, n.7.

41. Liquor Act, Act No. 30 of 1928, § 175 (emphasis added).

42. Act No. 30 of 1928, § 175. Since all the excluded groups except Cape Malays are also excluded from the definition of colored in the same act, it would appear they are precariously white.

43. Asiatic Laws Amendment Act, Act No. 47 of 1948.

44. Act No. 47 of 1948, § 1, which substitutes a new § 31(1) (a) in the Asiatic Land Tenure and Indian Representation Act, Act No. 28 of 1946.

45. Patel v. Minister of the Interior, [1955] 2 So. Afr. L.R. 435 (1955); Minister of the Interior v. Machadodorp Inv. (Pty.) Ltd., [1957] 2 So. Afr. L.R. 395 (1957).

46. That such a decision represents an upward movement, see Minister of Posts & Telegraphs v. Rasool, [1934] So. Afr. L.R. 167 (1933).

47. See, e.g., Natives (Prohibition of Interdicts) Act, Act No. 64 of 1956, § 1(i);

But the test of "membership" is seldom prescribed, leading to almost as many methods as there are statutes.

Earlier and less sophisticated statutes frequently had long and detailed definitions which, however, usually begged the crucial question. Thus one early statute⁴⁸ defined "native" to include:

- a) any member of any aboriginal race or tribe of Africa, other than a race, tribe or ethnic group in the Union representing the remnants of a race or tribe of South Africa which has ceased to exist as a race or tribe; and
- b) any person whose father or mother is or was a native in terms of paragraph a); and
- c) any person whose father or mother is or was a native in terms of paragraph b); and
- d) any person, one or more than one of whose ancestors is or was a native, who—
 - 1) is desirous of being regarded as a native for the purposes of this Act; or
 - 2) is by general acceptance and repute a native; or
 - 3) follows in his ordinary or daily mode of life the habits of a native; or
 - 4) uses one or other native language as his customary and natural mode of expression; or
 - 5) associates generally with natives under native conditions. . . .⁴⁹

This definition then specifically excluded any person falling under paragraph (b) and born prior to the commencement of the act who "by general acceptance and repute" is not a native or under paragraph (c) who "by general acceptance and repute" is not a native and whose parents by this same test were not natives, and "who desires to be regarded as a person other than a native for the purposes of this Act. . . ."⁵⁰ A subsequent statute,⁵¹ while adopting the above definition of African, nevertheless created a loophole which would be ideologically unacceptable today. An African might petition to be declared a "non-native." To receive favorable action by the minister, the petitioner must satisfy a Board of Inquiry that he

- (a) is a person of repute who is held in good public esteem in the locality where he resides and by his associates; and
- (b) is proficient in one of the official languages of the Union and has intellectual or other attainments more characteristic of European or other [*sic*] non-natives than of natives; and

Industrial Conciliation Act, Act No. 28 of 1956, § 1(xx); Natives Resettlement Act, Act No. 19 of 1954, § 1(vii); Bantu Education Act, Act No. 47 of 1953, § 1(v).

48. Native Trust and Land Act, Act No. 18 of 1936.

49. Act No. 18 of 1936, § 49.

50. Act No. 18 of 1936, § 49; but there is a heavy burden of proof on the person who seeks exemption under this section.

51. Representation of Natives Act, Act No. 12 of 1936.

(c) conforms in regard to his standard and habits of life to the standards and habits of life of Europeans.⁵²

Such detailed statutes fail to provide any principles of general application to the question of who is an African. The most obvious test of membership in an aboriginal race or tribe of Africa may be assumed to be that of descent. But this test often results in the exclusion rather than inclusion of persons with substantial amounts of mixed blood.⁵³ Thus the conviction of a group of co-defendants by the Natal Native High Court was reversed⁵⁴ because the court had jurisdiction over "natives" only, and one of the defendants was the illegitimate son of an African mother and an Indian father. The court concluded that under the High Court Act the sole test of whether a person is an African is descent.⁵⁵

It appears that the expression "in fact is" imports racial descent into any statutory definition.⁵⁶ Thus when "native" was defined as "a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa,"⁵⁷ a court held⁵⁸ that the son of a colored father and African mother was colored despite his African appearance. Since the evidence did not establish that he was a full-blooded African, it could not be held that he "is" or "in fact is" an African, and recourse then had to be taken to the test of general acceptance, under which he was adjudged colored.⁵⁹ Presumably the decision would be different now that the act provides that—

A person who in appearance obviously is a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a native unless it is proved that he *is not in fact* and is not generally accepted as such a member.⁶⁰

52. Act No. 12 of 1936, § 41.

53. But as to whether American Negroes are "natives," compare Silicosis Act, Act No. 47 of 1946, § 1(1), with Pension Laws Amendment Act, Act No. 48 of 1944, § 5(b).

54. R. v. Radebe, [1945] So. Afr. L.R. 590 (1945).

55. *Id.* at 610.

56. H.A. DEB., June 13, 1956, col. 7773.

57. Population Registration Act, Act No. 30 of 1950, § 1(x).

58. Lambert v. Director of Census, [1956] 3 So. Afr. L.R. 452 (1956).

59. In this case, De Wet, J., indicated his dissatisfaction with appearance as a test, saying that the union of a white and an African could produce a white child, a black child, and others who clearly showed their mixed heritage: "This phenomenon is accepted in the science of genetics and can be observed by anyone who goes about this country with his eyes open." [1956] 3 So. Afr. L.R. at 456.

60. Act No. 30 of 1950, § 19(1)*bis*, added by Act No. 71 of 1956, § 3(a) (emphasis added). *But see* Sithole v. Sekretaris van Binnelandse Sake en 'N Ander, [1960] 4 So. Afr. L.R. 105 (1960).

The International Commission of Jurists point out that one of the groups which has suffered most under the Population Registration Act's provisions is the Griquas, persons of mixed white, Hottentot, and Bushman blood who have over the years become a distinctive group speaking the Griqua Hottentot language. Some have in recent years intermarried with Africans and adopted Afrikaans as their language, but they have traditionally been regarded as colored. The Population Registration officer who visited their head-

When there is no definition of African or merely one based on membership in an aboriginal race or tribe of Africa, some other test of Africanness may be required. This may be found negatively, by determining whether the person in question is excluded from the definition of colored. Thus the Supreme Court⁶¹ reversed⁶² the conviction of a person accused of being unlawfully in an area "proclaimed" against Africans upon proof by a preponderance of the evidence that the accused was colored within the meaning of the act.⁶³ In an earlier case to which the court referred⁶⁴ the question of the applicant's descent was quickly disposed of (he was the son of colored people, although his mother had a typical African name and he looked like an African), and the court decided his racial classification on "general acceptance and other factors contributing to the balance of probabilities." The court placed the onus of proof that the petitioner was an African on the government, for—

On a matter where his whole future way of life is at stake, as well as that of his family, where his very livelihood might be adversely affected, it is unthinkable that the Legislature of a free country intends to place such an *onus* on the subject. . .⁶⁵

A reconsideration of the cases may easily lead to the conclusion that the popular conception of an African is after all correct: any dark-skinned person⁶⁶ (except an "Asian") who has been unable to convince the world that he is colored.

If the number of cases which give substance to the statutes defining Africans and differentiating them from coloreds is so limited as to give little assistance to the student of *apartheid*, the cases construing statutes which distinguish white from colored are legion, despite the general uniformity of provisions defining "European."

In a few cases pure descent has been held the proper test of "whiteness." In an early leading case⁶⁷ the children of a white man married to a colored

quarters classified them as Africans. As a result they will henceforth be treated as Africans, subject to all the restrictions discussed in this article; and their children will have to attend "Bantu schools" and be educated in one of the African languages which is completely foreign to them. INT'L COMM'N 26.

61. The Supreme Court, which is the South African court of general jurisdiction, sits in geographical divisions. It has both original and appellate jurisdiction, and appeals are taken from it to the Appellate Division, composed of selected Supreme Court justices. It may be compared to the Supreme Court and the Appellate Division in a department in New York State.

62. *R. v. Jackson*, [1957] 2 So. Afr. L.R. 199 (1957).

63. Natives (Urban Areas) Consolidation Act, Act No. 25 of 1945.

64. *Goliath v. Director of Census*, [1956] 3 So. Afr. L.R. 95 (1956).

65. *Id.* at 99.

66. Plus Bushmen, Hottentots, and a few small groups arbitrarily included.

67. *Moller v. Keimoes School Comm.*, 5 Buch. App. Ct. Rep. 182, [1911] So. Afr. L.R. 635 (1911). *But cf.* *De Gouveia v. Superintendent-General of Education*, [1954] 3 So. Afr. L.R. 1009 (1954).

woman were held to be lawfully excluded from the school for white children since the school statute made pure European extraction the test. Unfortunately, recent zealots have failed to heed the warning in the opinion, that

It is fortunately unnecessary to decide how far back in a person's pedigree it would be allowable to go in order to decide whether his European extraction is unmixed. In no case is it the duty of a School Committee to enquire into the descent of a child, if it is not obvious from the appearance of the child that he or she is of other than European descent. If any objection is made by the parents of other children to a child not obviously colored, the onus is on them to produce clear proof of the non-European element, and in the great majority of cases it would be impossible to produce such proof in regard to an ancestor of a remoter degree than that of grandparent . . .⁶⁸

Thus *Africa Digest* reports that possession of official white identity cards by both parents is insufficient to establish that a child is of pure white extraction.⁶⁹ The case is cited of an adolescent who was called out of class to the principal's office where his eyes, skin, and hair were examined, after which his parents were informed that he had signs of colored blood and would therefore have to leave the school.⁷⁰ One principal boasted that he had "turned away more than twenty 'suspects' already this year."⁷¹

Usually, however, the basic test is appearance, with "general acceptance and repute" an added or alternative test if appearance is indecisive.⁷² Still, very minor variations in such a definition may greatly disturb the courts. In a leading case⁷³ the Court of Appeals struggled to determine whether there is any substantive difference between a provision that any person "who *seems in appearance obviously to be* a white person or a coloured person, as the case may be, shall for the purpose of this Act be deemed to be such unless the contrary is proved" and one which states that any person "who *is in appearance obviously* a European or a non-European, as the case may be, shall for the purposes of this Act be deemed to be such unless and until the contrary is proved."⁷⁵

But what is the meaning of "seems obviously to be?" . . . So if it seems perfectly evident, perfectly manifest, palpably true that a person is in

68. 5 Buch. App. Ct. Rep. at 189.

69. 6 AFR. DIG. 196 (1959).

70. *Ibid.*

71. *Ibid.*

72. See, e.g., Industrial Conciliation Act, Act No. 28 of 1956, § 1(xliv); Population Registration Act, Act No. 30 of 1950, § 1(xv).

73. R. v. Ormonde, [1952] 1 So. Afr. L.R. 272 (1951); Note, 69 S.A.L.J. 117 (1952).

74. Immorality Act, Act No. 5 of 1927, § 21(2) (emphasis added). This act was substantially the same as its successor, Act No. 23 of 1957, except that "non-European" was used instead of "coloured" in the present act. ("Non-European" was substituted for "native" by Act No. 21 of 1950, § 1.) A "white person" is defined as any person "who in appearance obviously is or who by general acceptance and repute is a white person." Act No. 23 of 1957, § 1(ix).

75. Prohibition of Mixed Marriages Act, Act No. 55 of 1949, § 3 (emphasis added).

appearance a European, sec. 7*bis* still contemplates the possibility of proving "the contrary," i.e. that it *is not* perfectly evident, perfectly manifest, palpably true that he is in appearance a European—for if it is perfectly evident, he *is* by the definition in the Act a European. . . .⁷⁶

In this case the court reversed the conviction for unlawful marriage of a white male Moslem and a woman of light skin who attended the Dutch Reformed Church and was generally accepted as white but who was the daughter of a woman generally accepted as colored. Although the woman was not clearly a European, the court held that the prosecution had failed to prove that she was a non-European under the definition:

The definition is so framed that there must be a great number of people who cannot be proved to be either European or non-European . . . No doubt that framing was intentional, taking due note of the fact that there is a doubtful class, with one foot on each side of the colour line. . . . Indeed, cases are quite conceivable in which a person may according to one branch of the definition (that of obvious appearance) fall in the one group and according to the other branch (that of general acceptance and repute) in the other.⁷⁷

Alleged mixed marriages have, indeed, provided many of the cases which distinguish white from colored⁷⁸—and have generally shown the appellate courts at their most generous, for statutes imposing criminal sanctions or restricting marriage are strictly construed.⁷⁹

Thus the Supreme Court reversed⁸⁰ the conviction of a marriage officer for marrying a European man to an alleged non-European who was fair with dark hair and consorted with Europeans as a European although it was known that there was a "slight mixture of blood" on her father's side. An Interior Department circular had provided that marriages could be solemnized if both parties appeared to be either European or non-European or, in case of doubt, if the questionable party consorted with Europeans as a European (or vice-versa); on this basis it was erroneous to assume that a person was a non-European merely because he could not meet the racial purity test applied in school segregation.⁸¹

In another case⁸² a woman of "mixed descent," whose parents were nonetheless classified as white, obtained an order to compel a marriage officer to grant her a license to marry a nonwhite. Although she looked white, the

76. [1952] 1 So. Afr. L.R. 272, 275 (1951).

77. *Id.* at 277.

78. See note 79 *infra*.

79. McWhinney, *Race Relations and the Courts in the Union of South Africa*, 32 CAN. B. REV. 44, 61, 62 (1954); see, e.g., *R. v. K & B*, [1955] 3 So. Afr. L.R. 193 (1955). *But see* *R. v. B & H*, [1953] 2 So. Afr. L.R. 344 (1953); *R. v. B*, [1951] 2 So. Afr. L.R. 124 (1951).

80. *R. v. Gill*, [1959] 4 So. Afr. L.R. 199 (1959).

81. *Moller v. Keimoes School Comm.*, 5 Buch. App. Ct. Rep. 182, [1911] So. Afr. L.R. 635 (1911).

82. *Pedro v. Tansley*, [1951] 4 So. Afr. L.R. 182 (1951).

court held that her association with colored people and acceptance as one of them established the "contrary" of her appearance.

The Group Areas Act⁸³ varies the standard form of race definition slightly by defining white, colored, and native "groups." A "white group" includes

any person who in appearance obviously is or who is generally accepted as a white person, other than a person who, although in appearance obvious a white person, is generally accepted as a coloured person, or who is . . . under other provisions a member of any other group . . .⁸⁴

The "native group" includes (i) every person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa, other than a member of the colored race, and (ii) every woman who is married to or cohabits with a member of the native group and (iii) every white man who is married to or cohabits with a member of the native group.⁸⁵ The "coloured group" includes (i) persons not members of a white or native group, (ii) every woman who is married to or cohabits with a member of the coloured group, and (iii) every white man who is married to or cohabits with a female as defined in (i).⁸⁶

The peculiar racial definitions of the Group Areas Act have not eased the courts' burdens in distinguishing between white and nonwhite in marginal cases.⁸⁷ In a prosecution⁸⁸ of an alleged colored for occupying premises in a white area, the court stated:

There is particular poignancy in this case, the result of which will affect a whole family throughout their lives. . . . [Defendant] was . . . in a dual position during 1952, 1953 and the greater part of 1954: at work he passed as coloured, but at home and where he went outside his work, he passed as white. For the period August, 1954, until . . . [the date of arrest] he passed as white wherever he went . . .

I do think that these points reveal a consistent pattern of life which was since 1951 strongly white and since 1954 overwhelmingly white.

83. Act No. 77 of 1957.

84. Act No. 77 of 1957, § 10(1)(a). Section 41(1) provides that "a person who in appearance obviously is a white person shall . . . be presumed to be a member of the white group until the contrary is proved."

85. Act No. 77 of 1957, § 10(1)(b). Section 41(2) provides that "a person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa shall . . . be presumed to be a member of the native group until the contrary is proved."

86. Act No. 77 of 1957, § 10(1)(c). Section 41(3) provides that "a person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa shall . . . be presumed to be a member of the coloured group until the contrary is proved."

Native and colored groups may be subdivided by the Governor-General into any "ethnic, linguistic, cultural or other" subgroups, which shall be considered groups for the purposes of the act. Act No. 77 of 1957, § 10(2)(a). See Proclamation No. 73 (1951), cited in MAY 507; So. Afr. Gov't Gaz. (CN. 256), Feb. 12, 1954 (hereinafter cited as Gazette); *id.* (GN 942), May 6, 1955.

87. See *R. v. George*, [1954] 2 So. Afr. L.R. 243 (1954).

88. *R. v. Nicholas*, [1958] 3 So. Afr. L.R. 751 (1958).

The non-white pre-history and origins which undoubtedly exist, are then in terms of the definition to be disregarded because they are overshadowed by the general acceptance as white. In these circumstances it seems to me that the accused has discharged his *onus* on a balance of the probabilities.⁸⁹

In another case⁹⁰ the court found that the evidence showed merely that the defendant was a member of the "Indian group," which includes persons not necessarily Indian by descent but by general acceptance. Since the unlawfulness of the defendant's occupation of property depended on showing that he was an Indian under statutes which made descent the criterion,⁹¹ the evidence was held insufficient and his conviction reversed.

If there is no definition in a statute, the courts seem to apply whatever standards seem appropriate in the circumstances. A court has granted an order to compel the Registrar of Deeds to register certain real property in the names of certain minors as Europeans although they were one-eighth colored.⁹² In granting the petition the court considered standards applicable to land registration, including physical appearance, school attendance, general acceptance, and associations and mode of life.

It is probable that more and more problems arising out of lack of race definitions in *apartheid* statutes⁹³ will be "solved" by racial classification under the Population Registration Act of 1950.⁹⁴ This statute requires the Director of the Census to classify and register every Union resident⁹⁵ as either white, colored, or "native,"⁹⁶ the latter two to be subclassified according to the "ethnic or other" group to which each belongs.⁹⁷ The statute allows a person aggrieved by his own or any other person's classification 30 days after notice thereof to object. Final review is by an Administrative Board except that an appeal may be taken to the Supreme Court as to one's own classification.⁹⁸ The Director may at any time decide that a classification is wrong and after hearing alter the affected person's classification.⁹⁹ The act contains the following definitions:

89. *Id.* at 763, 765, 766; *accord*, R. v. L'Etang, [1954] 4 So. Afr. L.R. 430 (1954). *But see* R. v. Vilbro, [1957] 3 So. Afr. L.R. 223 (1957). And for practical consequences see the N.Y. Times, May 1, 1960, p. 14, col. 1.

90. R. v. Bokhary, [1958] 1 So. Afr. L.R. 737 (1958).

91. The Asiatic Land Tenure Act, Act No. 28 of 1946, or Transvaal Precious and Base Metals Act, Act No. 35 of 1908.

92. *Ex parte X*, [1940] So. Afr. L.R. 156 (1940).

93. *Cf.* Comment, *The Definition of Racial Groups*, 68 S.A.L.J. 103 (1951).

94. Act No. 30 of 1950.

95. Such classification to be made in the first instance from census data.

96. Act No. 30 of 1950, §§ 2, 3, 5(1).

97. Act No. 30 of 1950, §§ 5(1), (2).

98. Act No. 30 of 1950, §§ 11(1), as amended by Act No. 71 of 1956, § 1; 11(3), (7). But the act provides a slap on the wrist for informers whose objections to the status of another are "unfounded or frivolous or vexatious." Act No. 30 of 1950, § 11(6).

99. Act No. 30 of 1950, § 5(3). See the tragic case summarized from a *Cape Times* story in INT'L COMM'N 106-07.

A white person is one who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person.¹⁰⁰

A "native" is a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa. . . .

A person who in appearance obviously is a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a native unless it is proved that he is not in fact and is not generally accepted as such a member.¹⁰¹

A colored person is a person "who is not a white person or a native" ¹⁰²

As might be suspected from the difficulties the courts have experienced in deciding borderline racial cases, the Director of Census found many persons not readily classifiable under the Population Registration Act. Six years after its passage 90,000 South Africans remained in racial limbo.¹⁰³ In 1960 there still was an "appreciable" number of persons "in a state of uncertainty."¹⁰⁴ Even more tragic were the decisions which separated individuals from their families, friends, and the communities in which they were born and bred by classifying them as members of different, usually less privileged, racial groups.¹⁰⁵

100. Section 1(xv).

101. Act No. 30 of 1950, § 1(x); § 19(1)*bis*, added by Act No. 71 of 1956, § 3(a).

102. Act No. 30 of 1950, § 1(iii). By Proclamation No. 46 (Gazette, March 6, 1959, p. 10), the following were declared to be colored groups for the purposes of the act: Cape Coloured Group; Malay Group; Gricqua Group; Chinese Group; Indian Group; and Other Asiatic Groups.

103. H.A. DEB., June 13, 1956, col. 7789.

104. H.A. DEB., Feb. 10, 1960, col. 1257. Earlier the same day it was alleged that 30% of the whites, 75% of the coloreds, and 90% of the Asians still had not received their identity cards. *Id.* at col. 1239.

105. A Labor M.P. brought to light the following hardship cases: an eighteen year old boy who had passed his junior certificate at a colored school was classified as a native; a son was declared a Malay while his mother was held to be white; a father was classified as white, his wife as African, and their son as colored; a family of siblings were classified as colored, except one who was held to be an African. H.A. DEB., June 13, 1956, cols. 7786-87. Even more degrading is the case of an elderly white widow who was forced to admit, for the sake of her four white sons who were fair in color, that her fifth son, who was somewhat darker and therefore classified as colored, was born out of wedlock. INT'L COMM'N 106-07.

The International Commission of Jurists claims that the children of mixed unions are usually classified according to the "lower" of the two categories involved—*i.e.*, the one which carries less privileges. One of the unfortunate complications is that the minor children of a mixed union are classified as of the same race as the father for purposes of the Group Areas Act, so that the entire family may dwell together in one area; but upon reaching the age of 16 such children have to obtain their own identity cards and may be classified as of another race—forcing them to leave their family and friends and to adapt to the laws governing the groups to which they are classified as belonging, however much such rules may differ from those under which they grew up and to which they had in their first 16 years become accustomed. INT'L COMM'N 25.

The act, it was pointed out, contains a definition of "native" which differs materially from the definitions in a large number of other statutes in which an attempt has been made to define a Native . . . That means that a man may be issued an identity card as a Native under the Population Registration Act, and may not be a Native for the purposes of . . . the Urban Areas Act; or he may be given a Coloured identity card and yet be a Native for the purposes of certain other Acts. . .¹⁰⁶

Further, it

becomes more ludicrous when applied to females because their racial classification varies with their marital status. A Coloured woman who is married to a Native, becomes a Native in terms of the Group Areas Act, she reverts to a Coloured if she divorces her husband and furthermore, she could be classified as a European under the Immorality Act. . .¹⁰⁷

Thus it is clear that membership in the racial groups to be segregated from each other is not entirely absolute, due both to earlier intermixtures which affect many families,¹⁰⁸ and to the vagaries of legislative drafting. Nevertheless, there is no doubt about the status of a large proportion of the population, and the number whose race is uncertain is being reduced. In the remainder of this study racial terms will be used without qualifications, but it must not be forgotten that the problem of their applicability to individuals may at any time be added to other problems of construction and interpretation.

THE "CONSTITUTION" OF APARTHEID

The statutes analyzed in this section are limited to the handful which form the "constitution" of *apartheid* by defining the fundamental relations between white and nonwhite. Taken together, these statutes provide for the physical separation of the races from each other,¹⁰⁹ create a system of tribal government for Africans in rural areas¹¹⁰ and regulate Africans in urban areas.¹¹¹ Although enacted over a period of several decades, they are so interrelated that they must be read together to explain the operation of *apartheid*. Parenthetically, it should be added that the division between these basic statutes

106. H.A. DEB., June 13, 1956, col. 7777.

107. *Id.* at col. 7796.

108. In this regard, the following Parliamentary exchange may be revealing:

Government member, blaming a proposed amendment on the opposition: Your chickens are coming to roost.

Opposition member: I would like to tell the hon. member that my chickens are White but I do not know the colour of the chickens of the hon. member. . . .

H.A. DEB., June 6, 1957, col. 7373.

109. Native Trust and Land Act, Act No. 18 of 1936, and Group Areas Act, Act No. 77 of 1957.

110. Bantu Authorities Act, Act No. 68 of 1951; Native Administration Act, Act No. 38 of 1927; Native Affairs Act, Act No. 55 of 1959; and Promotion of Bantu Self-Government Act, Act No. 46 of 1959.

111. Natives (Urban Areas) Consolidation Act, Act No. 25 of 1945.

and other *apartheid* legislation, which will be analyzed in a forthcoming article is and must be somewhat arbitrary. Generally, however, the statutes discussed here are essential to the "successful" operation of all other statutes. *Apartheid* would be well entrenched and effective even if the remaining statutes did not exist.

Physical Separation: Native Reserves

While there are forerunners of much of the modern *apartheid* legislation,¹¹² the earliest significant laws were those which segregated black from white in rural areas by restricting the Africans to specified areas, yesterday's "reserves"¹¹³ and today's "Bantustans."

There were at least two major motivations for the establishment of the "native reserves." One was to create areas "where tribal life might follow its age-long courses, unmolested by the direct pressure of the European economy and unmolested to that economy . . ." ¹¹⁴ The other was to confine the "dark-skinned heathens," who had taken such a heavy toll in battle against the whites, to areas where the wary Dutch could watch for subsequent uprisings.¹¹⁵ Naturally, this distinction has become considerably blurred with time. Nevertheless, the political history of South Africa has been one of constant conflict between the whites who view all Africans as the vanquished enemy, never to be fully trusted or accepted, and those who believe that this attitude is ill adapted to a modern industrial society.

In any case, the modern consequence of the nineteenth century policy of territorial demarcation is that Africans are by law restricted to only two places in the countryside: to the reserves and to the land of white farmers (where they are rapidly becoming a landless agricultural proletariat).

The "reserves," as they are popularly referred to, comprise three slightly different classes of land: the "reserves" proper (areas assigned to the various tribes by the pre-Union governments and confirmed to the Africans by statute);¹¹⁶ "scheduled areas" (areas usually adjoining the tribal lands which were listed in schedules annexed to certain statutes¹¹⁷ and intended for the use and benefit of the Africans);¹¹⁸ and "released areas" (certain scheduled areas adjoining the tribal areas which the Native Trust or individual Africans

112. *E.g.*, Act No. 3 of 1885, § 2(b); Cape Proclamations 110, 112 of 1879.

113. Territorial demarcation of lands reserved exclusively for Africans was begun as early as 1839 by the Voortrekkers in Natal and was carried on in all four colonies in the following decades. When the Union was formed in 1909, Britain kept her three present protectorates (Basutoland, Bechuanaland, and Swaziland) outside the new state as exclusively African areas. H.A. DEB., May 18, 1956, col. 6010.

114. BRADY 414; H.A. DEB., March 24, 1959, col. 3084.

115. MORRIS, SOUTH AFRICAN WINTER 94 (1958).

116. Natives Land Act, Act No. 27 of 1913. See H.A. DEB., May 18, 1959, col. 6011.

117. Natives Land Act, Act No. 27 of 1913, and Native Trust and Land Act, Act No. 18 of 1936.

118. Natives Land Act, Act No. 27 of 1913, §§ 1(2), 10.

may acquire as part of the native reserves).¹¹⁹ Most of the reserves, it should be noted, are Crown lands, in which no African has vested rights.¹²⁰ The government, to implement its philosophy of modern Bantustans, has provided for tribal, rather than individual, land ownership.¹²¹

The basic mechanics by which Africans are restricted to the reserves are very simple. African rural land ownership is limited to the reserves by the Native Trust and Land Act.¹²² Africans may not acquire land from non-Africans anywhere outside a scheduled area if such land is surrounded by land held by non-Africans,¹²³ and the Governor-General may expropriate any land owned by an African outside a scheduled or released area.¹²⁴

The entire reserves are vested¹²⁵ in the South African Native Trust (of which the Governor-General¹²⁶ is the trustee).¹²⁷ The Trust is empowered to acquire land to add to the reserves,¹²⁸ but a maximum¹²⁹ has been set for each province.¹³⁰ The land may be acquired only if it is within or adjoining a scheduled or released area, and no land may be added to a released area without the consent of the owner.¹³¹ Except as otherwise provided, the Trust may expropriate the classes of land it is empowered to acquire,¹³² and any land outside a scheduled area which is transferred by a non-African to an African is to be deemed acquired by the Trust.¹³³

All Trust land is to be held for the exclusive use and benefit of the Africans.¹³⁴ Prospecting and mining on such lands are generally forbidden.¹³⁵ Non-Africans are prohibited from living in the reserves and are forbidden¹³⁶ to acquire from Africans any land in a released area which is entirely surrounded by land held by Africans or by the Trust.¹³⁷

119. Native Trust and Land Act, *supra* note 117, § 2, as amended by Native Trust and Land Amendment Act, Act No. 73 of 1956, § 1.

120. Ntantala, *African Tragedy*, Africa South, April-June 1957, p. 67.

121. ΗΟΥΣΗΤΟΝ 23, 75. The Government in this case went against the recommendations of its own advisers.

122. Act No. 18 of 1936, §§ 12(1)(b), 26, which in this respect is substantially similar to its predecessor Natives Land Act, Act No. 27 of 1913, § 1(1)(a).

123. Native Trust and Land Act, Act No. 18 of 1936, § 12(1)(b).

124. See note 123 *supra*, at § 13(2), as amended by Act No. 17 of 1939, § 7(a).

125. See note 123 *supra*, at § 5.

126. Acting through the Minister of Bantu Administration and Development.

127. Act No. 18 of 1936, § 4(3).

128. Act No. 18 of 1936, § 19(1).

129. The maxima, including released areas, run from 80,000 morgen in the Orange Free State to 5,028,000 in the Transvaal, for a total of 7,250,000 morgen. Section 10(1). The South African morgen equals approximately 2 1/9 acres. 1 UN COMM'N § 680 n.340.

130. Act No. 18 of 1936, § 10(1).

131. Act No. 18 of 1936, §§ 10(2); 2(2)(c), added by Act No. 17 of 1939, § 1.

132. Act No. 18 of 1936, § 13(1).

133. Act No. 18 of 1936, § 10(3)(b).

134. Act No. 18 of 1936, § 18(1).

135. Act No. 18 of 1936, § 23.

136. Except under permit.

137. Act No. 18 of 1936, § 12(1)(a), as amended by Act No. 17 of 1939, § 6(a).

As of 1955 the area of Trust lands was about 12.9% of the total land area¹³⁸ of the Union.¹³⁹ When all land contemplated by current legislation is acquired, the total area will equal about 13.7%¹⁴⁰ of the Union.¹⁴¹ Approximately one-third of the reserves lie in the temperate rainy zone,¹⁴² compared with 11.5% of the Union as a whole, but some areas have serious water shortages.¹⁴³ Generally the reserves are "regions of only medium or poor fertility, many of them having been left for native occupation after the better land in the vicinity had been taken over by white farmers."¹⁴⁴ A few reserves are large in size, but many are tiny, often mere enclaves in white farm areas.¹⁴⁵ The government plans to incorporate the British protectorates of Basutoland, Swaziland, and Bechuanaland as enormous new reserves¹⁴⁶ but the British apparently will bar this as long as *apartheid* continues.¹⁴⁷

The population density of the reserves varies from around 80 per square mile in the fertile areas to 40 per square mile in the poorer regions, excluding absent migrant workers.¹⁴⁸ Absent workers constitute about 12% of the total reserve population or 40% of the males between 15 and 64, with almost two-thirds of them being between 20 and 39.¹⁴⁹ The reason for the absenteeism is that the reserves do not support their African population.¹⁵⁰

Physical Separation: Indians in Rural Areas

Segregation in the rural areas has affected not only Africans. Though not to the same extent, the Indians, who have resisted all inducements to give up their successful farms and return to their ancestral home, have also been

138. About 17,500,000 morgen.

139. HOUGHTON 7.

140. About 19,711,000 morgen.

141. HOUGHTON 7. As to land actually acquired under the Native Land and Trust Act, see H.A. DEB., May 18, 1959, col. 6011. *Id.*, April 22, 1960, col. 2250 (still way short of amount supposed to go to reserves).

142. Twenty or more inches per year.

143. HOUGHTON 8.

144. HANDBOOK 173. *But cf.* H.A. DEB., Feb. 22, 1954, col. 940.

145. 1 UN COMM'N 117, § 304.

146. MAY 517-21.

[I]f we take the Bantu homelands in the Union, together with Swaziland, Bechuanaland and Basutoland . . . together with the Reserves in South West Africa, which have already been set aside . . . then we find . . . that 10,105,595 Natives will be occupying an area equivalent to 438,257 square miles; in other words, there will be only 23 per square mile. That would be better than the position in South Africa at the moment . . . [where] the distribution of population . . . is 30.5 per square mile . . .

H.A. DEB., Feb. 15, 1960, col. 1553.

147. MAY 517-21.

148. HOUGHTON 8.

149. *Id.* at 9.

150. HELLMANN, RACIAL LAWS VERSUS ECONOMIC AND SOCIAL FACTORS 9 (1955); 1 UN COMM'N § 299.

affected.¹⁵¹ Legislation restricting Indian land rights, in the opinion of one commentator, reflects primarily the fear of continued penetration of white areas,¹⁵² but it has no doubt been intensified by the constant increase in the Indian population¹⁵³ and by its lack of cultural assimilation.¹⁵⁴

Whatever the motivation, the segregation of Indians in South Africa has always been tied closely to limitations on the ownership or occupation of land. As early as 1885 the South African (Boer) Republic provided that "persons belonging to any of the native races of Asia shall not be capable of being owners of fixed property in the Republic."¹⁵⁵ Since Union an avalanche of legislation has gradually narrowed the rights of Indians to own or occupy land. Most of the statutes are written in terms prohibiting the transfer of real property to Asians by non-Asians.¹⁵⁶ These were capped by the Asiatic Land Tenure and Indian Representation Act of 1946,¹⁵⁷ which purported to give the Indian community increased representation in Parliament as a *quid pro quo* for further restrictions on property ownership,¹⁵⁸ but the Indians rejected the exchange¹⁵⁹ and before these provisions could become effective, they were repealed.¹⁶⁰ The Group Areas Act¹⁶¹ now substantially controls all Indian land ownership and occupation, and older legislation is relevant mostly to the question whether ownership or occupation was lawful as of the effective date of this Act.¹⁶²

Physical Separation: Group Areas

Although extensive separation of the races started in rural areas, the Group Areas Act, which affects urban and peri-urban areas primarily, is often

151. HANDBOOK 214. All immigration stopped with the enactment of the Immigrants Regulation Act, Act No. 22 of 1913. 1 UN COMM'N § 287.

152. MAY 505. In HANDBOOK 216-17, it is pointed out that at the expiration of their service Indians purchased considerable tracts of land along the coast and soon gained a virtual monopoly of the cultivation of mealies (corn meal, the staple of the Africans' diet) as well as beans, tomatoes, and other vegetables; their demand for land increased its value three to four times and led to fears that they would buy up the whole coast.

153. 1 UN COMM'N § 288.

154. *Id.* § 341; BRADY 422. But see Kuper, *The Indians of Natal*, in AFRICA IN TRANSITION 115 (Smith ed. 1958).

155. Act No. 3 of 1885, § 2(b).

156. Asiatics (Transvaal Land and Trading) Act, Act No. 28 of 1939; Trading and Occupation of Land (Transvaal and Natal) Restriction Act, Act No. 35 of 1943; Asiatic Land Tenure and Indian Representation Act, Act No. 28 of 1946; Asiatic Land Tenure Amendment Act, Act No. 15 of 1950.

157. Act No. 28 of 1946.

158. HELLMANN, RACIAL LAWS VERSUS ECONOMIC AND SOCIAL FACTORS 6 (1955).

159. HANDBOOK 527.

160. Asiatic Laws Amendment Act, Act No. 47 of 1948, §§ 2-5.

161. Act No. 77 of 1957, which superseded Act No. 41 of 1950.

162. *Ebrahim & Co. v. Minister of the Interior*, [1958] 4 So. Afr. L.R. 388 (1958); *R. v. Bokhary*, [1958] 1 So. Afr. L.R. 737 (1958); *R. v. Bagas*, [1957] 4 So. Afr. L.R. 311 (1957); *R. v. Dockrat*, [1954] 2 So. Afr. L.R. 419 (1954).

considered most symbolic of *apartheid*. Since it is calculated that today more than one-quarter of all Africans, as well as very large proportions of the Asians and coloreds, are urban residents,¹⁶³ it is clear why the act has achieved this status.

In simplest terms the act establishes separate areas in every region of the Union in which each race shall dwell and do business.¹⁶⁴ This is accomplished by establishing group areas and controlled areas.¹⁶⁵ Group areas point to the ultimate objective of *apartheid*: areas free from any members of the "disqualified" groups,¹⁶⁶ although disqualified persons may be employed in such areas under restricted conditions.¹⁶⁷ Controlled areas represent a halfway house, roughly "pegging" the racial situation as it is.

Group areas, may be proclaimed¹⁶⁸ as to ownership or occupation or both.¹⁶⁹ No disqualified person shall, after a date specified in the proclamation, acquire by purchase, inheritance, or otherwise any real property in a group area for ownership.¹⁷⁰ In a group area for occupation no disqualified person shall occupy or be allowed to occupy land or premises after the specified date.¹⁷¹

The entire country, except group areas, constitutes the controlled area.¹⁷² Persons in the controlled area are forbidden to enter into any contract under which a disqualified person would acquire real property in any portion set

163. H.A. DEB., May 18, 1959, col. 6094.

164. According to the Minister of the Interior in parliamentary debate:

[T]he Group Areas Act is there to see that there is not this residential intermixing. . . . But it has gone further, it has said that for business premises too, that intermixing just be stopped. . . .

H.A. DEB., June 5, 1957, col. 7334.

165. For a thorough study of the fundamentals of the act as established in the 1950 Act, including some difficulties which the 1957 Act presumably corrected, see Johnson, *The Group Areas Act—Stage 1*, 68 S.A.L.J. 286 (1951).

166. A disqualified person in relation to real property in a *group area* is a person not of the group specified in the proclamation establishing the area; in relation to a *controlled area* it means a person not of the same racial group as the owner of the property, or, if the owner is a company, then a member of a group different from the group of a person who holds a controlling interest in the company. Group Areas Act, Act No. 77 of 1957, § 1(x).

167. *E.g.*, African domestic servants in white homes.

168. After consultation with the Administrator of the affected province. Act No. 77 of 1957, § 20(3) (b).

169. Act No. 77 of 1957, §§ 20(1) (a), (b); (2).

170. Act No. 77 of 1957, § 24(1) (includes acquisition by transfer or inheritance). Disqualified companies must divest themselves of all real property in such a group area within 10 years. Act No. 77 of 1957, § 24(1) (b).

171. Act No. 77 of 1957, § 23(1). Since nonwhites seldom own real property, they are more likely to be affected by the proclamation of a group area for occupation than for ownership.

172. Act No. 77 of 1957, § 1(vi). Group areas for ownership only are controlled areas as to occupation, and group areas for occupation only are controlled areas for purposes of acquisition of property.

aside for members of another group;¹⁷³ and no person in a portion of the controlled area set aside for one group shall hold or acquire real property¹⁷⁴ if he becomes¹⁷⁵ a member of any other group¹⁷⁶ or dispose of such property to a member of any disqualified group.¹⁷⁷ But the Governor-General may specify certain portions of the controlled area in which occupation of land or premises shall be allowed only to members of the same group as that of the lawful occupier¹⁷⁸ as of the specified date.¹⁷⁹

The act is generally administered by the Minister of the Interior, but the Minister of Bantu Administration and Development is in charge of some provisions relating to Africans.¹⁸⁰ A Group Areas Board has been established to advise the Minister on the administration of the act.¹⁸¹

The provisions as to both group and controlled areas are subject to certain statutory exceptions in application, particularly as to government employees, transients¹⁸² and domestic servants of lawful occupiers, if permitted by and subject to the conditions set out by the Governor-General.¹⁸³ In addition, broad powers are granted government officials to authorize exceptions and exemptions.¹⁸⁴

The act provides criminal penalties for violation of its provisions,¹⁸⁵ and very broad regulatory powers are granted to implement those provisions.¹⁸⁶ To prevent large scale avoidance, the most obvious loopholes have been eliminated. Restrictive covenants contrary to statutory provisions are void;¹⁸⁷ a trustee may not hold property for a disqualified beneficiary;¹⁸⁸ testamentary

173. Act No. 77 of 1957, § 11(1).

174. Except by permit.

175. As, for example, by marrying or cohabiting with a member of another group.

176. Act No. 77 of 1957, § 13.

177. "No disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in the controlled area, except under authority of a permit." Act No. 77 of 1957, § 17(1).

178. Occupier is defined as the owner or occupier as of the specified date. The Minister of the Interior has power to determine the occupying group in buildings deemed unoccupied on the specified date and to redetermine the occupying group if an occupying group is redefined as an African or colored subgroup. Act No. 77 of 1957, §§ 15(3), 16(1), (2), (3).

179. Act No. 77 of 1957, §§ 14, 15(1).

180. Act No. 77 of 1957, § 1(xviii) (proviso).

181. Act No. 77 of 1957, §§ 2, 5.

182. Such as bona fide visitors, hospital patients, prison inmates, certain students, recruited laborers in transit, and squatters in emergency camps.

183. Act No. 77 of 1957, §§ 15(2), 17(2), 23(2).

184. Act No. 77 of 1957, §§ 1(4), 15(4), 17(3), 21(6), 23(3), 33(1).

185. Act No. 77 of 1957, § 42.

186. Act No. 77 of 1957, § 43.

187. Act No. 77 of 1957, §§ 16(5), 23(4). Section 35 provides that "any condition or provision in any document whatsoever, empowering or purporting to empower any disqualified person or any disqualified company to exercise any influence upon the transfer of immovable property shall be null and void. . ."

188. Act No. 77 of 1957, § 36. *But see* Hurley, N.O., v. Group Areas Dev. Bd., [1960] 3 So. Afr. L.R. 435 (1960).

disposition to or intestate succession by a disqualified person is in many instances deemed to be disposition of or succession to the net proceeds of the property;¹⁸⁹ trading and occupational licenses may not be issued or transferred until the applicant proves the lawfulness of his occupation of the proposed premises,¹⁹⁰ and licenses are to be invalidated if a disqualified person assumes actual control of a business.¹⁹¹ Real property unlawfully acquired or held may be sold by the authorities after three months' notice to the owner and the holder of the registered mortgage bond,¹⁹² and property, although lawfully acquired, shall be deemed to be held unlawfully if the transferor acquired it unlawfully.¹⁹³ There are, in addition, extreme powers of search and seizure granted to inspectors to ensure that the act is properly carried out.¹⁹⁴

"Disqualified companies" are in general forbidden to do any act that a disqualified person may not do. In relation to immovable property, a disqualified company is one "wherein a controlling interest is held *or deemed to be held* by or on behalf or in the interest of a person who is a disqualified person in relation to such property."¹⁹⁵ "Controlling interest" is so broadly defined that there may be several varying controlling interests in one company.¹⁹⁶ A company which has issued bearer shares or debentures or a subsidiary controlled by such a company may not acquire or hold real property without a permit.¹⁹⁷ The Minister of the Interior may compel a company to furnish

189. Act No. 77 of 1957, §§ 17(4), 24(3).

190. Act No. 77 of 1957, § 31(1).

191. Act No. 77 of 1957, § 31(4).

192. Act No. 77 of 1957, § 37(1).

193. Act No. 77 of 1957, § 37(2).

194. Act No. 77 of 1957, § 39(2).

195. Act No. 77 of 1957, § 1(ix) (emphasis added).

196. "Controlling interest" includes: a majority of the company's shares; or shares representing more than one-half the share capital; or shares of a value exceeding one-half the aggregate value of all shares; or shares entitling the holders thereof to a majority or a preponderance of votes; or any interest arising out of the grant of a loan for an amount in excess of one-half of the share capital, or debentures for that amount; or power to exercise directly or indirectly by holding any interest of any nature in any company, or otherwise, any control whatsoever over the activities or assets of the company; provided that

A controlling interest in a company wherein a controlling interest is not held or deemed under any other provisions of this Act to be held by or on behalf or in the interest of any person, shall . . . be deemed to be held by any person who holds any shares in that company or who has any interest in that company arising out of a grant by him of a loan to or debentures issued by that company;

Act No. 77 of 1957, § 1(2); and provided further that

[I]n the case of an association of persons a controlling interest therein shall be deemed to be held by a person of the same group as the majority of the members thereof. . . .

Act No. 77 of 1957, § 1(vii).

197. Act No. 77 of 1957, § 44(1).

information so that he can determine whether a group has a controlling interest in it.¹⁹⁸ He may determine the group to which a company holding real property belongs, and after such determination it shall be deemed that no other group holds a controlling interest.¹⁹⁹

The scope of the Group Areas Act is so vast as to stagger the imagination. Among the details for which it provides is the prevention of the change of the group character of a company by one group giving up its controlling interest:

Say Whites have a controlling interest in a company by reason of holding the majority of the shares, and an Indian has a controlling interest in the company by reason of a loan made to that company. The Whites can [i.e., prior to amendment] transfer their shares to the Indian, so that the company becomes purely an Indian company, and then an Indian company without a permit.²⁰⁰

Similarly in the case of a natural person, it prevents anyone from continuing to hold

immovable property if he or she changes his or her group character by reason of marriage or of cohabitation with a member of another group . . . E.g., a Malay [prior to amendment] gives money to a Coloured woman to buy immovable property, and when she has bought this immovable property he then marries her and she becomes an Indian [*sic*], and she then transfers her property to her husband without a permit, because the transaction then is between members of the same group. . . .²⁰¹

Provision is also made for buffer strips²⁰² between group areas to prevent the intolerable visual affront occasioned by viewing members of another race just across the street.²⁰³ In discussing this situation the Minister of Lands solemnly declared that

The question is, what must this buffer strip be? . . . A mine company wanted to know if they could use an area that would be proclaimed as a buffer strip to put a slime dump on. This was an excellent thing as a slime dump would create a buffer and a very efficient buffer. You might have . . . a natural thing like a ridge or a river, or you could have a railway line, . . . you might plant a forest; . . . or you might put up a row of factories or a row of warehouses . . . so that the ground occupied as a living area by one group would not impinge directly on ground occupied by another group. That is the principle of the whole thing. . . .²⁰⁴

The application of the Group Areas Act can best be demonstrated by actions taken by the government under the act and under supplementary and closely related legislation.

198. Act No. 77 of 1957, § 34(1).

199. Act No. 77 of 1957, § 34(2); but such determination may be appealed to the courts under subsection (3).

200. S. DEB., June 21, 1955, cols. 4552-53.

201. *Id.* at col. 4553.

202. Act No. 77 of 1957, § 22.

203. S. DEB., June 21, 1955, cols. 4581, 4590.

204. *Id.* at col. 4582.

To override the decision²⁰⁵ that patrons of a cinema were not occupying land within the meaning of the act (so that the proprietor did not need a permit to show movies to a racially mixed, nonwhite audience), the authorities have now proclaimed that the provisions relating to occupation of land apply to any person

who is present . . . for the purpose of attending any public cinema or partaking of any refreshments ordinarily involving the use of seating accommodations as a customer in a licensed restaurant, refreshment or tea room or eating house, or as a member of or guest in any club. . . .²⁰⁶

A member of the opposition has warned that the definition of "occupation" to include mere presence on land or in premises could be used to prevent white candidates from going into colored districts to seek their votes, to prevent African chauffeurs from entering white stores, or to prevent Africans from entering "white" churches.²⁰⁷

In parliamentary debate the Minister of the Interior made it clear that he would promulgate rules to prohibit Indians from employing Africans or Europeans.²⁰⁸ Regulations require the manager of a business to be of the same racial group as the employer-owner²⁰⁹ and disqualified persons may not be employed in professional, technical, or administrative positions.²¹⁰ Also, all African welfare activities must be controlled by all-African committees and the sites and buildings therefor must be leased to African committees only.²¹¹ Such a decision will necessarily limit the friendly guidance and assistance given by more experienced Europeans.²¹²

The government has also ended the absolute exemption for domestic servants living in white areas.²¹³ Recently all Africans except regular domestic

205. *Fen Sam Jackson v. Conradie*, [1955] 4 So. Afr. L.R. 266 (1955).

206. *Gazette*, July 4, 1958, p. 1; cf. HEPPLE, *CENSORSHIP AND PRESS CONTROL IN SOUTH AFRICA* 24 (1960).

207. H.A. DEB., June 5, 1957, cols. 7326, 7328, 7329. Former Senator Brookes says that "In one area in Natal a missionary was recently given a permit to enter the Reserve where his work lies subject to the condition that he does not sleep in any Bantu home or even eat there. . . ." Brookes, *Official Discretion*, 23 RACE REL. J. 10 (Dec. 1956).

208. H.A. DEB., June 5, 1957, col. 7342.

209. Whyte, *A Review of Legislation in 1957*, 25 RACE REL. J. 14, 25-26 (Jan.-June 1958) (citing Proclamations 328, 329, & 337 of 1957).

210. *Ibid.*

211. *Id.* at 16.

212. *Ibid.*

213. Act No. 77 of 1957, § 23(2)(c). According to the Minister of Native Affairs, illegal housing of Africans in domestic quarter above flats, (the so-called "locations in the sky") made such a move necessary:

From an investigation which was made . . . [in Johannesburg] it appears that there are approximately 8,000 Native males and 3,500 Native females in the urban areas of Johannesburg who have licenses to live in flat buildings There are anything between 60,000 and 80,000 Natives who obviously have not even the right to be there living on the roofs of these buildings. . . .

I . . . worked out, on the basis of the number of Natives who live on the roof

servants lost their permits to be in white areas,²¹⁴ thus dividing families when the mothers are employed as domestics.²¹⁵

Among the first people to feel the effects of the original Group Areas Act in all its rigor were the residents of the so-called "Western Areas" of Johannesburg, where some 60,000 non-Europeans lived in alleged slum conditions, averaging approximately 142 persons per acre.²¹⁶ After many fruitless attempts²¹⁷ to persuade the Johannesburg city council to oust the inhabitants of these "black spots," the government introduced the Natives Resettlement Act,²¹⁸ which empowered it to compel the transfer of the residents to more adequate "accommodation" or sites²¹⁹ further from town.²²⁰ Enacted in the name of slum clearance²²¹ as well as restoration of the western areas to their

of a number of buildings . . . [in one section] what would happen if that whole square mile were to consist solely of blocks of flats. The figures which I therefore arrived at . . . is that there would be 30,000 Natives living on the roofs of the flats. . . . In that case the density of Natives in that square mile would alone be greater than you can find in any location in South Africa. That is the danger which I see arising if it is not checked in time. . . .

S. DEB., March 28, 1955, cols. 1231-33.

214. 6 AFR. DIG. 149 (1959).

215. INT'L COMM'N 34. The full rigor of the statute is achieved by reading it with § 9(5) of the Urban Areas Act, Act No. 25 of 1945.

216. For a description of conditions in these areas (Pageview, Sophiatown, Newclare, and Martindale), see H.A. DEB., March 23, 1954, cols. 2520-21 (Minister of Native Affairs). *But cf.* HUDDLESTONE, NAUGHT FOR YOUR COMFORT ch. 7 (1956).

217. As the Minister of Native Affairs stated in the House:

I had to learn from experience . . . that no definite decision would ever be reached if one continues to work with a continually changing City Council, especially now that this Liberalist wing has begun to exert influence. . . .

H.A. DEB., March 23, 1954, col. 2528.

218. Act No. 19 of 1954.

219. An opposition M.P. pointed out:

[I]t is important to draw a very clear distinction between those Natives who are resident in the four specified areas—which are collectively known as the Western Areas—and those Natives resident elsewhere. . . . [T]his Bill, territorially speaking, provides not only for those four areas but for many magisterial areas outside. . . . Whereas the Natives from the specified areas are to be provided . . . with alternative accommodation, no such provision is being made for Natives who are to be moved from adjoining magisterial districts. In their case, instead of accommodation, all that they are being promised is occupation of land.

H.A. DEB., March 23, 1954, col. 2547. As to minimum standards in providing accommodations or sites, see *Rathebe v. Natives Resettlement Bd.*, [1958] 1 So. Afr. L.R. 121 (1958).

220. Act No. 19 of 1954, § 12(1).

221. *But see* the comments of an opposition M.P. as to the necessity of removal to accomplish this objective:

There are 2,464 stands which have buildings on them; 582 of these stands have buildings which are in order or require minor repairs. . . . [O]n those stands there are roughly six to seven families per stand, so that on the 582 stands you have

rightful owners,²²² this act deprived the Africans of freehold rights²²³ which they would not be allowed to acquire elsewhere.²²⁴ Despite the improved conditions in their new townships,²²⁵ western areas residents²²⁶ engaged in a passive resistance campaign, which resulted in numerous arrests²²⁷ and ulti-

nearly 4,000 families. Some are major slums, and some are minor slums, some could be reconstructed by major repairs, some by minor repairs. Finally there are 388 stands containing buildings which should be condemned. . . . Out of 2,464 stands about 20 per cent are perfectly good. . . .

H.A. DEB., March 23, 1954, col. 2568.

222. *Id.* at col. 2523. The "rightful" owners were whites or coloreds who have been forced out by encroachments by "lesser" racial groups; in some cases a "shocking" inter-racial settlement seems to have developed, against *apartheid* ideology.

223. H.A. DEB., April 12, 1956, cols. 3472-74; Kuper, *Race Zoning in Cloud Cuckoo Land*, Africa South, Oct.-Dec. 1957, p. 35. For a run-down of the situation in the various affected areas, see Cachalia, *The Ghetto Act*, Africa South, Oct.-Dec. 1957, p. 39. On the other hand, the Minister of Native Affairs argued that:

[T]he Native property owners in this area are essentially owners only in name. Not only are they few in number . . . they are bonded to the hilt . . . they are exploited by the moneylenders and therefore forced to exploit their own people who are tenants. . . .

H.A. DEB., March 23, 1954, cols. 2530-31.

224. H.A. DEB., April 12, 1956, col. 3474. But the Minister of Native Affairs argued: We adopt the standpoint that that [*sic*] within what is to be White South Africa a Native should not own ground, but within what is to be Black South Africa a European should not own ground. . . . [I]n terms of that I think it is undesirable for us to give property rights to Natives in a new area. . . .

H.A. DEB., March 23, 1954, col. 2530.

225. An indignant Senator, quoting the official journal, *Bantu*, declared:

"In planning Bantu residential areas . . . the general size of residential sites is approximately 2,800 square feet." 2,800 square feet . . . is 15 to the acre. . . . This is the ordinary size of a four-roomed European bungalow. Fifteen to the acre with six people per house equals 90 people living on one acre of land and that is 197 human beings—to one morgen. . . . They are building single quarters . . . for 210 to 265 men per morgen. . . . Even in Belgium in the worst of times the population was 700 to the square mile. . . .

S. DEB., March 30, 1960, col. 1587. And Senator Ballinger quoted an article about Africans who had previously lived in Sophiatown:

admittedly somewhat uncomfortably on £ 1 10s. a month [for rent] and paid 10s. a month for transport, now in Meadowlands . . . pay £ 3 1s. 9d. for a house and 17s. 9d. a month for transport. . . . the cost of lodging has thus doubled and with wages only just slightly improved, the average Meadowlands family, now having £ 2 a month less to spend, is inclined wistfully to think back to the good old Sophiatown days, when any amount of shops . . . and churches and social institutions were just around the corner. . . .

S. DEB., April 21, 1960, col. 2173.

226. Joined by a few white liberals, such as Patrick Duncan, son of a former Governor-General.

227. N.Y. Times, Feb. 10, 1955, p. 1, col. 7; *id.*, Feb. 15, 1955, p. 6, col. 2; *id.*, Feb. 16, 1955, p. 7, col. 3.

mately in the threatened application of severe penalties,²²⁸ which ended overt resistance.

But the Johannesburg nonwhites are not the only ones who have been uprooted from "the areas where they have lived, grown up, developed their interests and established themselves. . . ."²²⁹ Under the Group Areas Amendment Act of 1956²³⁰ the following areas were evacuated: Lady Selborne (Pretoria), with an African population of 40,000 and 250 allotments owned by Africans; nearby Claremont, with 8,000 Africans; Fingo Location (Grahamstown), with a population of 4,300 (allotments granted as a mark of appreciation for loyalty to the government during the Native Wars); and Christianburg, a mission settlement near Natal set aside as a residence for Africans in 1955.²³¹

But it is generally agreed that the Indians have suffered the most under the act.²³² Commenting on the transfer of an Indian community in the center of Johannesburg to an area 18 miles away, a South African wrote: "In one street, 70 shops with stocks of nearly £ 1,000,000, goodwill of £ 100,000 and real estate and equipment worth £ 150,000 are affected."²³³ Indians have been convicted of numerous violations of the act in their desperate attempts to avoid its fearful burdens,²³⁴ and civil actions have also limited their ingenious attempts to protect their long established interests.²³⁵

Summarizing the operation of the act, two commentators claim that "in no Determination made up to date have non-Europeans been given an area equal in proportion to population to that given to the Europeans. . . . The Act has thus operated in every instance to the detriment of the non-European."²³⁶

Since some sort of orderly marketing arrangement is necessary when hundreds of parcels of land are thrown on the market almost simultaneously, Parliament in 1955 enacted the Group Areas Development Act,²³⁷ which

228. To be discussed in Part II of this article.

229. H.A. DEB., Jan. 24, 1957, col. 140.

230. Act No. 29 of 1956.

231. H.A. DEB., April 12, 1956, col. 3475.

232. H.A. DEB., Jan. 24, 1957, col. 141; S. DEB., March 10, 1955, cols. 406-09; Cachalia, *The Ghetto Act*, Africa South, Oct.-Dec. 1957, p. 43; Kuper, *Race Zoning in Cloud Cuckoo Land*, Africa South, Oct.-Dec. 1957, p. 34.

233. Brookes, *Official Discretion*, 23 RACE REL. J. 7 (Dec. 1956). In the Senate debates of March 10, 1955, at cols. 406-07, Senator Byron declared:

When he [the Minister of the Interior] came before the House last he told us that 180 properties had passed from Indians to Europeans. Hundreds and hundreds of properties have passed since—a one-way traffic. . . .

234. *E.g.*, R. v. Bagas, [1957] 4 So. Afr. L.R. 311 (1957); R. v. Saxon Properties (Pty.), Ltd., [1957] 1 So. Afr. L.R. 343 (1957); R. v. Dockrat, [1954] 2 So. Afr. L.R. 419 (1954).

235. *E.g.*, Ebrahim & Co. v. Minister of the Interior, [1958] 4 So. Afr. L.R. 388 (1958); DeKlerk, N.O. v. Mahomed, [1957] 1 So. Afr. L.R. 416 (1957).

236. BROOKES & MACAULAY, CIVIL LIBERTY IN SOUTH AFRICA 20 (1958).

237. Act No. 69 of 1955.

established a Group Areas Development Board²³⁸ to assist in the disposal of real property owned by disqualified persons in group areas.²³⁹ The act vests in the Board a pre-emptive right as to "affected" property.²⁴⁰ To stabilize the market, it compels the owner to yield 50% or 75% of his "appreciation" above a basic value established by the Board and reimburses him for 80% of his loss if the sale brings less than the basic value;²⁴¹ or it may purchase the property at an agreed price.²⁴² It may also develop land, including subdivision of land, and construct roads, sewers, or even houses.²⁴³

Regulation: Africans in the Reserves

The basic *apartheid* statutes, as defined in this study, not only provide for the separation of white from nonwhite throughout the country, but also provide for special systems to govern Africans in the areas to which they are relegated. These laws differ according to the residence of the Africans; in the reserves, in (white) rural areas, or in the urban areas. However, the tendency of the government is to think of all Africans as primitive tribal people who should, as far as feasible, be subject to the tribal regime of the reserves.²⁴⁴

The statutes governing Africans in the reserves are the most complicated in both numbers and interrelationships. Of these, the Bantu Authorities²⁴⁵ and Native Affairs Acts²⁴⁶ are designed primarily to create and regulate the day-to-day administrative establishment in the reserve, while the Promotion of Bantu Self-Government²⁴⁷ and Native Administration Acts²⁴⁸ control the relations of Africans to whites and establish the basic political power structure.

Under the Bantu Authorities Act the reserves are divided into "authorities" of three types: tribal, regional, and territorial.²⁴⁹ The smallest are the tribal authorities, which may be created by the Governor-General for any one

238. Appointed by the Governor-General from nominees of certain ministers.

239. Act No. 69 of 1955, §§ 2, 12(1).

240. Act No. 69 of 1955, § 16(1).

241. Act No. 69 of 1955, §§ 20(2) (a) (ii), (iii).

242. Act No. 69 of 1955, § 20(2) (b).

243. Act No. 69 of 1955, §§ 12(1) (c), (d), (e).

244. H.A. DEB., April 26, 1956, col. 4482; H.A. DEB., May 3, 1956, col. 4851.

245. Act No. 68 of 1951.

246. Act No. 55 of 1959.

247. Act No. 46 of 1959.

248. Act No. 38 of 1927.

249. Act No. 68 of 1951, §§ 2(1) (a)-(c).

The various Bantu authorities replaced the Native Representation Council created as an advisory body by the act which removed Cape Africans from the common electoral roll (Representation of Natives Act, Act No. 12 of 1936, § 7). The Council, chafing under its limited advisory role, in 1948 refused to proceed until the government abolished all discriminatory legislation, and the government thereupon set out to abolish the Council as a center of radical agitation. BROOKES & MACAULAY, *CIVIL LIBERTY IN SOUTH AFRICA* 147-48 (1958); MAY 500; HANDBOOK 512. For an analysis of the significance of the Bantu authorities, see CARTER 92-95 and 1 UN COMM'N § 731, quoting Professor Mathews.

or more African tribes or communities.²⁵⁰ A tribal authority is defined as a chief or headman plus as many councillors as the Governor-General determines.²⁵¹ Next is the regional authority, established for any two or more areas having tribal authorities.²⁵² Finally there are territorial authorities, established by the Governor-General for any two or more areas with regional authorities.²⁵³ Regional and territorial authorities are defined as a chairman and members designated by the Governor-General from the members of the next lower ranking authorities.²⁵⁴

The functions of a tribal authority seem to be limited generally to administering the affairs of the tribe or community and to assisting the effectuation of regional or territorial authority projects.²⁵⁵ A regional authority advises the Minister on matters affecting Africans in the region and assists in establishing, maintaining and conducting regional educational institutions, constructing and maintaining roads, bridges, dams, hospitals, and clinics, and suppressing disease in stock.²⁵⁶ To do this, a regional authority has limited powers to issue ordinances and to levy a tax of not more than £ 1 per year per adult male.²⁵⁷ A territorial authority assists lesser authorities in their functions, assists the effective development of the administration of justice and courts of law, convenes a conference of any part or all of the "national unit" to which its population belongs, advises the government on the tribal, communal, and "national" interests of the area in which it is established, provides for markets and pounds, the control and erection of buildings, and the licensing and allocation of trading and other sites insofar as Africans are concerned, issues regulations, and imposes certain limited taxes.²⁵⁸

Where territorial *authorities* do not exist, the Governor-General may establish territorial *boards*, which have many of the same powers.²⁵⁹ But a territorial authority subsequently created supersedes a territorial board, as well as the area's regional authorities, as to some or all the functions previously assigned to the board or regional authorities.²⁶⁰

The funds with which the authorities carry out their assigned functions are derived from various customary fees and charges, fees and fines collected in judicial cases heard by chiefs and headmen, sums derived from property

250. Act No. 68 of 1951, §§ 2(1) (a), (2).

251. Act No. 68 of 1951, § 3(1).

252. Act No. 68 of 1951, § 2(1) (b).

253. Act No. 68 of 1951, § 2(1) (c).

254. Act No. 68 of 1951, §§ 3(1), (3).

255. Act No. 68 of 1951, § 4.

256. Act No. 68 of 1951, § 5(1).

257. Act No. 68 of 1951, §§ 5(2), 6(1).

258. Act No. 68 of 1951, § 7, superseded by Act No. 46 of 1959, § 12.

259. Act No. 68 of 1951, § 7 *bis*, added by Act No. 46 of 1959, § 13. The Minister of Bantu Administration and Development announced in the spring of 1960 that there were at that time one territorial authority, 31 regional authorities, and 360 tribal authorities. S. DEB., March 30, 1960, col. 1532.

260. Act No. 68 of 1951, § 7 *bis* (3), added by Act No. 46 of 1959, § 13.

under their jurisdiction, money appropriated by Parliament or allocated by the Minister, and taxes collected under the authorities' taxing power.²⁶¹

Co-existing with the various authorities are a Native Affairs Commission and its local councils, which were created by the Native Affairs Act of 1959.²⁶² The functions of the Commission²⁶³ include consideration of the general conduct of the administration of "native affairs" and of legislation concerning Africans and the submission of recommendations to the Minister.²⁶⁴

On the recommendation of the Commission the Governor-General is empowered to establish local councils in "native areas" or adjoining areas²⁶⁵ and general councils may be established to replace two or more local councils.²⁶⁶ Local councils are to be composed of Africans, but chosen by the Governor-General, who may appoint a public (white) officer to preside at meetings and act in an advisory capacity.²⁶⁷ Local councils may provide for various communal projects,²⁶⁸ and they shall advise the Commission on the local effects of legislation and administration affecting Africans.²⁶⁹ To accomplish these purposes they may hold interests in land, make by-laws and prescribe rates for services, and levy rates not exceeding £ 1 per year on adult male residents.²⁷⁰ If a local council fails to exercise these powers properly, the Minister is empowered to act for it.²⁷¹

At the same time that the *reserves* are divided into various authorities, the Promotion of Bantu Self-Government Act divides the "Bantu peoples" into seven²⁷² "national [i.e., tribal] units."²⁷³ For administrative convenience several units²⁷⁴ are combined,²⁷⁵ but each may be dealt with separately if necessary or expedient.²⁷⁶

261. Act No. 68 of 1951, §§ 6(1), 9(1), 10, 11(1).

262. Act No. 55 of 1959, §§ 2, 5.

263. The Commission is composed of the Minister as chairman, the Administrator of South West Africa, and three to five other members. Act No. 55 of 1959, § 2(2).

264. Act No. 55 of 1959, § 3(1). Although the functions appear to be advisory, provision is made for appeal of disagreements between the Minister and the Commission to the Governor-General and ultimately, if necessary to Parliament. Act No. 55 of 1959, §§ 3(1), 4(1).

265. Act No. 55 of 1959, § 5(1).

266. Act No. 55 of 1959, § 14(1).

267. Act No. 55 of 1959, §§ 5(2), (3).

268. Construction of roads, dams, sanitation systems, schools or hospitals, improvement of water supplies, prevention of stock disease, destruction of noxious weeds, improvement of agriculture, afforestation, etc. Act No. 55 of 1959, § 6(1).

269. Act No. 55 of 1959, § 7.

270. Act No. 55 of 1959, §§ 6(2), 8(1).

271. Act No. 55 of 1959, § 8(3).

272. North-Sotho, South-Sotho, Swazi, Tsonga, Venda, Xhosa, and Zulu.

273. Act No. 46 of 1959, § 2(1).

274. Tswana and South-Sotho; Venda and Tsonga; Zulu and Swazi.

275. Act No. 46 of 1959, § 2(2).

276. Act No. 46 of 1959, § 2(2).

The Governor-General is authorized to appoint a Commissioner General for each unit or combination of units.²⁷⁷ Each Commissioner General is to guide the development of the African people of the area, promote the administration of justice and courts of law, consult with the people on matters affecting them, enlighten them as to government policy and legislation, and advise the Minister as to their needs and desires.²⁷⁸

The purpose of the act is to provide for the gradual development of Africans within their own areas into self-governing national units "on the basis of Bantu systems of government."²⁷⁹ To achieve this purpose the Governor-General may vest in any territorial authority control of reserve lands within its territorial jurisdiction as well as any power, function, or duty vested in him if it is exercisable within the area in which the authority is established.²⁸⁰ The government anticipates, in addition, the development of Bantu courts, the control of education, welfare work, and social services by territorial authorities, and the imposition of all taxes in the reserves by the Bantu authorities.²⁸¹

In exchange for such self-development the act abolishes the representation of Africans in Parliament.²⁸² As one of their former representatives viewed it:

[T]he net result will be to remove the Native representatives from this House and, in place of them, to provide a form of local government which, in fact, is not intended to be real self-government. . . . This plan will simply put the Africans on the lowest rung.²⁸³

The "Bantuization" of the reserves by the Bantu Self-Government Act cannot fairly be said, however, to create a group of autonomous Negro communities, as some Nationalists suggest.²⁸⁴ Ultimate control continues to rest

277. Act No. 46 of 1959, § 2(2).

278. Act No. 46 of 1959, § 3.

279. Preamble; H.A. DEB., May 18, 1959, col. 6019. A government representative stated in Parliament

Here we are now establishing a Bantucentric development where he can develop his own form of government to the full. . . . Under our Scheme every Bantu can climb to the highest rung of the ladder within his own national circle. . . .

H.A. DEB., May 18, 1959, col. 3086. But Simons states that Mr. Eiselen, Secretary for Native Affairs in 1957, is reported, when a lecturer on anthropology at Stellenbosch University, to have said of the Africans that not one of their culture elements, not even their language presumably, would be strong enough to hold its own against the onslaught of European civilization. Simons, *Tribal Worship*, Africa South, July-Sept. 1957, p. 49.

280. Native Land and Trust Act, Act No. 18 of 1936, § 4, added by Promotion of Bantu Self-Government Act, Act No. 46 of 1959, § 7.

281. H.A. DEB., May 18, 1959, cols. 6019-23 *passim*.

282. Promotion of Bantu Self-Government Act, Act No. 46 of 1959, § 15(1).

283. H.A. DEB., March 24, 1959, cols. 3083-84.

284. See, *e.g.*, H.A. DEB., May 18, 1959, col. 6006.

firmly in government hands.²⁸⁵ The statute which assures this control is the Native Administration Act of 1927.²⁸⁶

Under this act the Governor-General is made "Supreme Chief" of all Africans in the country and is vested with all the powers and rights granted by the Natal Native Code.²⁸⁷ This Code was imposed upon the Zulus by their white conquerors in the Native Wars and was designed to prevent any further uprising.²⁸⁸ It was based on the premise that the Zulus lived under an autocratic system and was designed to preserve that "system" while transferring the center of power to a key figure among the whites, who after Union became the Governor-General.²⁸⁹

The Natal Code, *inter alia*, authorizes the Governor-General to order the arrest of any African whom he considers dangerous to the public peace and to detain him for three months without the right of appeal.²⁹⁰ It prohibits the Supreme Court's ruling upon the validity of any act done or order given by the Governor-General acting as Supreme Chief in the exercise of his functions or its granting an injunction against any officer acting as the representative of the Supreme Chief unless the court is satisfied *prima facie* that such officer is acting without lawful authority.²⁹¹ It also allows the Governor-General to impose a communal fine of £ 20 on each or any adult male member of a tribe or community if he believes that there has been a conspiracy to conceal the identity of the perpetrators of certain crimes or to suppress evidence of such offenses;²⁹² and empowers the Minister or Secretary for Bantu Administration and Development or any native commissioner, acting independently and on his own initiative, to command the attendance of chiefs or other Africans and require them to carry out his orders and to have any disobedient African²⁹³ summarily arrested and punished.²⁹⁴

285. H.A. DEB., March 24, 1959, col. 3083; CARTER 117. See also the comments of Professor duPlessis, expelled from the Nationalist Party, as reported in 6 AFR. DIG. 233 (1959).

286. Act No. 38 of 1927.

287. Act No. 38 of 1927, § 1, superseded by Native Administration Amendment Act, Act No. 42 of 1956, § 2.

288. H.A. DEB., April 26, 1956, col. 4484.

289. H.A. DEB., April 26, 1956, col. 4484. *But cf.* BROOKES & MACAULAY, CIVIL LIBERTY IN SOUTH AFRICA 155 (1958); "There is no evidence to show that there had ever been a supreme chief of the Zulu-speaking peoples before the days of Shaka (1783?-1828) nor that the powers of their ordinary chiefs had been despotic. . . ."

290. H.A. DEB., April 26, 1956, col. 4467; Whyte, *A Review of Recent Legislation*, 24 RACE REL. J. 26 (Jan.-June 1957).

291. H.A. DEB., April 26, 1956, col. 4468.

292. *Id.* at col. 4467.

293. Even a professional man, entirely divorced from tribal custom.

294. H.A. DEB., April 26, 1956, col. 4466. Whyte, *supra* note 290, states that "any official, authorized by the Minister, can punish any African at any time and the latter will have no legal redress and no recourse to habeas corpus." A "Native representative" asserted in the House that

this is a Bill which empowers the hon. Minister of Native Affairs to condemn any member of the three-quarters of the total population of South Africa without any

Until 1956 the Governor-General was Supreme Chief in the Transvaal, Natal, and the Free State only, for it was assumed, when the concept was introduced into legislation, that the Cape Africans were too advanced for such treatment.²⁹⁵ Moreover, they had never been treated as a conquered people.²⁹⁶ However, the government position now is:

If we want to bring peace and happiness to the Native population . . . then we cannot do otherwise than to apply this principle which has worked so effectively in the other three provinces, to the Native population of the Cape as well. . . . I am convinced that the Native who has the slightest knowledge of his own culture and his own system of law will feel nothing but gratitude towards the Government for bringing about this uniformity and for giving the Natives of the Cape the opportunity to rebuild and expand their old traditional system. . . .²⁹⁷

The Native Administration Act also provides for the appointment of (white) native commissioners to represent the Supreme Chief in the administration of African affairs,²⁹⁸ to try certain minor civil and criminal cases concerning Africans only,²⁹⁹ and to hear appeals from chiefs and headmen.³⁰⁰

The act gives the Governor-General power to define, and to alter, the boundaries of any African tribe, to divide existing tribes into two or more parts, to amalgamate tribes or parts of tribes, and to constitute new tribes "as necessity or the good government of the natives may in his opinion require."³⁰¹ In the public interest he may, without prior notice and subject to such conditions as he may establish, order that any tribe, part of a tribe, or *individual African* withdraw from any place in the Union to any other place and not return³⁰² for a specified period.³⁰³ Refusal to comply with such an

recourse to the Courts of Law, without any redress and without any form of trial. It gives him total and absolute power over three-quarters of our total population

....

H.A. DEB., April 26, 1956, col. 4483.

295. H.A. DEB., April 26, 1956, col. 4468.

296. H.A. DEB., April 26, 1956, col. 4468.

297. H.A. DEB., May 3, 1956, col. 4853. *Contra*:

In regard to this dreadful Natal Code . . . this is a horrible anachronism of a barbaric age. . . . What, in effect is this Minister asking us to do today by applying the Natal Code? He is asking us to go back hundreds of years. . . .

H.A. DEB., April 26, 1956, col. 4484; see also S. DEB., March 16, 1955, cols. 728-29.

298. Act No. 38 of 1927, § 2. They are to act as registrars of land in certain reserves. Act No. 38 of 1927, § 6(1).

299. Act No. 38 of 1927, §§ 9, 10.

300. Act No. 38 of 1927, § 12(3).

301. Act No. 38 of 1927, § 5(1)(a), superseded by Act No. 54 of 1952, § 20. For typical orders under these powers to redefine tribes, see, *e.g.*, Gazette, Aug. 8, 1958, p. 142.

302. Except by permit.

303. Act No. 38 of 1927, § 5(1)(b), superseded by Act No. 54 of 1952, § 20, as amended by Act No. 42 of 1956, § 3(a). The 1956 amendment, specifically permitting removal without prior notice, was added to circumvent the Supreme Court's ruling in *Saliwa v. Minister of Native Affairs*, [1956] 2 So. Afr. L.R. 310 (1956), which held prior

order constitutes a crime.³⁰⁴ No legal process can be issued to stay a removal order,³⁰⁵ and if an African (after removal) inquires as to the reason for the order affecting him, the Minister may merely set forth so much of the inducing information "as can, in the Minister's opinion, be disclosed without detriment to the public interest."³⁰⁶ This section applies to Africans such as teachers and ministers, who are exempt under other provisions.³⁰⁷

Under an amendment³⁰⁸ the Governor-General may now appoint, recognize, or depose a chief or headman only after *consultation* with the authorities established under the Bantu Authorities Act.³⁰⁹ Any recognition, appointment, or deposition of a chief or headman is subject to the approval of the Governor-General or Minister.³¹⁰ Since the new provision requires consultation only, it would appear that the government still appoints chiefs and dismisses them for cause or if desirable "in the general interests of natives in any area in respect of which the . . . authority concerned has been established. . . ."³¹¹ Thus the most respected African in the Union, Chief Albert Luthuli, a school teacher and popularly elected chief of his small Christian community in Zuzuland, who has since been proposed by Albert Schweitzer for the Nobel Peace Prize, was deposed because he refused to give up the presidency of the African National Congress despite official pressure.³¹²

Chiefs and headmen may be empowered to try civil claims between Africans³¹³ and also to try Africans under common law, native law and custom,³¹⁴ and statutory law for substantially all crimes, provided that all co-defendants are African and that the subject of the crime is African.³¹⁵ Any penalty short of death, mutilation, grievous bodily harm, imprisonment, or corporal punishment may be imposed (unmarried African males under 30 may be sentenced to flogging), and fines of not more than £ 20 or two head of large stock or

notice necessary under the principle of *audi alteram partem* (the Roman-Dutch equivalent of notice and hearing as an element of due process). H.A. DEB., April 26, 1956, col. 4463.

304. Act No. 38 of 1927, § 5(2) (a), superseded by Act No. 54 of 1952, § 20(2) (a).

305. Act No. 38 of 1927, § 5(4), superseded by Act No. 54 of 1952, § 20.

306. Act No. 38 of 1927, § 5(1) *ter*, as amended by Act No. 42 of 1956, § 3(b).

307. Act No. 38 of 1927, § 5(5) (b), superseded by Act No. 54 of 1952, § 20(5) (b).

Section 3(1) empowers the Governor-General to grant letters of exemption to certain Africans from most laws governing "Natives."

308. Act No. 46 of 1959.

309. Act No. 38 of 1927, § 2(8) *ter*, as amended by Act No. 46 of 1959, § 6.

310. Act No. 38 of 1927, § 2(8) *ter*, as amended by Act No. 46 of 1959, § 6(b).

311. Bantu Authorities Act, Act No. 68 of 1951, § 3(4).

312. Manchester Guardian Weekly, Aug. 18, 1960, p. 7, col. 4.

313. Native Administration Act, Act No. 38 of 1927, § 12(1), as amended by Act No. 9 of 1929, § 6(2).

314. See *R. v. Dumezwenie*, [1960] 3 So. Afr. L.R. 490 (1960).

315. Act No. 38 of 1927, § 20(1), superseded by Act No. 13 of 1955, § 1. The effect of this section is to permit chiefs and headmen to try under native law and custom Africans who are not members of their own tribe and who may have lived under western, urban conditions for a long time not only in respect to violation of native custom but also as to other offenses. S. DEB., March 16, 1955, cols. 728-29.

10 of small stock may be imposed in such cases.³¹⁶ Native commissioners may enforce such fines by sentencing a non-complying African to three months' imprisonment with or without hard labor.³¹⁷ The increase in the chief's jurisdiction and in penalties was made at the chiefs' request;³¹⁸ but many Africans lack confidence in these courts, and they are generally deserted while Native Commissioners' courts are crowded.³¹⁹ The Opposition has attributed this to the fact that in chiefs' courts parties are not entitled to be represented by counsel, witnesses do not give evidence under oath, and no proper records are kept of the proceedings.³²⁰ Most of the chiefs do not, of course, have any training for judicial duties.³²¹

316. Act No. 38 of 1927, § 20(2), superseded by Act No. 13 of 1955, § 1; *cf.* H.A. DEB., June 8, 1961, col. 2616, extension of powers as result of insurrection in Pondoland.

317. Act No. 38 of 1927, § 20(5), superseded by Act No. 13 of 1955, § 1.

318. A major complaint of the chiefs had been the difficulty of collecting fines from recalcitrant offenders, as the only remedy was a civil action. S. DEB., March 14, 1955, cols. 606-07. It should be noted that an appeal from a chief's court is impractical in the case of a sentence of corporal punishment since it can be carried out immediately. *Id.* at col. 722.

The statute limits tribal liability for actions or obligations of chiefs or headmen and prohibits any tribesman from suing a chief or headman as to any question affecting land without the approval of the Governor-General. Act No. 38 of 1927, §§ 3(1), 4.

319. H.A. DEB., May 3, 1956, col. 4870; S. DEB., March 16, 1955, cols. 697-98. But Senator Van Niekerk claimed:

[T]he hon. Senators should not forget that to the Natives the system of chiefs and headmen is the centre of their whole existence. . . . [Imposing] lashes is a custom which has existed amongst the Natives for 100 years. If a Native piccanin allows the cattle to stray or steals something, he is brought before the headman, who gives him a good hiding. . . . [This bill would make the Natives feel] that the White man has now given him certain things he has always wanted. . . . He is now being trusted. He would now at least be master in his own territory to a certain extent and I think nothing could do more to foster the goodwill of the Native people towards the European population than to cultivate that feeling of the Native towards the European. . . .

S. DEB., March 16, 1955, cols. 715, 716, 719.

320. S. DEB., March 16, 1955, cols. 697-98, 729.

321. [T]his legislation means in a measure the reinstatement, and . . . the right to carry out the administration of justice as was in vogue in the days when Native chiefs, as tribal heads, held supreme authority over their people. . . . It also gives to untrained persons, persons who are not trained in the duties of magistrates or lawyers, to ordinary, illiterate tribal chiefs, something about which they have no conception. . . . [W]e are retrogressing. . . . For the past 100 years and more, we in South Africa have been working under the influence of a policy . . . concerned in civilizing these people on the basis of the way of life and the institutions and demands of Western Civilization. This definite trend did not ignore the customs of the Bantu or Bantu law. It did not destroy them. We tried to replace them gradually by our own, but in addition we tried always to apply it to the customs of the Native, also to customary Native law, as far as the administration of justice was concerned. . . . [T]he Natives were and the Natives are today satisfied with this system, this civilizing process. . . .

S. DEB., March 16, 1955, cols. 688-89.

Among the most drastic means of ensuring ultimate white control in the reserves is the power granted to issue rules and regulations under the statutes affecting the reserves. The Native Administration Act gives the Governor-General broad authority, beyond his power to remove tribes or individuals, to ensure enforcement of the law: he may make regulations concerning "the prohibition, control or regulation of gatherings or assemblies of Natives";³²² he may create and define pass areas where Africans must carry passes and control or prohibit the movement of Africans into, within, or from such areas,³²³ and he may make regulations governing non-urban areas³²⁴ inhabited exclusively³²⁵ by Africans.³²⁶ He may also declare any alien African undesirable and have him removed³²⁷ from the Union.³²⁸ In addition, the Governor-General has extensive powers to make rules and regulations under the Bantu Self-Government Act.³²⁹ Indeed, one Opposition member has claimed that his powers under the act are so broad that Parliament would never need to legislate again on the subject of the reserves.³³⁰

322. Act No. 38 of 1927, § 27(1)(c).

323. Act No. 38 of 1927, § 28(1).

324. Areas which are neither urban areas nor public health areas.

325. If two-thirds or more of the inhabitants are Africans and the remainder are colored, the area shall be deemed inhabited exclusively by Africans. Act No. 38 of 1927, § 30(a), superseded by Native Administration (Amendment) Act, Act No. 21 of 1943, § 9.

326. He may also investigate claims to land and revoke grants to Africans on individual tenure, substituting deeds on a quit rent basis. Act No. 38 of 1927, §§ 7(1), 8(1).

327. Permanently or for a specified period.

328. Act No. 38 of 1927, § 5, superseded by Act No. 79 of 1957, § 4. Act No. 79 of 1957, § 4(9) makes it an offense for such a removed foreign African to return during such ban.

329. Act No. 46 of 1959, § 14(1).

330. H.A. ДЕН, May 18, 1959, col. 6078. The act provides that it is proper to make different regulations as to different tribal, regional, or territorial authorities or territorial boards and as to national units, tribes, or communities. Act No. 46 of 1959, § 14(2).

Regulations recently issued for the Transkeian Territories include the following:

19. (1) Whenever a Native Commissioner . . . [or an] officer of the South African Police, is satisfied that any person has committed an offence . . . [or] has reason to suspect that any person has or had the intention to commit such an offence the said Native Commissioner or . . . officer may without warrant arrest or cause to be arrested any person whom he suspects upon reasonable grounds of having taken part or intending or having intended to take part in the offence or intended offence in question or who in the opinion of the said Native Commissioner or . . . officer is in possession of any information relating to the said offence or intended offence, and the said Native Commissioner or . . . officer may question or cause to be questioned the said person in regard to any matter which has any bearing upon the said offence or intended offence and may detain . . . him at any place which the said Native Commissioner or . . . officer deems suitable for the purpose until the said Native Commissioner or . . . officer is satisfied that the said person has answered fully and truthfully all the questions put at him which have any bearing upon the said offence or intended offence.

(2) The Minister may at any time upon such conditions as he may determine, cause to be released any person arrested and detained under the sub-regulation (1),

Since any successful policy of separate development of African "nations" according to the Nationalists' plans requires reserves which can support not only today's African population but also tomorrow's projected increase, necessary complements to the statutes already discussed are measures to reorganize and expand the productivity of the reserves. To cope with this problem, the Nationalist Government, soon after coming to power, established the Commission for the Socio-Economic Development of the Bantu Areas within the Union of South Africa, the so-called Tomlinson Commission,³³¹ to

conduct an exhaustive enquiry into and to report on a comprehensive scheme for the rehabilitation of the Native Areas with a view to developing within them a social structure in keeping with the culture of the Native and based on effective socio-economic planning.³³²

On the basis of its inquiry, the commission made the following recommendations, *inter alia*. It advocated separate development³³³ for the Africans in the Union.³³⁴ Separate development must, it pointed out, lead to Africans occupying all posts, high and low, in their separate area.³³⁵ It called for consolidation of the reserves on the basis of historico-logical homelands for the principal ethnic groups, finding the present reserves too fragmentary.³³⁶ It considered necessary the full-scale development of the reserves as to agriculture, industry and commerce,³³⁷ and it pointed out that even with such development the reserves would be able to support only about two-thirds of the projected African population for the year 2000.³³⁸ It advocated individual

and if such person fails to comply with any such condition, he shall be guilty of an offence.

20. No person who has been arrested and is being detained under regulation 19 shall, without the consent of the Minister or person acting under his authority, be allowed to consult with a legal adviser in connection with any matter relating to the arrest and detention of such person.

Proclamation No. 413, 1960, Gazette, Dec. 14, 1960; see the discussion of this proclamation in H.A. DEB., June 8, 1961, col. 7618.

331. Named after its chairman.

332. HOUGHTON 1.

333. It stated that the only possible alternative was integration, which it rejected. One member disagreed and wrote:

The practicability of the "segregation" formula must be fully investigated. . . . If . . . it is found unpractical, and I greatly fear that it will be found to be so, progressive integration with its economic and political consequences will have to be accepted.

Id. at 3.

334. *Id.* at 3, 11, 16.

335. *Id.* at 3, 15.

336. *Id.* at 3, 55.

337. *Id.* at 4, 25, 34.

338. *Id.* at 3, 22.

Let us consider what the most optimistic prognosis of the Government commission is. . . . By the year 2000 one-third of them [Africans] will be permanently settled

land tenure, subject to the right of cancellation for misuse,³³⁹ in order to create a true farming class settled on farm units large enough to ensure a fair living—which it called the basis for agricultural development.³⁴⁰ The excess population removed from the land must, according to the Commission, become a true urban class, working in a fully diversified economy.³⁴¹ To achieve this objective it posited the following requirements: The establishment of primary and secondary industry on the border of and within the reserves, the development of tertiary industry in the reserves, and the creation of villages and towns in the reserves, with Africans having freehold rights to land.³⁴² It called for the creation of a Development Council³⁴³ and of a Development Corporation³⁴⁴ and stated that an initial investment of £ 104,000,000 (of which amount 50% would be recoverable) would be necessary for the first ten years to start the projected program.³⁴⁵

A government white paper issued in April 1956, indicated that some major recommendations were unacceptable in whole or in part: abolition of tribal land tenure;³⁴⁶ government policy as to mining;³⁴⁷ permission for white industrialists to build or operate enterprises within the reserves;³⁴⁸ and the amount of investment proposed by the Commission.³⁴⁹

Nevertheless, out of the Tomlinson Commission report ultimately came the Bantu Investment Corporation Act.³⁵⁰ The objects of this act appear to be: (1) “providing a home for every Bantu within his own ethnic group . . .”;³⁵¹ (2) “creating possibilities which will convert the economic development in the Bantu areas into a dynamic force . . .”;³⁵² and (3) “utilizing this African

in the urban areas. That means that we will have among us four times as many Natives permanently settled in the White areas as we have to-day. . . .

H.A. DEB., March 28, 1957, col. 3755.

339. HOUGHTON 24, 30.

340. *Id.* at 25.

341. *Id.* at 24, 29.

342. *Id.* at 34, 43.

343. For research and planning. *Id.* at 54.

344. For promotion of African enterprise. *Ibid.*

345. *Id.* at 56.

346. *Id.* at 75.

That [individual land tenure] is the one recommendation that this Government turned down, and it is the main recommendation. Without this pre-requisite the whole scheme is a failure.

H.A. DEB., March 28, 1957, col. 3757.

347. HOUGHTON 75.

348. *Ibid.* See also H.A. DEB., Feb. 4, 1959, cols. 408-09.

349. HOUGHTON 76.

350. Bantu Investment Corporation Act, Act No. 34 of 1959. The Minister of Bantu Administration and Development stated that “As regards this Bill I can just say that it emanates from the report of the Tomlinson Commission. . . .” H.A. DEB., Feb. 4, 1959, col. 391.

351. H.A. DEB., Feb. 5, 1959, col. 458.

352. H.A. DEB., Feb. 4, 1959, col. 386.

manpower productivity. . . ."³⁵³ To this end the act creates the non-profit Bantu Investment Corporation of South Africa, Ltd., to "promote and encourage the economic development of Bantu persons in the Bantu areas . . ." by providing capital and technical assistance, by encouraging new and existing enterprises and thrift, by planning and promoting capital accumulation, and by promoting self-help in the economic sphere.³⁵⁴ Under its organic statute the Corporation has a capital of £ 500,000³⁵⁵ allotted to the National Trust³⁵⁶ in shares of £ 1 each.³⁵⁷

In alluding to the variation between the amount of capital which the Tomlinson Commission recommended for *the first ten years* and the amount proposed for the Corporation, the Minister of Bantu Administration and Development stated that:

Approximately 4,000,000 people . . . are living in the Bantu areas, and . . . there is no place in Southern Africa . . . where manpower is wasted on a greater scale than in the Bantu areas. There is no other place where in general people have as good a time and where so little work is done. . . . [M]ost of the Bantu in those areas are engaged on productive employment for approximately 42 per cent of their potential working lives. For the rest they simply do nothing. . . . Utilizing this manpower productively will therefore represent a very great contribution to the overall economy of South Africa. . . .

[T]he possibility of mobilizing the Bantu's capital is greater than most people realize. Large sums of this Bantu capital are lying idle today . . . under stones or buried in the ground. . . .³⁵⁸

To bring about the efficient use of this Bantu potential, the Minister indicated that the government will seek to end marginal farming, as the Tomlinson Commission suggested. The less efficient Bantu farmers will be forced to give

353. *Id.* at col. 387.

354. Act No. 34 of 1959, § 4. In this connection an Opposition member has stated, citing governing directives prohibiting anyone but an African from using a tractor in the reserves and curtailing branch practice by physicians in the reserves:

What the Government is trying to do in this and other measures is to establish a separate Black economy. . . . If carried to its logical conclusion, the products of Native industry, established and expanded with the help of cheap Native Labour, will come into conflict with our urban factories which employ hundreds of thousands of Europeans and Natives at much higher rates of pay. . . .

H.A. DEB., Feb. 4, 1959, cols. 406-07.

355. Which may be increased by the Minister.

356. [T]he Native Trust would acquire all the shares in the corporation. . . . [O]ther persons who want to invest money in it . . . can do so, but naturally they will not acquire any shares. They will receive their interest, etc., but the Native Trust is the only shareholder. . . .

H.A. DEB., Feb. 4, 1959, col. 393.

357. Act No. 34 of 1959, § 10.

358. H.A. DEB., Feb. 4, 1959, cols. 387-88.

up their cattle, which are their traditional source of wealth and status symbols, and to go to urban areas to invest their money and their energy in other means of livelihood.³⁵⁹

Regulation: Africans in White Rural Areas

All the country outside the reserves is white man's land where Africans may live and work only through the tolerance of the white man. Nevertheless, conditions differ so markedly between rural and urban areas that entirely different systems of regulation and control have been developed.

Traditionally, an African in the country may reside on a farm in one of several capacities.³⁶⁰ He may be the lessee of a European-owned farm under certain conditions;³⁶¹ he may be a full-time employee ("labor tenant") of the owner, working for a wage³⁶² or for some combination of wages, food, land, and grazing rights, for which his family may also be required to give their services;³⁶³ he may be a "squatter tenant," working three or four months a year in exchange for the privilege of cultivating a certain amount of land or grazing certain stock and working there or elsewhere the rest of the year while his family remains on the farm;³⁶⁴ or he may live on a farm as a "squatter" for rent or without payment.³⁶⁵ But the government has made it clear that it is determined to put an end to the squatter—and, sooner, or later, to the squatter tenant—results which early laws failed to achieve.³⁶⁶ The objective is to spread the available Africans around among all the farmers who want help, thereby breaking up little local "labor monopolies."³⁶⁷

All "labour tenants"³⁶⁸ must be registered by the district native commissioner;³⁶⁹ no person shall be deemed a labor tenant unless he is registered.³⁷⁰ But no African may be registered as a labor tenant in any case without the approval of the local labor tenants control board³⁷¹ unless such tenant was living on the land when the 1954 amendment³⁷² became effective.³⁷³ A con-

359. *Id.* at col. 386.

360. With numerous local variations.

361. HANDBOOK 191-92.

362. *Id.* at 194; H.A. DEB., Feb. 22, 1954, col. 910.

363. HANDBOOK 194.

364. H.A. DEB., Feb. 22, 1954, cols. 910-11.

365. *Id.* at col. 911. See also H.A. DEB., Feb. 22, 1954, cols. 951-52.

366. H.A. DEB., Feb. 22, 1954, cols. 908, 911-12.

367. *Id.* at col. 908.

368. It is not clear whether the term as used here means "labor-tenant" as used above, or "squatter tenant."

369. Native Trust and Land Act, Act No. 18 of 1936, § 27(1).

370. Act No. 18 of 1936, § 27(3).

371. Act No. 18 of 1936, § 27(2), superseded by Act No. 18 of 1954, § 6.

372. Native Trust and Land Amendment Act, Act No. 18 of 1954.

373. Act No. 18 of 1936, § 27(2), superseded by Act No. 18 of 1954, § 6. If such a date is later than the effective date of § 8(4) of the Natives (Abolition of Passes) Act,

tril board is empowered to determine, on its own motion or upon complaint of six local landowners, whether there are more labor tenants on a farm than are actually required for the work there and on the other lands owned or farmed by the owner.³⁷⁴ Subject to the presumption that five tenants are needed by each farmer,³⁷⁵ the board may order the number reduced.³⁷⁶ The landowner is required to renew licenses annually, at one shilling each, for all tenants exceeding six.³⁷⁷

Owners of land where there are squatters are required to register and obtain a license for each squatter, the fee increasing from £ 1 the first year to £ 16 for the ninth and subsequent years,³⁷⁸ but no African is automatically entitled to be registered as a squatter unless he has resided on the land continuously since 1936³⁷⁹ or unless the Minister of Bantu Administration and Development gives his permission, which he may condition as he pleases.³⁸⁰

The Department of Native Administration and Development is required to *try*³⁸¹ to place in new employment or to provide for the settlement in a scheduled or released area all Africans who are compelled to leave farms as excess labor or because they are not entitled to registration,³⁸² but it is under

Act No. 67 of 1952, then registration depends upon showing that information about such labor tenants had been furnished the district native commissioner under the latter act.

374. Act No. 18 of 1936, § 29(1), as amended by Act No. 18 of 1954, § 8(a). The history of restricting the number of farm laborers or squatters is the better part of a century old and common to almost all parts of the Union. HANDBOOK 191-92. Hellmann cites: Orange Free State statutes limiting the number of African families living on a farm to five, excluding temporarily hired persons in continuous employment; a Natal ordinance requiring every landowner with more than three African families on his land to register; Transvaal laws limiting the number of African families allowed to reside on a European farm; and Cape Acts prohibiting "private locations" (any number of huts exceeding five in one square mile occupied by Africans not employed by the farmer-owner of the land) without permission. See also Prevention of Illegal Squatting Act, Act No. 52 of 1951.

375. Act No. 18 of 1936, § 30(1).

376. Act No. 18 of 1936, § 29(3).

377. Act No. 18 of 1936, §§ 30(2), (3) as amended by Act No. 18 of 1954, §§ 9(b), (c).

378. Act No. 18 of 1936, § 32, superseded by Act No. 18 of 1954, § 10; Act No. 18 of 1936, § 33(2), as amended by Act No. 18 of 1954, § 11(a); Act No. 18 of 1936, § 33(2) *bis*, as amended by Act No. 18 of 1954, § 11(b).

[T]he ordinary land-owner will not pay these increased licence fees, and . . . most of the squatters will get notice to quit, and you will have many thousands of homeless Natives wandering about the countryside, or filling our gaols as vagrants whose only offence is that they have nowhere to live. . . .

H.A. DEB., Feb. 22, 1954, col. 929.

379. Act No. 18 of 1936, § 32, superseded by Act No. 18 of 1954, § 10. The date selected is presumably related to the effective date of the principal act.

380. Act No. 18 of 1936, § 32, superseded by Act No. 18 of 1954, § 10.

381. But for a protest against the expropriation of white farmers' land to accommodate illegal squatters, see H.A. DEB., Feb. 22, 1954, cols. 961-62.

382. Act No. 18 of 1936, § 38, superseded by Act No. 18 of 1954, § 12.

no obligation to resettle any but a small handful,³⁸³ and the reserves are already overcrowded.³⁸⁴

These provisions also apply to farms owned by Africans in released areas,³⁸⁵ where shortly before 1950 it was estimated that 178,704 Africans lived.³⁸⁶

Regulation: Africans in Urban Areas

In urban areas (defined as areas under the jurisdiction of an "urban local authority")³⁸⁷ Africans are subject to the control of the Natives (Urban Areas) Consolidation Act of 1945,³⁸⁸ referred to as the "Urban Areas Act."

The broad purposes of this act are to control the influx of Africans into urban and peri-urban areas and to regulate their conduct while there.³⁸⁹ To achieve these objectives, the act restricts the entry of Africans into urban areas as well as their right to remain, determines where they may live, limits the kind of work they may do, and rigidly governs their general conduct.

The key to the achievement of the first objective is found in sections 23³⁹⁰ and 10(1).³⁹¹ The former requires every male African³⁹² to register his arrival in an urban area³⁹³ with the labor bureau, to obtain a certificate of

383. Act No. 18 of 1936, §§ 38(a), (b) (i), superseded by Act No. 18 of 1954, § 12. Those covered are Africans who reside in released areas or who, if outside such areas had been in occupation for such a period and under such circumstances that they could reasonably have expected to stay there. In discussing this provision the leading United Party speaker said:

It is clear therefore from the statement the Minister made in Another Place [the Senate] . . . that the mass of the displaced Natives will fall under sub-section (b) (ii), under which there will be no positive obligation on the Minister to provide for them. . . . There are no authentic statistics to show how many labour tenants and squatters are likely to be affected under this Bill, but the number must be very great. . . . According to the Official Year Book of 1949 there are approximately 2,750,000 Natives living on farms, and I think it is safe to say that 50 per cent of them belong to the labour tenant or squatter class. . . .

H.A. DEB., Feb. 22, 1954, cols. 930-31.

384. H.A. DEB., Feb. 22, 1954, col. 929.

385. Act No. 18 of 1936, § 25(2) (a), as amended by Act No. 18 of 1954, § 4(a); H.A. DEB., Feb. 22, 1954, col. 928.

386. H.A. DEB., Feb. 22, 1954, col. 929. The original Native Trust and Land Act had exempted land in scheduled native areas and in released areas owned by Africans or by the Trust. Act No. 18 of 1936, § 25.

387. Natives (Urban Areas) Consolidation Act, Act No. 25 of 1945, § 1. "Urban local authority" includes "any municipal council, borough council, village council, or any town board, village management board, local board, health board or health committee."

388. Act No. 25 of 1945.

389. R. v. Kotane, [1957] 1 So. Afr. L.R. 630 (1956).

390. As amended by Act No. 54 of 1952, § 35, and Act No. 36 of 1957, § 39.

391. Superseded by Act No. 54 of 1952, § 27.

392. Except exempt Africans, including those holding letters of exemption under the Native Administration Act of 1927, registered African voters, registered land owners, chiefs and headmen, ministers, teachers, and court interpreters. Act No. 25 of 1945, § 23(2).

393. Technically, those urban areas which are "proclaimed" by the Governor-General because they are required to provide "native locations" for Africans or because they con-

permission to be there, and to produce the certificate on demand.³⁹⁴ Permission to enter may be denied an African unless he is authorized to remain and to take a job in the area.³⁹⁵ Any African in such an area who does not find work or who leaves his job must report to the authorities³⁹⁶ and will be required to leave if he does not find employment.³⁹⁷ But not just any job is enough: a labor bureau employee shall refuse to register any labor contract for any class of work prescribed by the Minister in relation to the area,³⁹⁸ and he may refuse to register any employment contract which he does not consider bona fide.³⁹⁹

African women may not enter such areas to live or work without a certificate of approval.⁴⁰⁰

The powers of the labor bureaus⁴⁰¹ are enormous. While the bureaus

cannot compel an African to take up any specified job, . . . they can, in certain circumstances, remove alternative opportunities from him. In particular, they can refuse him permission to enter an urban area, and at the same time indicate to him that a job is available as a farm labourer, and this they frequently do. The African may refuse, but he must then forego the chance of paid labour unless he is lucky enough to find a paid job other than farming in his own area. The procedure of refusing permission to enter an urban area and at the same time indicating farm employment is a common one. It is not "forced labour" but it is perilously near it. . . .⁴⁰²

They may prevent an African in one urban area from going to another by dint of red tape, if not intentionally.⁴⁰³

But even if an African may enter an urban area, he still faces the problem

tain "a large number of natives." It would appear that most urban areas are proclaimed. H.A. DEB., April 24, 1954, col. 4663.

394. Act No. 25 of 1945, § 23(1) (b). In a proclaimed area employers may be required to register every contract of service and every termination of such contract or the desertion of the employee. Act No. 25 of 1945, § 23(1) (a).

395. Act No. 25 of 1945, § 23(1) (c), as amended by Act No. 36 of 1957, § 39(b).

396. And reside in a specified place.

397. Act No. 25 of 1945, § 23(1) (e).

398. Act No. 25 of 1945, § 23(1) (a), as amended by Act No. 36 of 1957, § 39(a).

399. Act No. 25 of 1945, § 23(1) (a).

400. Act No. 25 of 1945, § 23(1) (d). Permission may be granted to the wife or unmarried daughter of an African who has been continuously employed for two years in the area.

401. They are offices of the Department of Bantu Administration and Development. BROOKES & MACAULAY, CIVIL LIBERTY IN SOUTH AFRICA 93 (1958).

402. *Ibid.*

403. An account of the course of an application made by an African in Johannesburg to go to work on the Durban docks is set forth in great detail in Jeffreys, *South African Quiz*, The Forum, Nov. 1958, p. 30 (citing the Research Bureau of the (Johannesburg) *Star*, June 5, 1958). After the long recital it concludes: "However, according to the District Labour Bureau, Durban, there would be little hope of a Johannesburg Native getting a job at Durban docks, for the Transvaal [province in which Johannesburg is located] is a *closed area* as far as Natal is concerned."

of whether he may remain there.⁴⁰⁴ Under section 10(1) no African may stay more than 72 hours in an urban area unless (a) he was born in the area and has been continuously resident there since birth;⁴⁰⁵ or (b) he has worked there for one employer continuously for 10 years or has remained there lawfully and continuously for 15 years,⁴⁰⁶ is not employed outside such area,⁴⁰⁷ and has resided there during such ten or 15 years period and thereafter without being convicted of any serious⁴⁰⁸ offense;⁴⁰⁹ or (c) is the wife, unmarried daughter, or minor son not subject to taxation, of an African qualified under (a) or (b) and ordinarily resides with such African; or (d) he has received⁴¹⁰ permission to remain.⁴¹¹ A permit to remain, which may be granted

404. And his right to enter may have depended in the first place on whether he was authorized to remain.

405. *But cf.* *Mathebula v. Ermelo Municipality*, [1955] 4 So. Afr. L.R. 443 (1955). Under the previous reading of this section the court decided that an African who was born in an urban area where his family lived, where he paid taxes and visited regularly while conducting business in another community, and where he hired a house when he sold his business and returned to settle down was not unlawfully in such area without the permit required by subsection (d).

406. In *R. v. Ndingani*, [1956] 4 So. Afr. L.R. 39 (1955), the Supreme Court held that since the defendant had not yet resided 15 years continuously as of the date of the 1952 amendment, her residence became unlawful 72 hours thereafter (for failure to obtain the permit required by subsection (d)), and no more continuous residence accrued to win her exemption under subsection (b).

407. *But cf.* *R. v. Silinga*, [1957] 3 So. Afr. L.R. 354 (1957), in which the court held that an African who had lived more than 15 years in Capetown but had left home to pick grapes in another community during the 1947 and 1948 harvest seasons, returning home each week-end, where her erstwhile husband cared for their children, had acquired the continuous residence required by subsection (b). And in *R. v. Mokatsane*, [1959] 1 So. Afr. L.R. 96 (1958), the court held that an African had gained the required continuous residence by sleeping and spending week-ends in one urban area although he worked outside the area.

408. The dividing line is an offense punishable by a fine exceeding £ 50 or imprisonment exceeding six months. Act No. 36 of 1957, § 30.

409. *But cf.* *R. v. Madlebe*, [1956] 2 So. Afr. L.R. 565 (1956). In this case, decided under an earlier amendment, the court held that when an African had completed 15 years' continuous residence without being convicted of a serious crime, a conviction of such a crime subsequently committed did not remove him from the protection of exemption under subsection (b).

410. From the local urban authority if he is not a "workseeker" or from the local labor bureau. "Workseeker" is defined by the Native Laws Amendment Act, Act No. 54 of 1952, § 1(e) (amending Native Labour Regulation Act, Act No. 15 of 1911).

"[W]orkseeker" shall mean any native over the age of fifteen years who—

(a) is unemployed or not *bona fide* engaged in any business, trade, profession or other remunerative activity;

(b) is not a pupil or student at an educational institution or . . . is not awaiting admission to another institution; and

(c) is capable of being employed and is mainly dependent upon employment for his means of subsistence;

but does not include a male native over sixty-five years of age or a female native over sixty years of age. Where there is any doubt as to whether a native falls within

at the discretion of the authorities and not as of right, must indicate the purpose and the period for which an African may remain in an urban area.⁴¹² If his purpose is to take a job, the permit expires when he leaves the employer.⁴¹³ If it is to seek work, the period of validity shall be not more than 14 days but the permit remains valid for the duration of his employment if he finds a job during the original permit period.⁴¹⁴

The full effect of section 10(1) can be understood only when it is read with section 23 and in the light of recent amendments which have overruled earlier sympathetic judicial interpretations of these provisions.⁴¹⁵ By construing these sections so as to give effect to both⁴¹⁶ and so as not to import the exceptions of section 10(1) into section 23,⁴¹⁷ the courts have substantially eliminated the exemption of section 10(1)(b) for any African who has ever failed to register properly with a local labor bureau. Conversely, exemption under section 10(1)(a)-(c) does not excuse an African from registering with a labor bureau unless he is exempt under section 23.⁴¹⁸ In addition, it is clear that the onus of proving some exemption from the 72-hour rule is on the African;⁴¹⁹ it is not the duty of the prosecution to establish that the African is not exempt.⁴²⁰

this definition the burden of proof that he is not a workseeker shall be upon such native.

411. An opposition M.P. has stated that the effect of amended § 10(1) is to require the Native to stay for all time in the urban area or to lose his rights. . . . The effect of any absence from an urban area results in the loss of the right to exemption from the necessity of carrying a permit for the Native concerned. It applies not only to the Native who may break his continuous residence but also to his wife and children, even if they, too, were born in the urban area. . . .

H.A. DEB., April 4, 1957, col. 4083.

412. Act No. 25 of 1945, § 10(2), superseded by Act No. 54 of 1952, § 27. Note that § 10(1) *bis*, added by Act No. 16 of 1955, § 5(a), provides that permission to re-enter an urban area shall not be refused an African who returns within 12 months to his previous employer to do the same class of work he was previously doing unless he has been prohibited by some other provision of law from entering or remaining in such area.

413. Act No. 25 of 1945, § 10(2)(a), superseded by Act No. 54 of 1952, § 27.

414. Act No. 25 of 1945, § 10(2)(b), superseded by Act No. 54 of 1952, § 27.

415. See notes 405, 407, 409 *supra*. *But cf.* note 406 *supra*.

416. *R. v. Tshawe*, [1956] 4 So. Afr. L.R. 818 (1956).

417. *Ibid.*

418. *Mashinini v. Boksburg Town Council*, [1958] 4 So. Afr. L.R. 3 (1958).

419. *R. v. Ngotyana*, [1956] 4 So. Afr. L.R. 550 (1956); *R. v. Thelingoana*, [1954] 4 So. Afr. L.R. 53 (1954). *But cf.* *Para v. Vereeniging*, [1951] 1 So. Afr. L.R. 610 (1950).

420. *R. v. Kula*, [1954] 1 So. Afr. L.R. 157 (1953). The mere fact that certain sections of the act are difficult to apply is no excuse for violation. *R. v. Kotane*, [1957] 1 So. Afr. L.R. 630 (1956).

The Transvaal Division of the Supreme Court has recently ruled that Africans from the three British protectorates of Basutoland, Bechuanaland, and Swaziland, who, unlike other alien Africans, were previously permitted under § 12 (superseded by Act No. 16 of 1955, § (6)) to remain in urban or proclaimed areas if they had been there lawfully as of the effective date of the act and had remained there lawfully ever since, are under more recent amendment (Act No. 79 of 1957, § 8) no longer specially privileged and must obtain

To put teeth into these sections, the act provides that contravention thereof or remaining in an urban area for an unauthorized purpose is a criminal offense;⁴²¹ and in any prosecution under section 10 "it shall be presumed until the contrary is proved that such [i.e., the accused] native remained in the area in question for a period longer than seventy-two hours."⁴²² A person convicted of a violation may be removed to his home or last place of residence or "to a rural village indicated by the Secretary for Native Affairs within a scheduled native area or a released area. . . ."⁴²³ The act also empowers local authorities to set aside "locations" for all⁴²⁴ Africans⁴²⁵ and to establish accommodations or prepare sites for accommodations⁴²⁶ and to let business sites there.⁴²⁷ The Minister may compel the local authorities to take such action and, if they fail to do so, have it done at their expense.⁴²⁸ He may also require the curtailment or removal of any such location or native village or

permits to remain or be deported. *Matsoetlane v. Minister of Bantu Administration and Dev.*, [1960] 2 So. Afr. L.R. 89 (1959).

421. Act No. 25 of 1945, §§ 10(3), (4), superseded by Act No. 54 of 1952, § 27. In addition, it is an offense to induce or assist an unauthorized African to enter an urban area, and anyone who violates this provision shall pay the cost of removing such illegally introduced person. Act No. 25 of 1945, § 11, superseded by Act No. 54 of 1952, § 29; Act No. 25 of 1945, § 14(2). There are exceptions written into § 10 for mining companies and certain other companies, but it is rigorously enforced as to ordinary persons. Thus in *R. v. Marquard*, [1954] 3 So. Afr. L.R. 819 (1954), the court (assuming the facts as stated were true—although it was obvious the justices were skeptical) held that the defendant violated the act by driving a truckload of Africans, bound for another place, into an urban area where he stopped at his home long enough to change his clothes to prepare for a social evening after taking the Africans on to their destination.

422. Act No. 25 of 1945, § 10(5), superseded by Act No. 54 of 1952, § 27.

423. Act No. 25 of 1945, § 14(1), superseded by Act No. 54 of 1952, § 32, as amended by Act No. 36 of 1957, § 34. In discussing this provision, the parliamentary leader of the Labour Party declared:

This means that the Secretary for Native Affairs can indicate not that the Native should be sent back to his home or last place of residence, but that he can be sent to some rural area to work on a farm, or he can be sent to one of these mysterious places of which we hear so much, Frenchdale or Riemvasmaak. In other words, he can be banished. . . .

H.A. DEB., April 1, 1957, col. 3919.

424. Exemptions are set out in § 9(2), as amended in part by Act No. 16 of 1955, § 4(a) (restricting the number of domestic servants residing in a building to five and creating a presumption against both the owner or occupier of the building and the African in criminal prosecutions for exceeding the permitted number). However, all such exempted Africans are now subject to relevant provisions of the Group Areas Act.

425. The Governor-General may by proclamation require all Africans in an urban area to live in such a location.

426. Act No. 25 of 1945, § 2, as amended by Act No. 16 of 1955, § 16. Section 2(c) was amended by Act No. 36 of 1957, § 24, empowering local authorities to lay out land and sites for Africans, rather than to *provide buildings* for them, as previously.

427. Act No. 25 of 1945, § 37. For application of the power to let sites for business purposes, see *Lekhari v. Johannesburg City Council*, [1956] 1 So. Afr. L.R. 552 (1955) (involving criminal penalties for failure to pay rent).

428. Act No. 25 of 1945, §§ 3(1), 4. See also Group Areas Act, Act No. 77 of 1957, §§ 26(1), (2).

hostel in case of danger to health or safety.⁴²⁹ When a location has been established in an urban area, it is an offense for any non-exempt African not to reside therein⁴³⁰ and for anyone to permit an African to live anywhere except in the location.⁴³¹ No person within five miles of an urban area may⁴³² allow Africans to congregate or reside on his property unless they are bona fide employees;⁴³³ and in any criminal action against the owner, lessee, or occupier of property for violating this provision, "it shall be presumed until the contrary is proved, that such native was not, during the period covered by the charge, in the *bona fide* employ of the accused."⁴³⁴ It is unlawful for non-Africans⁴³⁵ to acquire property in an area set apart for a native location or to reside or do business there.⁴³⁶

Urban Africans are no longer merely confined to their locations, subject to numerous restrictions such as those prohibiting the introduction or possession of intoxicating liquor.⁴³⁷ The government has begun to divide them into tribal units within the locations and to segregate such units from each other.⁴³⁸ In contemplation of this development the Promotion of Bantu Self-Government Act provides that a territorial or regional authority or board may⁴³⁹ nominate an African to represent the authority or board in one or more urban areas with the Africans there who belong to the "national unit [i.e., tribe] concerned."⁴⁴⁰ Such a nominee is to be recognized as the representative of the territorial or regional authority or board by the Africans in the area to which he has been nominated, but the Governor-General may withdraw recognition at the request of the authority or board by which he was nominated or after consultation by the Minister with such authority or board.⁴⁴¹ The representative⁴⁴² has the following duties: (a) to advise the authority or board by which he was nominated as to matters of general interest to the national unit

429. Act No. 25 of 1945, § 3(3), added by Act No. 16 of 1955, § 3.

430. Act No. 25 of 1945, § 9(3).

431. Act No. 25 of 1945, § 9(5).

432. Except by permit.

433. Act No. 25 of 1945, § 15(1). See S. DEB., March 30, 1960, col. 1585, for a discussion of the plight of nonwhites in communities near Durban towards which the city is expanding. As new (white) suburbs are declared urban areas, Africans previously more than five miles from the city find themselves in violation of this provision, as do their landlords.

434. Act No. 25 of 1945, § 15(6). See R. v. Njiwa, [1957] 2 So. Afr. L.R. 5 (1956).

435. Act No. 25 of 1945, §§ 5(3); 5 (added by Act No. 36 of 1957, § 26).

436. Act No. 25 of 1945, §§ 5(1), 8(1), 9(8), 37(c), proviso (i). Under § 9(9), added by Act No. 36 of 1957, § 29(e), no person shall enter a location without permission of the officer in charge. And for the detailed regulations issued in connection therewith, see INT'L COMM'N 35.

437. Act No. 25 of 1945, §§ 32; 33; 34, as amended by Act No. 36 of 1957, § 44; 35. Section 36 empowers the Minister to prohibit the sale of sprouted grain to any African within five miles of an urban area.

438. Cope, *Verwoerd's Blueprint for the Towns*, The Forum, Oct. 1958, p. 10.

439. In consultation with the Minister and with the approval of the Governor-General.

440. Act No. 46 of 1959, § 4(1).

441. Act No. 46 of 1959, §§ 4(2), 3.

442. "Induna."

regarding the area in which he is recognized; (b) to constitute a local board to help him to perform his duties; and (c) to represent the authority or board which nominated him with the national unit and to serve the interests of the national unit within the local area in which he is recognized.⁴⁴³ The representative is deemed by the statute to be a "headman" in relation to his powers to try civil and criminal cases involving Africans belonging to the tribal unit.⁴⁴⁴

Ironically, these attempts to return to tribalism are being made when the salient characteristic of urban African life is:

that Western material culture is being adopted in its entirety. European dress and European furniture are the accepted norms. . . . The acquisition of European material goods is limited only by the African's purchasing power.

Residence in an urban area . . . has brought about the greater individualism of the immediate family . . . which forms an economic and residential unit, very much on the same pattern as that obtaining in European society. . . .⁴⁴⁵

Tribalism has been disappearing as a result of intertribal marriage. A presumably apocryphal story tells of an African woman who, having taken her baby to the Meadowlands clinic, which is run on strictly "ethnic" lines, cried out in despair:

My father was Nguni, my mother was Sotho. My husband's father was a Tsonga and his mother Venda, but he prefers to speak Zulu. I don't know about my baby, but some of my friends say that he cried like a Xosa. Now please tell me, my masters, through which door do I enter the clinic?⁴⁴⁶

The Urban Areas Act has still other facets. Since 1957 schools, hospitals, clubs, and similar institutions for Africans have been forbidden outside "native locations" unless they existed at the same place prior to 1937 or in any case if the number of Africans entering or attending exceeds the number in 1937.⁴⁴⁷ The Minister may forbid the admittance or attendance of Africans

443. Act No. 46 of 1959, § 5(1).

444. Act No. 46 of 1959, § 5(2). For powers of a headman in this respect, see text at notes 313-21 *supra*. An opposition M.P. predicted a year before the Bantu Self-Government Act became effective that:

In the absence of any enlightenment from Dr. Verwoerd, I can only conclude that the new set-up for Native administration in the towns will be on the following lines:

When the Native townships have been split up into authentic groups, an Induna will be appointed in each township to serve as a link with the corresponding Bantu Authority way back in the Reserve. It may be the intention to introduce the Bantu Urban Authorities Bill [published in 1952 but not introduced] in modified form, creating tribal councils in the townships to work with the indunas, or else some closer link will be established between the ethnic groups in the towns and the chiefs in the Reserves.

Cope, *Verwoerd's Blueprint for the Towns*, The Forum, Oct. 1958, p. 10; see H.A. DEB., May 18, 1959, col. 6020.

445. HANDBOOK 271.

446. Cope, *Verwoerd's Blueprint for the Towns*, The Forum, Oct. 1958, p. 11.

447. Act No. 25 of 1945, § 9(7) (c), added by Act No. 36 of 1957, § 29(d).

even at such permitted institutions if (1) their presence in the area constitutes a nuisance or (2) their numbers are sufficient to constitute a nuisance or (3) the institution is conducted in a manner prejudicial to the public interest.⁴⁴⁸ It is a criminal offense to conduct any institution in violation of these provisions.⁴⁴⁹ The conduct of religious services for Africans outside their locations is also subject to termination by the Minister.⁴⁵⁰ He may in addition forbid Africans to attend any place of entertainment outside a location if their presence or numbers constitute a nuisance⁴⁵¹ and penalize both the African and the operator of the entertainment place for any violation.⁴⁵² The most far-reaching provision of this amendment, however, empowers the Minister to prohibit persons from holding, organizing, or arranging outside a location any meeting, *including a social gathering*, which is to be attended by an African "if in the opinion of the Minister the holding of such meeting . . . is likely to cause a nuisance to persons resident in the vicinity . . . or will be undesirable. . . ."⁴⁵³ In 1959 the Minister of Bantu Administration and Development listed 13 whites whom he intended to prohibit from holding meetings in Johannesburg; the ban, he indicated, was aimed at the mixed drinking parties, characterized by excesses, which were held in contravention of South African custom.⁴⁵⁴

Despite all these restrictions, the "pull of the towns has been irresistible."⁴⁵⁵ The number and the percentage of Africans in urban areas has grown steadily, and the amount of "real" urbanization is increasing despite government policy.⁴⁵⁶ To cope with the special problems arising out of African urbanization and to implement the government's general policies relating to urban areas, the Urban Areas Act provides a battery of special enforcement measures.

The most notorious is, perhaps, the section⁴⁵⁷ which empowers any officer to arrest without a warrant any African in an urban⁴⁵⁸ area *on the belief*

448. Act No. 25 of 1945, § 9(7) (d), added by Act No. 36 of 1957, § 29(d).

449. Act No. 25 of 1945, § 9(7) (d), added by Act No. 36 of 1957, § 29(d).

450. Act No. 25 of 1945, § 9(7) (b), added by Act No. 36 of 1957, § 29(d). For further restrictions on religion, see text at note 453 *infra*.

451. Act No. 25 of 1945, § 9(7) (e), added by Act No. 36 of 1957, § 29(d).

452. Act No. 25 of 1945, § 9(7) (e), added by Act No. 36 of 1957, § 29(d).

453. Act No. 25 of 1945, § 9(7) (f) (ii), added by Act No. 36 of 1957, § 29(d). Under § 9(7) (f) (i) the Minister may prohibit the holding of any such meeting.

454. 6 AFR. DIG. 144 (1959). The Minister stated that he had approached the City Council about the situation but had not received the courtesy of a reply. *Ibid.* It was also reported that Verwoerd, while still Minister of Native Affairs, had appointed a "watchdog committee" to see that government policy was carried out in Johannesburg, the decision being made "in view of the many problems presented by Johannesburg in the implementation of national policy. . . ." *Id.* at 21.

455. HANDBOOK 234.

456. *Id.* at 239; H.A. DEB., March 23, 1954, col. 2560; S. DEB., March 30, 1959, col. 1539; S. DEB., April 21, 1960, cols. 2202-03.

457. Act No. 25 of 1945, § 29(1), superseded by Act No. 54 of 1952, § 36.

458. Or a proclaimed area.

that he is an "idle" or "undesirable" person and to bring him before a magistrate or native commissioner, to whom he shall then be required to "give a good and satisfactory account of himself. . . ." The African may be held "idle" if he is habitually unemployed and has no sufficient honest means of livelihood, or if through his own misconduct or default⁴⁵⁹ he fails to support himself or his legal dependents, or if he habitually begs or induces others to beg for him.⁴⁶⁰ He may be found "undesirable" if he has been convicted of certain crimes or has failed to depart from an urban area as required,⁴⁶¹ or, if a female, she has entered a proscribed area without documents or failed to produce them on demand.⁴⁶² If found "idle" or "undesirable," the African may be removed and sent to his home, to a work colony, farm colony, refuge, rescue home, or other similar institution, or to any other indicated place,⁴⁶³ or the African may enter an employment contract with such employer and under such terms as the magistrate or commissioner approves.⁴⁶⁴

An urban local authority may order any African to leave an urban area if his presence is thought to be "detrimental to the maintenance of peace and order."⁴⁶⁵ Violation of such an order is a criminal offense.⁴⁶⁶ If more than one such order is issued against an African within five years, the Minister may order the chief native commissioner to make an investigation, and if the latter finds that the presence of the African is detrimental to peace and order, he may, subject to the approval of the Governor-General, forbid the African from entering any specified area for a specified time.⁴⁶⁷ Violation of this order is also an offense, for which deportation to any indicated area or a work colony may be ordered by the court.⁴⁶⁸

The Minister of Native Affairs assured Parliament that the power granted local authorities to remove Africans was designed to cope with "agitators."⁴⁶⁹ The opposition argued that there already were numerous effective ways to get rid of subversive Africans,⁴⁷⁰ that breach of the law or disorderly conduct is not a necessary element of the conduct for which such severe penalties are

459. Including gambling, drink or drug addiction.

460. Act No. 25 of 1945, § 29(1) (a), superseded by Act No. 54 of 1952, § 36.

461. By § 23.

462. Act No. 25 of 1945, § 29(1) (b), superseded by Act No. 54 of 1952, § 36, as amended by Act No. 36 of 1957, § 41.

463. Act No. 25 of 1945, §§ 29(3) (a)-(c), superseded by Act No. 54 of 1952, § 36.

464. Act No. 25 of 1945, § 29(3) (d), superseded by Act No. 54 of 1952, § 36. As to the use of this and similar provisions to provide cheap African labor for farms and industry, see text at note 463 *supra*.

465. Act No. 25 of 1945, § 29 *bis*, added by Act No. 69 of 1956, § 1. It is perhaps significant that the English rubric of § 28 of the Urban Areas Act is "removal of redundant Natives" and that a ground for ordering Africans out of an urban area under that section is simply that there are too many in such area.

466. Act No. 25 of 1945, § 29 *bis* (3), added by Act No. 69 of 1956, § 1.

467. Act No. 25 of 1945, §§ 29 *bis* (5), (6), added by Act No. 69 of 1956, § 1.

468. Act No. 25 of 1945, § 29 *bis* (7), added by Act No. 69 of 1956, § 1.

469. H.A. DEB., June 8, 1956, col. 7350.

470. H.A. DEB., June 11, 1956, col. 7402.

imposed,⁴⁷¹ that no judicial proceeding is required before imposing these penalties,⁴⁷² that there is no provision for an African or his family who has been born and reared in the area from which he is banished,⁴⁷³ that there is no way for a banished African to "rehabilitate" himself,⁴⁷⁴ that "agitator" can be used to designate anyone who disagrees with the Minister,⁴⁷⁵ and that the dispersion of authority would make it impossible to check on the fate of affected Africans.⁴⁷⁶

Since banning by local authorities is wholly administrative in nature, there appears little likelihood of effective judicial restraint as to removals, but the courts have given some substance to "idle" and "undesirable" person concepts. Thus it has been held that the magistrate must consider the general mode of life of the African as well as the alleged misconduct and any explanation therefor.⁴⁷⁷ Since the magistrate has power "to deprive such a man of his liberty for a long period of time and to send him away to a farm colony where he is kept at hard labour . . .," the courts have insisted on scrupulous respect for judicial standards in the hearing,⁴⁷⁸ but the finding will be respected if the facts are clear.⁴⁷⁹ A local authority, however, may still ban Africans under its power to preserve "peace and order" if there are insufficient grounds to find him "idle" or "undesirable."

Finally, the statute imposes curfew regulations on all Africans⁴⁸⁰ and requires that, on demand by any official, every African produce any document or certificate that he is obliged to have.⁴⁸¹

CONCLUSION

The statutes discussed above establish only the skeleton of the law governing race relations in the Union. In themselves they suggest the pervasiveness of the philosophy of physical separation of the races; in juxtaposition to the inherent problems of racial classification they suggest something of the arbitrariness of so rigidly defined a policy. The superstructure built upon this legislative skeleton—the multitude of statutes and ordinances which extend *apartheid* to every aspect of South African life—will be examined in a subsequent article.

471. *Id.* at col. 7399.

472. *Ibid.* It was pointed out in col. 7400 that the local authority was judge in its own case, that the African was not heard, and that no reason was required to be given for the decision.

473. *Id.* at cols. 7300-7401.

474. *Id.* at col. 7430.

475. *Id.* at col. 7419.

476. *Id.* at col. 7426.

477. *Rhalau v. Acting Native Comm'r*, [1955] 4 So. Afr. L.R. 1 (1955).

478. *R. v. Ntombella*, [1957] 1 So. Afr. L.R. 624, 626 (1956), quoting from *R. v. Sinjane*, [1942] 2 So. Afr. L.R. 879 (1942); *R. v. Sitaphelo*, [1957] 4 So. Afr. L.R. 321 (1957) (insufficient evidence to support necessary allegation).

479. *R. v. Patshima*, [1954] 4 So. Afr. L.R. 398 (1954).

480. Act No. 25 of 1945, § 31(1).

481. Act No. 25 of 1945, § 43 *bis*, added by Act No. 36 of 1957, § 50.