

SECOND CARNEGIE INQUIRY INTO POVERTY
AND DEVELOPMENT IN SOUTHERN AFRICA

Pass laws and the disorganisation
and reorganisation of the African
population in South Africa

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PASS LAWS AND THE DISORGANIZATION AND REORGANIZATION
OF THE AFRICAN POPULATION IN SOUTH AFRICA

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Since the start of this century over 17,250,000 Africans have been arrested or prosecuted under a battery of pass laws and influx control regulations in South Africa.¹ The size of this figure is blunt testimony of the extent to which the pass laws have been used to control the freedom of movement of the African population and to circumscribe their access to labour markets in both rural and urban areas. While it is not only the pass laws which have been employed to 'channel' a flow of black labour into the economy and to place by 1980 some 53% of the African population in the Bantustans (or 'homelands' as they are at times officially, although inaccurately termed) the pass laws have occupied the central position in the process of policing the African population and directing them into places dictated by whites. In short they are a key part of the legal-administrative apparatus aimed at maintaining white domination.²

Pass laws in South Africa have a long history dating back to 1760 in the Cape when slaves moving between urban and rural areas were required to carry passes authorizing their travel.³ Examining their growth and increasing application to African population over time reveals that they have been

used to balance two apparently contradictory white needs -- an 'exclusionary' need to obtain political security by controlling and policing the number of Africans in 'white' areas, and an 'inclusionary' need to ensure a supply of cheap labour within these areas.⁴ The use of pass laws to meet both 'exclusionary' and 'inclusionary,' needs has led to changing patterns of legislation and administrative practice over the years. During the first part of this century the thrust of the pass laws and their administration (up to at least 1950) was to encourage flows of labour into 'white' agriculture and industry and to allocate labour into geographical areas where it was needed, from 1950 onward the emphasis of the pass laws has been overtly exclusionary and directed to 'relocating' Africans from 'white' areas and containing them within the Bantustans. An uneasy tension has existed throughout efforts to use the pass system to balance white needs for security and labour, and additional legislation has been interwoven with it to form a 'daunting legal complex' establishing far reaching controls over African employment, housing, access to land and citizenship rights.⁵ Pass laws remain at the centre of this legal complex, which has undergone continual adjustments as efforts are made to 'reform' the system without altering the existing distribution of power.

Current influx reform efforts, mirrored clearly in the report of the Riekert Commission appointed in the wake of

the 1976 black uprising, are aimed at making influx controls more efficient and tightening them up while at the same time granting increased privileges (but not rights) to a select group of urban dwellers.⁶ These efforts at 'reform' have taken place against a wider backdrop of massive forced population removals involving millions of Africans, which have resulted in an underemphasized and significant population shift from 'white' areas into Bantustans. The nature of this population shift has meant that the "National Party's claims that the flow of black people into white areas would be reversed by 1978 is not as ridiculous as it seemed to be".⁷ This forceful shift of the African population is reflected in preliminary statistics from the 1980 population census.

This paper argues that the pass laws and influx control regulations have served to disorganize⁸ and then reorganize the African population. The African population has been disorganized by influx control regulations forcing and expelling workers and their families into and from the economy, by regulations manipulating the access of the African population to labour markets and the land, and more recently by changing citizenship regulations stripping away the legal right of vast numbers of Africans to remain in urban areas. Over the same period the African population has been reorganized into 'tribal homelands', 'independent black states' and, at vast human and economic cost, "sorted ethnically".⁹ Associated with these processes of disorganization and reorganization has been a tightening of the net controlling access to urban areas,

housing and jobs and the erection of rigid legal barriers around Bantustans in which the unemployed and structurally unemployed are trapped, unless they cross these barriers to risk prosecution by living 'illegally' in towns.

Against this background this paper will focus on the application of influx control measures and attempt to quantify the manner in which they have been applied over time. The application of influx controls during this century has not been uniform and an examination of changing patterns in their application starkly reveals the existence of differing policies underpinning them and of different efforts to apply them in the face of changing economic and political conditions. In particular prosecution figures for pass laws and influx control 'offences' (which will be used in the absence of any systematic or reliable series of conviction figures), demonstrate a dramatic rise in prosecutions over the period 1960-68 and an equally sudden decline thereafter. This marked movement in prosecutions demonstrates an interlocking of pass laws with labour control measures and a selective application of these controls both to groups in the African population and within various urban areas.

II

It is impossible to obtain reliable statistics regarding the number of Africans arrested, prosecuted or convicted in

terms of pass laws and influx control regulations. As is pointed out by both Horrell and Kahn not only has there never been an official definition of what a 'pass' is but passes have been verbally abolished by the Natives (Abolition of Passes and Coordination of Documents Act of 1955. Since then officials have insisted that passes do not exist (despite Dr. Piet Koornhof acknowledging their reality in his references to the 'hated dompas'). A consequence of this is that there is no official classification of which laws are 'pass laws' and differences exist between various efforts to classify those laws relating to passes and influx control.

Added to this difficulty is a wider one: attempts to quantify economic or political phenomenon in South Africa are bedeviled by a lack of accurate or reliable statistical material. Two significant illustrations of this can be cited, first in terms of census material and second in terms of the collation of statistics, both of which have an impact on any empirical study of pass laws and influx control.

An adequate population census should provide relatively precise enumerations of population size and of its geographical location. However the South African population census has become notorious for its underenumeration of the African population. The 1960 census report, for instance, initially placed the size of the African population at 9.9 million people but on several occasions the Department of Statistics

has had to revise this figure in light of sample surveys and subsequent censuses and by 1980 had increased it by over 2 million to 12.1 million. Similar underenumeration characterises official statistics on the number of Africans in urban areas, the 1970 census is believed not to have included some 50% of the population of Soweto nor some 35% of the population of Mdantsane.¹⁰ Currently compounding difficulties of enumeration has been the exclusion since 1976 of "independent black states" -- such as the Transkei -- from any of the official statistical reports, with the result that official national statistics have to be treated with considerable caution.

In terms of influx control and pass laws, official figures for arrests and prosecutions not infrequently are at variance with another, at times this appears to be due to different reporting procedures and periods. However, doubt must be cast on some of the figures. The minutes of a 1974 meeting in Pretoria between police and senior 'Bantu Affairs Commissioners' recently were obtained by a news reporter and indicated that top officials had manipulated figures on pass law offences in order to avoid unfavourable publicity, in particular the minutes reported "Aid centre statistics covering cases sent to court will meanwhile be coloured (ingekleur word) to reflect a positive image."¹¹ Other problems concerning pass law and influx control figures relate to the difficulty that since the creation of

of Administration Boards in 1973 it is not always possible to determine whether national statistics combine the number of arrests by police and Administration Board official. Further it is not possible to determine over years the number of people summarily 'endorsed out' of urban areas or the numbers of those who may pay 'admissions of guilt' for pass law infringements and who may not appear in official figures of arrests and prosecutions.

The key to the use of many -- if not most-South African statistics is to recognize their limitations and generally to treat them as flawed orders of magnitude rather than as precise measurements. It is against this background that initially two related sets of figures, concerned with pass law prosecutions and African population distribution, may best be examined.

The annual reports of the Commissioner of Police provide a relatively systematic series of figures for cases sent to trial, or arrests, for offences under laws that can be classified as controlling African freedom of movement and entry into 'white' areas and into the labour market. While there are gaps in the provision of pass law prosecution figures in Commissioner of Police annual reports (and no figures are provided after 1980), these gaps usually can be filled from a variety of other sources.¹²

Over the period 1916-1982 more than 17,252,146 Africans have been prosecuted under pass laws and influx control

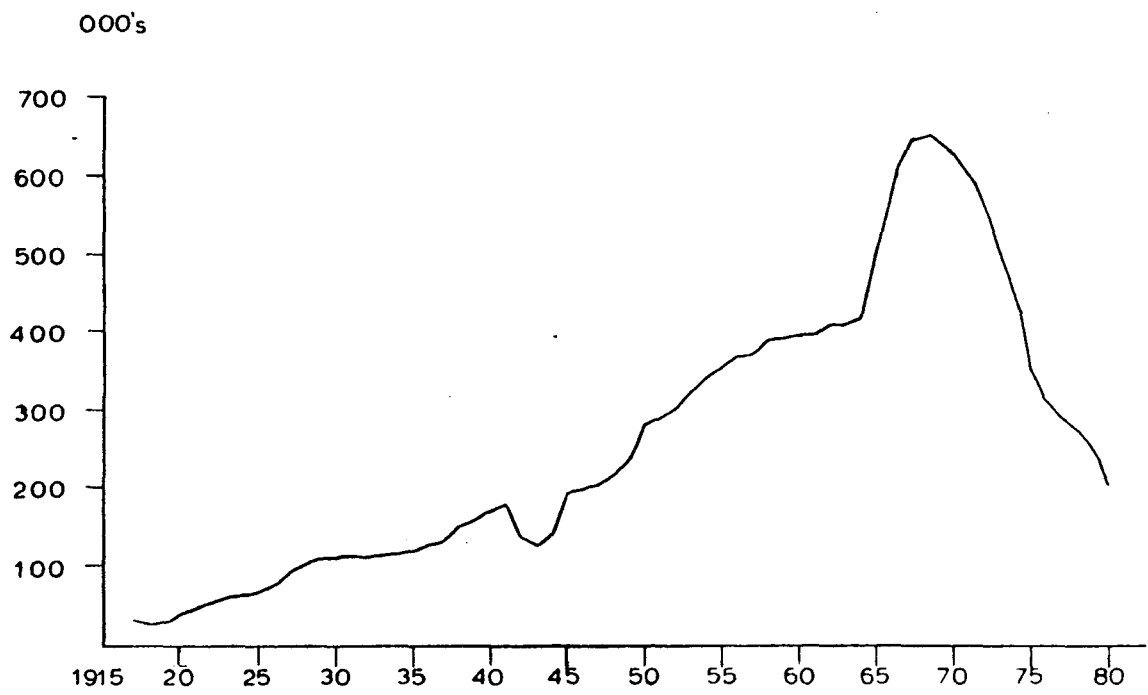


Figure 7: PASS LAW PROSECUTIONS 1916-81

(The graph is based on a three year moving average of prosecution figures collated from reports of the Commissioner of South African Police)

regulations. In this sixty-five year period the pattern of prosecutions can be placed into some crude but distinct categories: (a) a period of a steady but 'slow' increase in the number of persons prosecuted during 1916-1941, with annual prosecution figures averaging 95.6 thousand rising from 40.4 thousand to 177.9 thousand over the period (b) a decline in the number prosecuted during the years of World War II 1942-1944, when an average 126.7 thousand prosecutions were instituted annually. (c) a return to a period of increasing prosecutions, with a particularly marked increase from 1948-1959, when at the start of the period 214.3 thousand annual prosecutions took place and by its end prosecutions had nearly doubled to 417.7 thousand per year, (d) a rapid increase in the number of persons prosecuted under pass laws from 1960-1967, with annual prosecutions reaching a high figure of 693.7 thousand persons prosecuted in 1967/8, following this (c) from 1968 to 1981 a rapid decline in the number of persons prosecuted for pass law offences with prosecution figures declining by 1981 (to roughly the 1945 level) of 171.4 thousand annual prosecutions and averaging 418.8 thousand per year over the period 1968-1981.

Table 1

PASS LAW PROSECUTIONS 1916 - 1981

	1916	1921	1930	1940	1950	1960	1967/8	1970/1	1980/1
Curfew Regulations	...	...	...	...	92,377	142,122	157,807	136,118	10,835
Masters and Servants	10,727	22,058	28,878	16,970	25,321	18,743	23,365	21,911	
Pass Laws	22,225	34,900	46,985	115,488	58,056	--	--	--	
Labour Regulations	7,452	...	26,014	27,079	14,254	--	--	--	160,600
Urban Areas Act	--	--	25,939	9,164	13,742	55,933	142,727	159,122	
Registration & Production Docs.	...	...	...	...	61,582	138,990	352,517	282,684	
Foreign Blacks in Urban Areas	...	...	...	...	...	14,475	17,245	15,240	
'Bantu' Administration	--	--	--	--	--	--	--	16,255	
TOTAL	40,404	56,958	127,816	168,701	265,332	370,263	693,661	631,330	171,435

... = Figures not supplied

-- = Legislation not applicable

Source: Official Yearbooks of the Union of South Africa No. 1, 1918 and No. 5, 1923; Annual Reports of the Commissioner of South African Police; 1980/1 figures, House of Assembly Debates, Question Columns Minister of Cooperation and Development and Minister of P.

Table 2PASS LAW PROSECUTIONS 1916 - 1982

	<u>Total</u>	<u>Annual Average</u>	<u>Daily Average</u>
1916 - 1920	161,936	32,400	89
1921 - 1925	296,726	59,300	163
1926 - 1930	521,536	104,300	286
1931 - 1935	576,613	115,300	316
1936 - 1940	752,429	150,500	412
1941 - 1945	735,026	147,000	403
1946 - 1950	1,135,172	227,000	622
1951 - 1955	1,624,589	324,900	890
1956 - 1960	1,899,469	379,900	1,040
1961 - 1964/5	1,853,535	370,700	1,016
1965/6 - 1969/70	3,108,239	621,600	1,703
1970/1 - 1974/5	2,704,477	540,900	1,482
1975/6 - 1979/80	1,495,465	299,100	819
1980/1 - 1981/2	386,970	193,500	530
TOTAL	17,252,146		

Sources: Annual reports of the Commissioner of South African Police; Union Statistics for 50 years (Pretoria, 1960); House of Assembly Debates Question Columns.

This pattern, underlying the 'quantum' of misery' produced by pass law prosecutions, is a direct reflection of changing legislative and administrative decisions concerning methods of control over the African population.

Prior to examining the forces behind the changing pattern of prosecutions since 1916 (and in particular accounting for the dramatic rise in prosecutions over the period 1960-1967) some immediate comments should be made about the overall figures presented.

First, while the figures demonstrate a massive application of influx control measures over time they form only a conservative indication of the numbers of people directly affected by such measures. A range of legal mechanisms apart from pass laws have enabled officials to remove individuals and total communities from white areas without resorting to pass law prosecutions. Legislation has existed, and continues to do so, that has been used to remove African labour tenants and squatters from white farms, and one calculation estimates that 668,000 removals have been carried out since 1960 under such legislation (a different estimate places the figure at 1.3 million removals).¹³ Other legislation enables black townships to be 'deproclaimed' and their residents removed to 'black' areas, Horrell estimates that up to 993,000 Africans have been removed from urban areas in this manner over the period 1960-1972.¹⁴ In addition 'black spot' removals have taken place forcing African farming communities out of

white rural areas, and into Bantustans, between 1960-1979 an estimated 454,000 people have been removed under such 'clearances'.¹⁵

It is clear that an accounting of the full measure of the impact of influx control measures must include more than a focus on pass law application. Second, even the narrower focus on the application of the pass laws has to rely on prosecution figures, as figures for instance of the number of persons summarily prevented from entering or endorsed out of urban areas (either by being declared to be 'idle and undesirable' under Section 2a of the Black Urban Areas Act or by declaration that they are unqualified to be there) are not available. Some indications of the extent of the application of these sections of the Act can be gleaned from answers to Parliamentary questions: in 1955 the Minister of Native Affairs stated that

25,331 Africans had been 'turned away' from the Witwatersrand and Vereeniging areas and placed on farms, and in 1962 it was revealed in the Assembly that 4,254 women and 677 children had entered Johannesburg without permission and had been endorsed out.¹⁶ Other reports in 1956 indicated that "every day" in the larger towns "many hundreds" of male Africans were arrested on suspicion of vagrancy or crime and that many of those persons who were not suspected criminals, pay sums in admission of guilt at police stations and were then warned to leave the area if not

legislatively entitled to be there.¹⁷ More recent figures indicate that in 1977 in the major urban areas 737 persons were declared 'idle and undesirable' and endorsed out¹⁸ and contemporary reports indicate that such endorsements have been used as a political weapon against black dissidents.¹⁹

The size of this grouping of people who are not prosecuted for offences under influx control regulations but who are either summarily removed from urban areas or prevented from entering them due to these regulations is significant, although numerically difficult to estimate.

Third, a range of legislation not originally designed for influx control in recent years has been used for the purpose of excluding people from urban areas and pass law prosecution figures do not and cannot reflect this change. Most significant of this legislation has been the intensive use of the Admission of Persons to the Republic Regulation Act of 1972 as a weapon in the armory of influx controls. The Act sets out the procedures, found in most states, for deportations of foreigners. It was enforced in 1981 to deport without recourse to any court, 3,666 persons in Cape Town who were declared to be Transkeian citizens illegally in the Republic of South Africa.²⁰ With the 'independence' of Boputhatswana, Ciskei and Venda all persons technically classified as their 'citizens' become foreigners in South Africa and liable to deportation.

South Africa thus has created from its citizens several millions of persons who have become "new foreigners" liable to instant deportation and endorsement out of 'white' areas.²¹

Fourth, in addition to the figures for pass law and influx control prosecutions a fuller measure of the controls placed on the African population should include both Tax and Trespass prosecutions. Poll tax and trespass legislation complements and reinforces the pass laws and the pattern of prosecutions under these pieces of legislation closely follows the changing pattern of pass law prosecutions.

Table 3 African Prosecutions Under Tax and Trespass Laws

	<u>Tax</u> ¹	<u>Trespass</u>
1920-29	115,909	- - -
1930-39	858,735	(73,159 - 1934-39)
1940-49	366,605	436,680
1950-59	981,448	1,084,677
1960-69 ²	1,804,625	1,371,973
1970-79	<u>405,253</u>	<u>1,375,305</u>
Total	4,531,575	4,341,794

Source: Collated from Annual Reports of the Commissioner of South African Police.

- Notes:
1. Tax figures not included in 1920, 1925 Annual Reports
 2. A change in reporting periods took place in 1963 thus the 1960-69 figures cover the period to June 1970, and the 1970-79 figures cover the period to June 1980.

Poll taxes originally were used as a mechanism for driving the African population into the cash economy by requiring them to pay a cash tax, which for the bulk of the population could only be paid by selling their labour. The taxes raised are kept separate from general tax revenue and used to off-set the costs of the administrative machinery imposed on Africans -- although studies of municipal and national accounts show that at no time has the tax been successful in meeting this objective.

Africans of working age are required to produce on demand a tax receipt and are subject to prosecution if they fail to do so.

The figures for prosecutions under this tax legislation (Table 3) show that 4.5 million people were prosecuted over the period 1920-79 for failure to produce a valid tax receipt. The figures follow the same pattern as pass law prosecutions over this period, also rising to their highest point in 1967/8 (when 243,437 people were prosecuted for this offence in one year) and thereafter dropping rapidly, so that by 1978/9 the number of prosecutions had dropped to 23,402. The rapid decline in prosecutions is due to more efficient procedures for collecting tax via direct deductions from pay. But, as Sachs points out, despite the decline in prosecutions under this legislation it is unlikely that poll taxes will be abolished "since they help perpetuate the notion that Africans have a separate citizenship from

white, while at the same time appearing to demonstrate that it is White taxpayers who subsidize virtually all expenditure on Blacks."²²

Unlike Tax prosecutions, Trespass prosecutions show little sign of significantly declining and manifest an increase over the 1972-79 decade. In large measure this is because trespass laws have been used both against urban Africans on white owned residential property (for example against those visiting domestic workers or 'illegally' living on such property) and, most significantly, they have been used to prosecute those 'squatting' on land in 'white' areas. Trespass legislation enables authorities to check and control the African population, to destroy squatter camps on the fringes of urban areas, to move Africans off white owned farms, to carry out 'pass raids' on residential property and in sum, it provides Police and Administration Board officials with a legal tool of considerable importance with which to carry out policies at both a local and national level. With the growth of urban 'squatting' and increasing efforts to move blacks into Bantustans it is unsurprising that trespass prosecutions have shown little decline over past years and that for the past twenty years 350 people per day have been prosecuted under the provisions of this legislation.

So far absolute figures for arrests and prosecutions under influx control laws -- and under the related tax and

trespass laws -- have been presented. These figures indicate that over the period 1916-82 more than 26 million Africans have been prosecuted under these three Acts of discriminatory legislation, with prosecutions being particularly intensive over the period 1960-67 and declining thereafter. While useful in presenting an overall pattern, these figures need to be viewed against wider demographic trends of urbanization and population size and distribution.

The Demography and Legislation of Population Movement

The African urban population increased continuously over the period 1911-80, with the number of Africans living in towns and cities rising from 508 thousand to 6.4 million (Table 4). Despite the significant increase from 12.6% to 32.1% in the urban African population over the period, the pace of urbanization has been uneven. The intercensal periods up to 1951 show an urban population growth rate of between 1.5% and 6.6%, with the latter figure applying to the peak urban growth period between 1946-1951. Subsequent to 1951, there has been a steady decline in the African urban population growth rate, and by the intercensal period 1970-80 the rate had fallen to 2.3%. While absolute figures for African urban population growth indicate a steady increase in the number of Africans in towns, these widely cited figures are misleading insofar as they obscure a

declining urban growth rate which is particularly marked from 1951 onwards. In the three periods 1951-60, 1960-70 and 1970-80 urban growth rates show this declining rate to be 4.5%, 3.9% and 2.3%. On a metropolitan level Simkins demonstrates the existence of a similar pattern of declining growth rates of the African population.²³ On both national and metropolitan levels up to 1960 African urban growth rates are above the growth rates of the total African population -- indicating an immigration to towns -- after 1960, urban population growth rates decline below population growth rates, indicative of a net migration from the towns.²⁴

One part of the explanation for this is reflected in Table 4 where it is shown that there was a steady proportional increase up to 1970 in the application of the pass laws to the African population, with the equivalent of 1.2% of the total African population being prosecuted for pass law infringements in 1921 rising over the period to the equivalent of 4.1% being prosecuted in 1970. Thereafter the figure drops in 1980 to 1.2%.

The pattern of decreasing, urbanization rates amongst the African population is more fully viewed in the context of overall population distribution figures. In an incisive series of essays on the distribution of the African population Simkins presents carefully corrected censal material, from which overall distribution figures of the African population can be calculated (Table 5)²⁵ These

Table 4

AFRICAN POPULATION AND PASS LAW PROSECUTIONS 1911 - 1980

Census Year	African Population (in 000's)	African Urban Population (in 000's)	Pass Law Prosecutions (in 000's)	%Total Population Prosecuted Under Pass Laws
1911	4,019	508	...	...
1921	4,698	587	56.9	1.2%
1936	6,597	1,142	120.1	1.8%
1946	7,832	1,689	200.1	2.6%
1951	8,561	2,329	280.2	3.3%
1960	10,928	3,471	370.3	3.4%
1970	15,340	5,070	631.3	4.1%
1980	19,826	6,361	239.4	1.2%

Sources: Population figures 1911-1980, Department of Statistics, 1980 (all figures refer to South Africa, 1910 boundaries); 1980 Population estimate by Unit for Future Research, University of Stellenbosch, 1982; Pass Law Prosecutions: Commissioner of Police Annual Reports.

Table 5

DOMESTIC AFRICAN POPULATION DISTRIBUTION 1950-1980

	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>
Z in urban areas ² outside of 'Bantustans'	25.4	29.6	28.1	26.7
Z in rural 'white' areas ³	34.9	31.3	24.5	20.6
Z in 'Bantustans'	<u>39.7</u>	<u>39.2</u>	<u>47.4</u>	<u>52.7</u>
(Population size	8,669,400	11,506,900	15,468,100	20,972,300)

Notes

1. Source: Calculated from Simpkins (1983) Table 1, pages 53-56
2. Before boundary changes excluding Edenvale Umlazi and Kwamashu and excluding Africans born outside of 1910 borders of South Africa
3. Before inclusion of 'black spots'

figures indicate that since 1950 there has been a massive shift in population location towards the Bantustans, where population after dropping slightly between 1950 and 1960 (from 39.7% to 39.2% of the total African population) rose rapidly to 47.4% in 1970 and 52.7% in 1980. Accompanying this growth in the proportion of Africans in the Bantustans has been a marked decline in the proportion of Africans in rural areas outside of the Bantustans (a decline from 34.9% to 20.6% in the period 1950-1980) and only marginal increases in the proportion of the domestically born African population in the towns. (One should note that Simkins's figures for urban Africans, exclude persons born outside of South Africa and make adjustments for underenumeration in censuses and thus give lower figures than censal ones for the number of urban Africans,)

Interwoven with the changing population distribution pattern has been a decline in the proportion of women in towns between 1960 and 1980 and a marked tendency for out-migration from the towns by children. Both of these trends have been reinforced by freezes on the supply of new housing in towns and by locating most new educational institutions in the Bantustans. Conversely there has been a migration into urban areas by groups in the population of working age.

Census figures alone point to policies restricting urban growth among the African population, moving blacks out of 'white' rural areas and promoting migration into Bantustans.

As Simkins notes, a study of census material enables one to characterize the three decades between 1950 and 1980 as follows:

- (a) 1950-1960 a period of substantial migration to the urban areas with an estimated 307 thousand Africans migrating into metropolitan areas and 49 thousand into towns.
- (b) 1960-1970 a period of "big state effort" at population relocation, with an outflow of 195 thousand Africans from metropolitan areas and 8000 from towns and a net inflow of just under one million persons into the Bantustans. Associated with the movements was a massive program of population removals from 'white' rural areas.
- (c) 1970-1980 a period of slower movement to the Bantustans, of closure of small town 'locations' and of replacing settled urban workers with migrant labourers.

These trends are remarkably consistent with overall pass law prosecutions which show a steady increase over the first period (suggesting greater but originally ineffective controls being placed on urban migration), reach their highest levels in the 1960-70 decade during which population removal and relocation is most marked, and decline in the last decade when movement to urban areas is checked. How

was this shift of the population into Bantustans achieved and what part did influx control measures play in it? An approach to this question requires a brief depiction of some of the historical forces behind state efforts to control and limit African urbanization and to erect a labour supply system based on 'independent' and 'economically viable' Bantustans. // The thrust of early legislation designed to control African population movement can be characterized as being designed to propel the African population into the white controlled economy, whereas the thrust of further legislation has been to expel them from this economy unless their labour was needed. Pass laws reflecting the evolution of this process have existed for over two centuries and have undergone repeated modifications in efforts to rationalize them in the face of changing political and economic circumstances.²⁵

The first wave of pass laws focused around the need to control first slaves then 'vagrants' and to prevent recruited labour from changing jobs, or deserting. While early pass laws, particularly in the Cape Colony, did have exclusionary clauses their thrust was to regulate labour and to lay down conditions under which labourers could move. By the time of Union in 1910 many types of controls over the movement of Africans existed, involving the use of travel documents, labour documents, curfew documents, residential documents and the imposition of penalties for the non-possession of

them.²⁷ Local, and later provincial, authorities were left relatively free to impose such controls as they desired over the entry of Africans into their areas and no coordinated national structure for urban African administration existed. Authorities in most urban areas were quick to follow the precedent of Kimberley in the 1870's in establishing 'native locations' and to compel Africans to live in them under municipal controls regulating their living conditions. However the location conceived of as a response to the urban movement of Africans soon became a problem in itself as overcrowding and unsanitary conditions prevailed in them, leading in 1914 the Tuberculosis Commission to state "with few exceptions they are a disgrace and the majority are quite unfit for human habitation."²⁸ The demand for labour had not been matched by the provision of an adequate supply of basic services, such as housing and sanitation, a failing which helped stimulate both movements to control the pace of urbanization and white fears about the implications of black urban permanence.²⁹

The second phase of pass law legislation was built around political moves to construct a national policy to control the African presence in urban areas. In 1921 the Stallard Commission on Transvaal Local government reported that:

'It should be a recognized principle of government that Natives -- men, women and children -- should only be permitted within municipal areas insofar

and for so long as their presence is demanded by the wants of the white population and should depart there from when they cease to minister to the needs of the white man'³⁰

In response to the Stallard Commission, and deteriorating urban 'slums', the 1923 Natives (urban areas) Act emerged. The Act laid down a national structure for urban African administration directing municipalities to provide housing and services for African populations, and giving them the power to restrict entry in towns and expel those Africans "habitually unemployed...idle, dissolute or disorderly." However, few local authorities used the power granted them to institute influx controls and by 1937 only 11 towns systematically had used their powers to limit and control the entry of Africans into them.³¹ The 1937 Native Laws Amendment Act altered this and tightened up pass laws on a national basis, linking them directly to provisions governing labour supplies and introduced measures giving African workseekers fourteen days to find work or to leave the town.

In the 1940's the Stallard doctrine came under question as urban and industrial growth continued, most notable of the questioners was Smuts who in a speech in 1942 referring to African urbanization stated "Segregation has tried to stop it, it has, however not stopped in the least. You might as well try to sweep the ocean back with a broom."³² This realization, together with increasing demands for

labour, led both to an easing of influx control, which were suspended in many areas including the Witwatersrand over the economically boom years of the second world war, as well as to a series of official investigations as to what policy the State should adopt toward urban Africans. Commissions of inquiry and inter-departmental committee reports provided evidence of the permanence of the urban African population and of the need to change existing policy so as to recognize this. The major statement of this position was provided by the (Fagan) Native Law Commission which reporting in 1948 concluded that "the idea of total segregation is impractical" and that efforts should be directed toward regulating the flow of labour and encouraging its stabilization in urban areas under a changed system of influx controls.³³

The third phase of pass law legislation was ushered in with the 1948 election of the National Party government, which repudiated the findings of the Fagan Commission and reaffirmed the Stallard doctrine that Africans should remain in towns only as long as their labour was needed by whites. There can be little doubt that the 1948 election in terms of pass law legislation and application formed a major turning point in policy and administrative developments. The new minister of Native Affairs, Dr. H. F. Verwoerd, moved toward entrenching the migrant labour system, to addressing farmers' requirements for cheap labour and to evolving an overall

policy concerning black urban workers and their relationship to 'native reserves'. The policy as it unfolded extended a uniform system of influx controls throughout the country and was marked by several key pieces of legislation. Prominent among these was the 1952 ammendment to the Urban Areas Act restricting permanent urban residence (under Section 10 of the Act) to those born in the particular urban area and residing there continuously since birth, and to those who entered urban areas legally and had resided there continuously for 15 years or who had worked for one employer for ten years. The wife or child of a qualified man were permitted to live with him in the town. The Act also reduced the length of time a person could visit an urban area to seek employment to 72 hours.

The tightening of influx control measures was marked by a spate of legislative and policy measures: in 1964 an embargo on the entry of African women into urban areas was imposed on other than those having a visitors permit for a specific period, in 1964 compulsory registrations and employment of workers via a network of labour bureaux was instituted; in 1968 Labour Regulations were introduced to prevent contract workers from obtaining Section 10 rights; in the late 1960's the building of family housing in urban areas was frozen; the area of the Western Cape declared to be a 'Coloured' Labour preference area was enlarged; in 1971 a Network of Administration Boards were established and

urban African administration was removed from local authorities and responsibility for implementing pass laws given to these Boards.³⁴

The policy underlying such changes was clearly set out in a general circular issued in 1967 by the Secretary of Bantu Administration, which stated:

"It is accepted government policy that the Bantu are only temporarily resident in the European areas of the Republic, for as long as they offer their labour there. As soon as they become, for some reason or other, no longer fit for work or superfluous in the labour market they are expected to return to their country of origin or the territory of the national unit where they fit in ethnically if they were not born or bred in the Homeland."³⁵

After outlining who are regarded as 'non-productive Bantu' -- the old, the unfit, widows, women with dependent children, disabled workers -- the circular set out procedures to be used in relocating people and concluded:

"It must be stressed here that no stone is to be left unturned to achieve the settlement in the homelands of non-productive Bantu presently residing in the European areas."³⁶

The fourth phase in pass law policy is currently unfolding and involves the adoption of a 'two-track' urbanization policy.³⁷ One track involves the freezing of Section 10 privileges under a 1978 amendment to the Urban Areas Act, with no person born after the date of 'independence' of their putative 'homeland' being able to obtain permanent urban residence, and with no migrant labourer being able to acquire rights to permanent urban residence (although this is currently under challenge in the Rikhotso appeal

before courts). In this manner as 'independence' is granted to 'black states' Section 10 rights will fall away without being formally abolished. The consequences of this will be that urban areas will contain migrant workers and others with permission to be in them but that these persons will not have legal rights of permanence and their permission to be in urban areas at any time may be administratively withdrawn, without reference to the courts.

The second track of current policy involves attempts to improve the conditions of 'urban insiders' who currently have Section 10 privileges. This group were granted 99 year leasehold rights on housing in 1978 and the recent Riekert Commission has recommended extending their privileges by allowing them such things as permission to move between urban centres without losing their legal rights, as long as they have an offer of employment and accomodation.³⁸ At the same time efforts are being made to increase the efficiency of influx control measures, frequently under the argument that the rights of this group to housing and employment need to be protected.

In November 1980, the government published, for information, three bills concerning the administration of blacks in white areas, among them being the Orderly Movement and Settlement of Black Persons Bill which proposed tightening influx controls and raising the existing R500 maximum fine for influx control offences to R5000.³⁹ After widespread

criticism the bills were referred to the Grosskopf Committee, which reported privately in May 1981.⁴⁰ The Committee is reputed to have favoured entrenching the rights of certain Africans to permanent urban residence, and of extending these rights to contract workers and not making them dependent upon possession of South African citizenship. In 1982 a changed version of the Orderly Movement of Black Persons Bill was introduced, that rejected the main recommendations of the Grosskopf Committee, and contained measures to tighten up considerably influx controls and to undermine permanent residence rights by making them dependent upon approved accommodation and access to South African citizenship.⁴¹ In addition the Bill proposed giving wide discretionary powers to the Minister, enabling him to declare any of the provisions of the Act inapplicable to particular urban areas or categories of persons, and to give similar powers to administration officials in issuing certificates authorizing a person to be in an urban area. The Bill again encountered criticism and has been referred to the (Heunis) Commission on the Constitution.

The trend of contemporary policy is clear to limit permanent residence in urban areas, while giving increased privileges to existing permanent residents to tighten up influx controls, by-pass the courts and to move more fully towards what has been termed 'administrative rule.'⁴²

It is against this background that the pattern of pass law prosecutions can be interpreted. The number of prosecutions from 1916 to 1941 shows a steady increase -- from 40.4 thousand prosecutions in 1916 to 178 thousand in 1941 -- indicative of a growing enforcement by local authorities of these laws, which became particularly marked with the passing of the 1937 Urban Areas Act. In 1936, 120 thousand prosecutions took place by, 1941 prosecutions increased by 48% (to 178 thousand) as pressure was brought on local authorities to enforce influx controls. Prosecutions drop over the war years between 1942 and 1944, averaging 126.7 thousand per year, when an economic boom was taking place and labour was needed. After the 1948 election of the National Party government, pass law prosecutions increased rapidly, climbing from 214 thousand a year to a peak in 1967/8 of 694 thousand, with each change to urban areas legislation and to regulations implementing the migrant labour policy being followed by an increased prosecution rate. This is particularly marked in the mid 1960's with, for example, the introduction in 1964 of compulsory labour bureau registration for workers and an embargo on the entry of women into urban areas being followed by an increase of 100 thousand prosecutions in the following year. The mid-1960's were characterized both by a tightening of controls on residence in urban areas and by widescale removals of the rural black population in 'white' areas into Bantustans,

as well as by regulations entrenching the system of migrant labour. The cumulative impact of these measures increased pass law prosecutions to their highest level this century, raising them from 401 thousand in 1964 to 694 thousand in 1967, and can also be seen in census figures which show a marked decline in the proportion of Africans living in 'white' rural areas from 31% in 1960 to 24% in 1970.

The Decline of Pass Law Prosecutions and the Increase in
the Enforcement of Influx Control

The rapid decrease in the number of pass law prosecutions over the period 1968-81, with prosecutions dropping from 694 thousand to 172 thousand, appears extraordinary against a background of increasing state efforts to limit the growth of the urban African population and a firmly established programme of population removals. Several explanations of this decline could be forwarded, the Minister of Cooperation and Development has suggested that increasing fines for pass law 'offences' act as a deterrent to illegal entry into 'white' areas but the origin of the decline lies elsewhere and indicates little relaxation in influx control measures or in the implementation of official policies.⁴³

Although prosecutions reached their highest point in 1967/8, their true decline did not take place until 1972/3 when they dropped by over 100 thousand in one year, declining

from 633 thousand in 1971 to 530 thousand. In 1972 a series of Aid Centres were opened in the main urban areas to which persons arrested for pass law offences were brought and their cases investigated by officials. If this investigation revealed no ground for prosecution (for instance the arrested person had a valid passbook but did not have it in his possession when arrested) the court operating, at the centre discharged the person.⁴⁴ Centre officials also have power to issue 'temporary permits' to persons while investigating their residence rights and to arrange for the "repatriation" of Africans to 'homelands'.⁴⁵

The extent of the operation of these centres is set out in Table 6 which indicates that an average 160 thousand persons annually are referred to them. Combining the information supplied annually about Aid Centres with information on pass law prosecutions enables an estimate to be made of possible annual pass law prosecution figures in the absence of Aid Centres (on the assumption that those referred to Aid Centres and not prosecuted and those reporting voluntarily to these centres, may otherwise have been prosecuted). This calculation, set out in Table 7, indicates that Aid Centres can be said to account for some of the decline in pass law prosecutions since 1968. Without such centres prosecutions in probability would have remained at their levels in the early 1960's; in other terms, it can be estimated that since 1972 the centres have decreased pass law prosecutions by

Table 6

INFLUX CONTROL AND AID CENTRES¹

	Persons Referred	Of Whom not Prosecuted (%)	Of Whom Assisted to find Employment	Of Whom Returned to 'Homeland'	Persons Reporting Voluntarily	Total Referred and Reporting to Aid Centres
1972	93,067	17,867 (19.2)	889	...	9,539	102,606
1973	138,980	44,387 (31.9)	1,628	92,866	...	138,980 (+)
1974	165,555	19,840 (12.0)	13,076	18,467	26,189	191,744
1975	221,537	121,314 (54.8)	21,636	61,242	31,775	253,312
1976	188,608	91,631 (48.6)	20,871	38,544	46,927	235,535
1977	167,380	88,228 (52.7)	20,014	32,525	48,545	215,925
1978 ²	193,082	95,277 (49.3)	26,427	36,325	...	193,082 (+)
1979	151,430	80,148 (52.9)	19,027	27,634	27,634	179,064
1980					...	
1981	117,603	61,661 (52.4)				

... - Not recorded

Sources: Calculated from Parliamentary figures given in Annual Survey of Race Relations in South Africa (1973-82) (Johannesburg: SAIRR)

Notes

¹ Aid Centres were established in 1971 when two centres in Cape Town and Welkom began operating, by 1972 there were 13 centres, 1973 16 centres, 1974 18 centres and in all subsequent years 19 centres operated

² For no stated reason, the 1978 figures given by the Minister exclude Cape Town and Wirbank

The figures given in answer to Parliamentary questions frequently differ from those given in the Annual Reports of the Department of Bantu Administration and Development, for instance the 1976 Departmental Report gives figures of 201,374 referred to Aid Centres and 109,273 referred to centres but not prosecuted

Table 7

PASS LAW PROSECUTIONS AND AID CENTRES

	Pass Law Prosecutions ¹	Persons Referred To Aid Centres But Not Prosecuted Together With Those Reporting Voluntarily ²	Possible Prosecutions (Col. 1 + Col. 2)
1972	530,430	27,406	557,836
1973	511,163	44,387	555,550
1974	398,910	46,029	444,939
1975	381,858	153,089	534,947
1976	287,374	138,558	425,932
1977	279,957	136,773	416,730
1978	306,850	93,277	402,127
1979	239,426	107,782	347,208
1980	171,435		
1981	215,535	117,603	331,138

Sources: ¹ Figures from Commissioner of Police Reports for period June-July 1972/3 and onwards

² 1973, 1978, 1981 figures for those 'reporting voluntarily,' to Aid Centres have not been reported by the Department of Cooperation and Development and are not included.

96,300 cases annually. However one should not ascribe too great a significance to these centres as their effectiveness is declining, with both the numbers of persons referred to them and the numbers of those people saved from prosecutions dropping since 1975.

While Aid Centres indicate changing procedures in the application of pass laws, and can be said to account for some decline in actual prosecutions, this existence is not indicative of any declining enforcement of influx controls. Indeed, declining prosecution figures are directly associated with new methods of pass law enforcement and a tightening of influx controls.

Several indications of this can be cited; most far reaching are the changing linkages between 'white' areas and Bantustans that are entrenching the migrant labour system and preventing Africans and their families from entering the urban areas other than to work. The lack of housing and the growth of black dormitory areas near major centres of employment point directly to ways of enforcing influx controls in a wholly different manner than through pass law prosecutions.

The chronic shortage of African housing in 'white' areas that the Viljoen Committee report put a 168 thousand units in 1981 is increasing annually.⁴⁶ The committee report in 1982 estimated the housing backlog in Soweto to be 35 thousand units, and to be growing at a rate of 4 thousand

units per year, whereas over the past seven years approximately 7,700 units had been built. Despite this severe and increasing African urban housing shortage the government in 1982 reduced funds for financing the construction of black housing and instructed the Administration Boards to cut back on the use of their funds for housing construction.⁴⁷

The vast pressure on housing is preventing people entering the cities other than to work and is trapping those who do not have work into the growing pool of people unemployed in the Bantustans. For those fortunate to have employment, but not accommodation, they are turned into 'temporary sojourners' in the cities who are here "so long as their presence is demanded by the wants of the white population" and forced to leave the cities at night.⁴⁸ This is resulting in two patterns of dense population settlement in the Bantustans from which migrant labourers are being drawn.⁴⁹ The first is the formally established towns, usually within reasonable commuting distance of industrial areas, which are essentially appendages and dormitory towns for white urban areas.⁵⁰ Most black towns in 'homelands' are essentially of this type, for instance Mdantsane outside of East London and KwaMashu in Durban, and from them flows a daily supply of labour, living officially in Bantustans and working in white cities. Many of these towns only are fictionally in Bantustans; KwaMashu was formally part of Durban until boundaries were redrawn and it and its 200 thousand

inhabitants 'transferred' to KwaZulu in April 1977.⁵¹ The workers in such towns are among the fortunate in being near to job markets and having access to transportation networks.

The second category of dense population settlements in the homelands are informal and undeveloped and contain large numbers of migrant labourers who travel daily, often a considerable distance, to industrial areas. Winterveld, near the Pretoria-Rosslyn-Brits industrial area, is one such town and has become probably the biggest squatting town in Southern Africa, housing an officially estimated population of 120 thousand people (although those acquainted with the area put this figure three times higher).⁵² Other population concentrations in the 'homelands' are further removed from industrial areas and require workers to engage in long hours of commuting. Some concentrations of persons in KwaNdebele contain persons working in Pretoria who commute daily rising at 3 a.m. and returning home as late as 11 p.m.⁵³ In KwaZulu it is reported that "160 buses descend each day upon Empangeni and Richard's Bay carrying 22,091 passengers, some of whom live as far as 80 kilometres away and have to catch a bus as early as 4 a.m." The report continued by quoting an official in Empangeni who stated "The workers prefer this to anything. They like it. They can go home every night. The bus system is fantastic. It is incredible."⁵⁴

The 'homelands' also contain a third category of dense population settlements described by Kane-Berman as consisting

of persons "almost entirely cut-off from the mainstream economy" in which the 'unemployed, the 'superfluous' people from white towns and rural areas are being dumped.⁵⁵ In this category fall many of the 'resettlement' camps containing poverty and living conditions that the recent nationwide research reports of the Surplus Peoples Project stated "must be seen to be believed."⁵⁶

Against this background urbanization in the 'homelands' has increased rapidly, with the urban population growing from 33,486 in 1960, to 594,420 in 1970, to 984,271 in 1975.⁵⁷ The growth of dense population settlements in Bantustans is related both to mass removal of people from 'white' areas (so that in the Ciskei it has been estimated that one in every four persons living within its borders has been deposited there since 1970 when the population was half its present size) and to increasing pressures on housing in towns forcing people into becoming migrant labourers based in 'homelands.'⁵⁸ What has been taking place is the creation of new forms of influx control, going beyond the arrest or prosecution of people illegally in 'white' areas, forms that consciously manipulate access to housing and to employment as instruments with which to control and limit the entry of the African population to urban areas.

The use of these forms of tightening control is particularly evident in the labour market, where a growing labour bureaucracy is enforcing the contract labour system that allows a worker

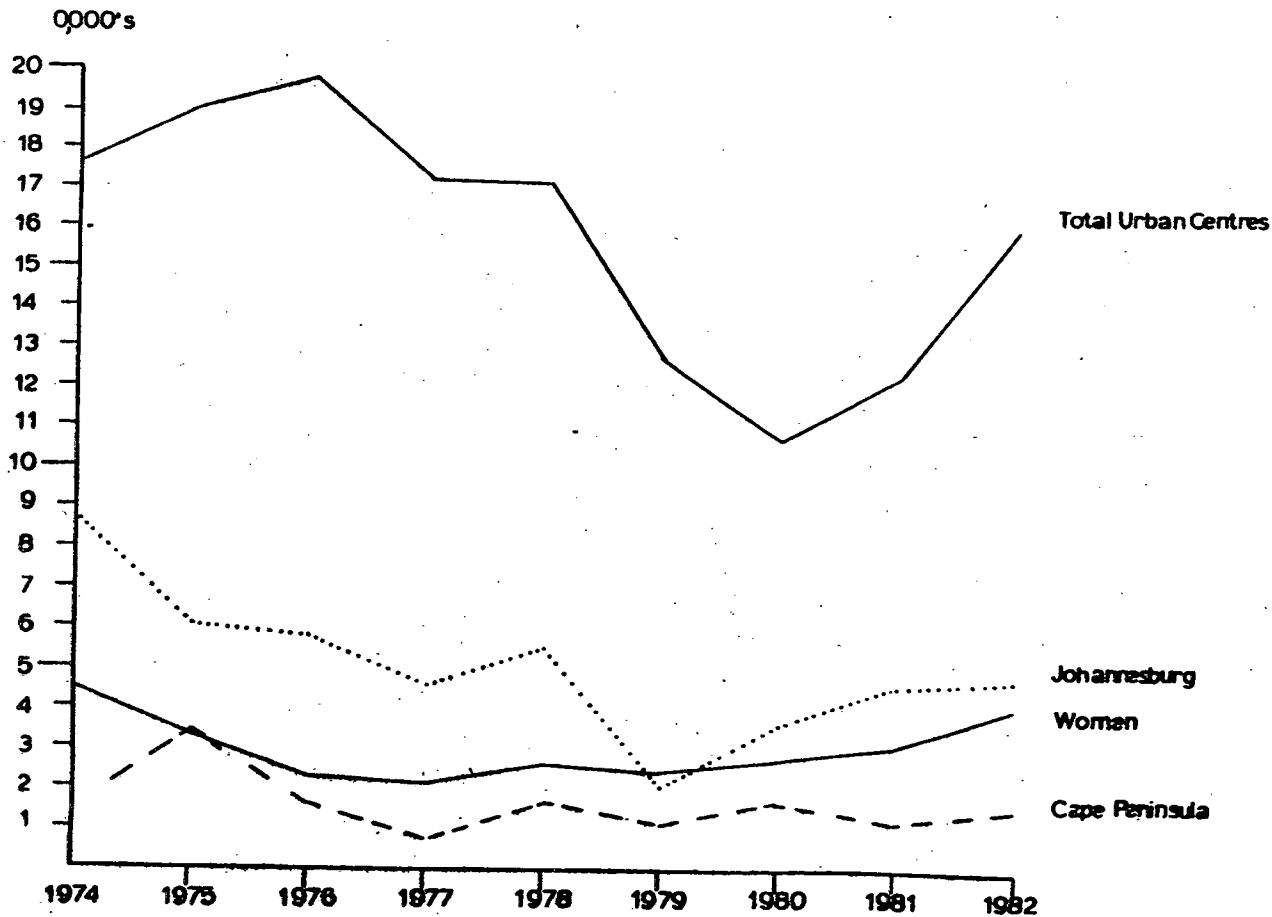
into a 'white' area for a maximum period of one year, after which his employment must be terminated and the worker return to his place of origin to renew the contract.⁵⁹ The system helps shut out the unemployed from the cities and helps contain what have been described as "staggering labour surplus conditions" within particular areas.⁶⁰ Particularly affected by the contract labour system have been rural women who are being pushed into the "dark recesses of the labor market."⁶¹ On the urban side, the contract labour system is being enforced both by means of the pass system as well as by employers who are reluctant to employ "illegal" labour under the threat of themselves being prosecuted and facing fines of up to a maximum of R500 for a first offence which it is being proposed should rise to R5,000.⁶²

The decline in pass law prosecutions over the period 1968-1981 is not surprising in the face of the use of new forms of tight influx controls. The Riekert Commission recommendation that 'unlawful occupation of accomodation by persons', together with 'unlawful employment', be grounds for 'repatriation' of persons from white areas, emphasises the changing nature of these controls and the way in which their enforcement is being taken off the streets and into housing and factories. However, pass law prosecutions in urban areas remain an important component in the total armory of influx control weapons, albeit only one weapon in this armory, and have increased from 171 thousand in 1980/1 to 206 thousand in 1981/2. Their importance thus cannot be ignored.

Pass Law Prosecutions in Urban Centres 1974-82

Since 1974 systematic figures of pass law arrests in 11 major centres are available, these figures indicate that 78.2% of all arrests in 1982 occurred in these areas.⁶³ They also indicate that following the 1973 creation of Administration Boards, in charge of the administration of Africans in 'white' areas, increasingly the enforcement of the pass laws has moved from the South African Police to the officials of the Administration Boards. In 1979, 35% of all arrests of pass law offenders were made by Board officials, in 1980 38%, in 1981 50%, and in 1982 45% of all arrests were made by these officials (who are mainly black). The police remain important in enforcing pass laws, particularly in the Pretoria, Johannesburg and Durban areas where the majority of arrests are made by them, but there is a marked trend toward Board officials being the state agents enforcing influx controls in all other areas. This is consistent with a move toward enforcing influx control measures in cities not on the streets but in residential areas and workplaces. The low number of arrests in Soweto, where official figures show that the combined array of police and administration board officials arrested only 1 pass law 'offender' in 1982, may point to this process going further and to pass laws on the Witwatersrand being enforced mainly at the workplaces in Johannesburg and in the East and West Rand. In these areas

Figure 2: PASS LAW PROSECUTIONS IN URBAN CENTRES



105,995 persons were prosecuted under pass laws in 1982. (See appendix 1).

While behaviour may be described as 'illegal' it is another matter to enforce the punitive aspects of the law. Pass laws are most widely disregarded in the cities where their penal enforcement mainly takes place. How stringent this enforcement is is difficult to estimate as the numbers of people 'illegally' present in cities is not known. Estimates that do exist indicate that up to half the urban African population in some towns could be classified as being 'illegally' present. In the greater Cape Town area, Dr. Koornhof stated in August 1981 that 85,436 of the estimated population of 199,600 in this area were there 'illegally' -- and this figure is generally thought to be conservative.⁶⁴ Similarly, in Soweto and the squatter camps around Durban large numbers of 'illegals' are known to be present.

The number of prosecutions in major urban areas over the period 1974-81 shows important variations between areas and over time. The pattern of prosecutions over this period is set out in figure 1, and indicates that 177,511 prosecutions occurred in urban centres in 1974 and that this figure, after increasing up to 1976, dropped in the post-Soweto era but again has been increasing in the past two years, and that 161,108 prosecutions took place in 1982. There is a remarkable overall stability to these figures with three exceptions.

First, the figures for prosecutions in Pretoria show a

marked decline from 44,874 prosecutions in 1979 to 14,325 in 1980. In February, 1980, Dr. P. Koornhof, Minister of Cooperation and Development, announced that the 72 hour restriction on African visits to cities as an experiment would be abolished in Pretoria. This followed on the recommendation of the Riekert Commission that the 72 hour provision be scrapped and that entry into urban areas be tied to the availability of housing and jobs.⁶⁵ An immediate decline of nearly 31 thousand prosecutions took place but after considerable unease by the local authorities, the experiment was abandoned in mid-1981 and prosecutions immediately increased, although still remaining considerably below their 1979 level. (Bloemfontein, in which influx controls always have been enforced stringently also was announced to be an experimental area but authorities appear to have disregarded this and prosecution figures showed no similar decline).

Second, and of considerable significance, is the pattern of pass law prosecutions in the Cape Peninsula. Since 1954 the Western Cape has been classified as a Coloured Labour Preference area and this stimulated vigorous attempts to restrict the entry into and permanence of Africans in the area. Women were required first to carry passes permitting their entry and employment in this area (1952); policies have been adopted to reduce the number of Africans in the area by 5% per year (1966); family housing construction has been frozen until recently, when limited numbers of new

houses have been built to accomodate certain of the squatters from Crossroads squatter Camp (209 such houses were constructed in 1981) and the enforcement of influx control measures has been applied on a widespread basis. Prosecution figures for pass law offences in 1982 in the Western Cape indicate that 10% of all prosecutions in major urban areas occurred there, and this figure shows a decline since 1980 when 15% of such prosecutions were initiated in this area.

The prosecution figures do not reflect the full extent of the attack on the presence of urban Africans in the Western Cape, as a new weapon, apart from housing, employment contracts and pass law arrests, is being used as an influx control mechanism. In August 1981 African 'squatters' were deported from Cape Town to the Transkei under the Admission of Persons to the Republic Regulation Act (No. 59 of 1972). Their deportation took place on the grounds that they were foreigners, being citizens of the 'independent' Transkei who had illegally entered the Republic. Large scale deportations -- with 3,666 deportations taking place between August and mid-September 1981 -- were an obvious attempt to circumvent the courts where there had been a concerted effort to provide legal representation for people arrested under pass laws during raids on and demolitions of 'squatter camps' around Cape Town.⁶⁵ Such deportations are not subject to appeal in the courts and could increase considerably as 'independence' is given to other 'homelands.' In this way even the limited

legal rights granted Africans under pass laws -- rights which place the onus on the accused person to prove his innocence rather than on the state to prove the guilt of the accused -- are being removed.⁶⁶

A third feature emerging from examining urban prosecutions for pass law offences is the extent of the application of influx controls to women. The issuing of passbooks to women that began in 1956 did not result immediately in more than a few local authorities applying influx controls to women. Those authorities who did apply these controls did so on a voluntary basis (with the exception of Cape Town where the Minister had made the implementation of influx control measures for women mandatory in 1952). In 1959 this position changed and by proclamation the Native Labour Regulation Act of 1911 was altered to make it necessary for all African women in towns to obtain written proof of their legal presence and for women seeking employment in towns to register with local labour bureaux.

There exist only scattered figures prior to 1974 illustrating the extent of pass law application to women, (although there is considerable evidence that as a group women had been seriously affected by the extension of influx control measures and by the 1964 embargo placed on their entry into urban areas unless they were in possession of a 72 hour visitors permit or a labour contract). From 1974 the scope of the application of pass laws to women becomes clearer with the release of

details about the number of women arrested annually in the major urban centres.

These figures indicate that over the nine year period (1974-1982) 19.3% of all arrests for pass infringements in urban centres were of women, and on a nationwide basis for the five years 1974-78 17.6% of all arrested under pass laws were women. In other terms, on a nationwide basis about one out of every five persons arrested is a woman, and slightly more than one out of every four persons arrested in major urban centres is a woman. The number of these latter arrests is set out in Appendix 2. Not unexpectedly, in view of the assault on the presence of Africans in the Western Cape, influx controls have been rigidly applied to women in the Cape Peninsula and in the effort to prevent and uproot family life in the area. One indication of this is that for the past three years more women than men have been arrested in the Cape Peninsula (with most recently 9,715 women being arrested as contrasted to 6,297 men in 1982), this despite the fact that as West has noted no such demographic disproportion exists in the area and men outnumber women three to one in the legal population.⁶⁷ There is clearly a particular attack on the presence of women in the Cape underway.

It is clear from examining pass law prosecutions over the period 1916-81 that these laws, however modified and

4.

applied, have served to disorganize the African population by excluding well over 17 million Africans from the central economy, by destabilizing settled African communities and by relocating an increasing proportion of the African population in South Africa's Bantustans. At the same time as excluding Africans from the central economy, pass laws have been used to 'include' those workers needed by it (under stringent conditions) and to then reorganize them so as to offer a limited number a degree of urban permanence.

The very process underlying pass laws has created a contradictory dynamic. Influx controls have created widening differentials between urban and rural areas, with poverty and unemployment being exported from urban areas into Bantustans that are already grossly overcrowded and poverty stricken. This then reinforces pressures for people to enter the central economy in order to survive and in turn leads to new efforts to apply influx control. The more efficient influx controls become, the more necessary it has become for people to violate them. In 1979 Dr. Jan Lange presented calculations indicating this dynamic driving people to the towns in the search for survival, despite risks of prosecution and imprisonment (Table 8), and demonstrated the degree to which survival is depending on access to the central economy.

While internal border fences around Bantustans, patrols of their perimeters have been called for and the State is searching for new methods of applying pass laws, people will

TABLE 8
HERE

risk even continuous prosecution, for in the words of one
black worker:

"When you are out of a job, you realise that the boss and the government have the power to condemn you to death. If they send you back home (and back home now there's a drought) and you realise you can't get any new job, it's a death sentence. The countryside is pushing you into the cities to survive, the cities are pushing you into the countryside to die."68

Table 8

EXTENT TO WHICH ECONOMICALLY ACTIVE 'HOMELAND' BLACKS COULD
IMPROVE PERSONAL INCOME BY 'ILLEGALLY' TAKING WORK IN SELECTED
CITIES, 1979.

	<u>Ciskei to</u> <u>P'maritzburg</u>	<u>Lebowa to</u> <u>Johannesburg</u>	<u>B'ptswana to</u> <u>Pretoria</u>
Nine months work; three months jail	702.7%	255.0%	85.4%
Six months work, six months jail	468.5%	170.0%	56.9%
Three months work; nine months jail	234.2%	85.0%	28.5%

Source: Dr. J. Lange, Financial Mail, 12 October 1979

Appendix 1

PASS LAW ARRESTS IN MAJOR URBAN AREAS 1974 - 1982

	1974	1975	1976	1977	1978	1979	1980	1981	1982
Pretoria	22,384	39,531	46,447	45,396	46,296	44,874	14,325	19,440	19,563
Johannesburg	88,410	61,002	58,447	46,030	55,124	21,244	37,642	40,576	47,109
Soweto	- -	4,171	1,946	1,239	757	461	203	24	1
East Rand	16,078	17,352	45,096	47,915	26,365	25,625	15,073	28,938	45,764
West Rand	6,178	18,998	17,536	13,217	18,796	13,112	12,730	12,094	13,122
Durban	10,688	7,971	6,712	4,333	2,971	4,520	6,951	2,968	7,857
P'maritzburg	4,459	593	169	362	49	331	12	4	0
East London	- -	2,558	1,309	1,859	2,319	1,360	667	552	2,215
Port Elizabeth	2,002	962	2,227	1,340	1,094	774	205	754	2,724
Bloemfontein	7,093	2,934	1,632	3,035	2,687	3,223	4,364	4,012	6,741
Cape Peninsula	20,219	34,495	16,099	8,845	16,348	10,683	16,327	13,694	16,012
TOTAL	177,511	190,567	197,670	173,571	172,806	126,207	108,499	123,056	161,108

Appendix 2

ARRESTS BY SEX FOR PASS LAW OFFENCES IN MAJOR URBAN CENTRES

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Female	40,576	34,406	24,719	22,955	26,023	25,023	28,066	32,396	41,429
Male	136,935	156,161	172,951	150,616	146,783	101,184	80,433	90,660	119,679
Total	177,511	190,567	197,670	173,571	172,806	126,207	108,499	123,056	161,108
% Women of Total Arrests	33.0	18.1	12.5	13.2	15.1	19.8	25.9	26.3	25.7

Footnotes

1. Collated from figures supplied in Annual Report of the Commissioner of South African Police, Pretoria, Government Printer (1917-1920, 1925-33, 1935-1939, 1941-1979/80); Official Year Book of the Union of South Africa, Pretoria: Government Printer (Year Book 1 (1918) for 1916, Year Book 5 (1923) for 1921, Year Book 6 (1924) for 1922, Year Book 7 (1925) for 1923, Year Book 8 (1927) for 1924, Year Book 16 (1936) for 1934, Year Book 22 (1941) for 1940) and House of Assembly Debates Question Col.235-238. 22 February 1983 (Minister of Law and Order; Minister of Cooperation and Development), and Col.21, 4 February 1983.
2. On the legal-administrative apparatus see Albie Sachs 'The Instruments of Domination in South Africa' pp. 223-49 in Leonard Thompson and Jeffrey Butler (eds.) Change in Contemporary South Africa (Berkeley: University of California Press, 1975).
3. Ellison Kahn 'The Pass Laws' pp. 275-91 in Ellen Hellmann (ed.) Handbook of Race Relations in South Africa (Cape Town: Oxford University Press, 1949).
4. G.M. Budlender 'Influx Control: The politics of exclusion and administrative role' unpublished mimeo, October 1982, examines these processes of 'security' and 'exclusion'.
5. Philip Frankel 'The Politics of Passes: Control and Change in South Africa' Journal of Modern African Studies 17 (2) 1979, pp. 119-217.
6. Commission of Inquiry into Legislation Affecting the Utilization of Manpower (RP 32/1979).
7. Sheena Duncan, Argus 5 November 1982.
8. A detailed and valuable exposition of these processes of disorganization and reorganization is found in the Surplus Peoples Project Reports Forced Removals in South Africa, 5 vols., S.P.P., Cape Town, 1983.
9. Ibid., volume 5, p. 344.
10. On Soweto population figures see Merle Lipton 'The South African Census and the Bantustan Policy' World Today 6(June): 1977, 257-71; on Mdantsane, information supplied by David Mattravers, personal communication.
11. Sunday Times (Johannesburg), 13 July 1980.
12. See sources given in footnote 1. Several persons have used the series of figures for convictions given in Table F-4, column 38 'Bantu Control' in Union Statistics for 50 Years (Bureau of Census and Statistics, Pretoria, 1960). It is not certain what offences these figures cover and they provide only average figures from 1921-1939 and end in 1958, no systematic series of conviction figures is available thereafter. Where possible prosecution and arrest figures have been used from their original sources in this paper.
13. Gerry Mare African Population Relocation in South Africa (Johannesburg, SA Institute of Race Relations, 1980) pp. 8-15 and Robert Schrire 'Homelands--

- Political Perspectives' pp. — in Robert Schrire (ed.) South Africa: Public Policy Perspectives (Cape Town, Juta, 1982).
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 16. Muriel Horrell, Survey of Race Relations in SA, 1955-6 (Johannesburg SAIRR, 1957) p. 79.
 17. Muriel Horrell, Survey of Race Relations in SA 1956-7 (Johannesburg, SAIRR, 1958) p. 63.
 18. Muriel Horrell, Survey of Race Relations in SA (Johannesburg, SAIRR, 19) p.
 19. Stephen Friedman 'Profile: An Idle and Undesirable Businessman' Rand Daily Mail 9 August 1983.
 20. House of Assembly Debates, No. 7, 1981 Col.390-1, 395 cited by Martin West 'From Pass Courts to Deportation' African Affairs 81 (323), 1982, pp. 463-77.
 21. Geoff Budlender The New Foreigners D.C.S. Oosthuizen Lecture, Rhodes University, 1980.
 22. Sachs, p. 244.
 23. Charles Simkins, Four Essays on the Past, Present and Possible Future of the Distribution of the Black Population of South Africa (Welders, University of Cape Town: Cape Town, 1983), chapter 2.
 24. Ibid.
 25. Ibid.
 26. On the history of pass laws see Budlender 'Indian Commission...'; also 'The Pass Laws'; and the Richart Commission, also Richard de Villiers 'The Pass Law Allocation and Control (1760-1979)' South African Labour Bulletin 5(4), 1979, pp. 87-104; T.R.H. Davenport The Beginnings of Urban Segregation in South Africa (Grahamstown; Rhodes University 1971); David Welsh 'The Growth of Towns' pp. 172-243 in Monica Wilson and L.M. Thompson (eds.) The Oxford History of South Africa, Volume 2 (London, O.U.P., 1971).
 27. Davenport, pp. —
 28. Report of the Tuberculosis Commission (UG '34, 1915) para 234.
 29. On the growth of urban apartheid see M.W. Swanson 'The Durban System': Roots of Urban Apartheid in Colonial Natal' African Studies 35 (3-4), 1976, pp. 159-176.

30. Transvaal Province: Report of the Local Government Commission (T.P. 7, 1922).
31. J.C. Smuts Address to Conference Between Municipalities and Native Affairs Department, Pretoria 28 and 29 September 1937, to Discuss the Provisions of the Native Laws Amendment Act (No.36 of 1937) U.G. 56-'37, p. 3.
32. J.C. Smuts The Basis of Trusteeship (SA Institute of Race Relations, Johannesburg, 1942), p. 10.
33. Report of the Native Laws Commission 1946-8.
34. By the end of 1973, 22 boards had been appointed covering all areas of South Africa outside of the homelands. The Boards were established under the Bantu Affairs Administration Act (No.45 of 1971).
35. Secretary for Bantu Administration and Development, General Circular, No.25 1967, para.1, reproduced in Mare, African Population Relocation.
36. Ibid., para 12 (a)
37. See Helen Zille 'Pushing in on the Cities' Frontline, June 1983, pp. 33-36.
38. On the Riekert Commission see special issue 'Focus on Riekert' South African Labour Bulletin 5 (November) 1979, and in particular Sheena Duncan 'The Effects of the Riekert Report on the African Population' pp. 65-74.
39. The maximum fine of R500 is for a first offence, and the government has legislated for a minimum fine of R500 for a second offence for employers of labour. (Duncan, p. 72).
40. Peter Randall (ed.) Survey of Race Relations in SA, 1982 (Johannesburg: SA Institute of Race Relations, 1983) p. 286.
41. Bill 113 of 1982. It is reported that the National Intelligence Service had a "major say" in drafting the bill, which had been referred to a Cabinet committee. "It is understood that the need to ensure the effective combating of urban terrorism received priority attention in the committee" and that the committee was responsible for introducing key aspects of the redrafted Bill. Rand Daily Mail 20, December 1982.
42. Budlender, Influx Control, p. 18.
43. Die Burger 19 March, 1980.
44. On Aid Centres see Muriel Horrell, Laws Affecting Race Relations in South Africa 1948-1976 (Johannesburg: SA Institute of Race Relations, 1978) pp. 182-85.
45. Annual Survey of Race Relations, 1972, p. 164.
46. Viljoen Committee Report cited in Annual Survey of Race Relations 1982 (Johannesburg, SA Institute of Race Relations, 1983) pp. 288-89.

47. Annual Survey... 1982, p. 295.

48. The quote is from the 1922 Stallard Commission.

49. See on this Kane-Berman, Population Removals.

50. See P. Smit and J.J. Booysen Urbanisation in the Homelands--A New Dimension in the Urbanisation Process of the Black Population in South Africa? Institute for Plural Societies, Monograph No.3, University of Pretoria, 1977.

51. Maré, p. 26.

52. Zille, p. 33.

53. Kane-Berman, p. 34.

54. Stanley B. Greenberg and Hermann Giliomee 'Labour Bureaucracies and the African Rural Areas: A Field Research Report', South African Labour Bulletin, 1983, pp.

55. p. 34.

56. S.P.P., Forced Removals in South Africa Volume 5, p. 344.

57. Maré p. 26, calculated from Smit and Booysen p. 19 and Appendix C.

58. Joseph Lelyveld 'Misery in a South African "Homeland"' New York Times Magazine, 25 September 1983.

59. On contract labour see Stanley B. Greenberg Race and State in Capitalist Development: Comparative Perspectives (New Haven: Yale University Press, 1980).

60. Greenberg and Giliomee, p.

61. Ibid., p.

62. The new maximum is proposed by the Orderly Movement of Black Persons Bill (Bill 113 of 1982).

63. Figures calculated from House of Assembly Debates question columns over relevant years from information supplied by Minister of Cooperation and Development and Minister of Law and Order.

64. Cited by West, p. 465 from H.A.D. 4, 1981, Cols 230-1.

65. For an account of these deportations see West 'From Pass Courts to Deportation'.

66. Section 10(5) of the Urban Areas Consolidation Act of 1945 lays down this provision, for its effect see Ramarumo Monama Is this Justice? A Study of the Johannesburg Commissioners' ('Pass') Courts, Centre for Applied Legal Studies, Occasional Paper 4, University of the Witwatersrand, June 1983.

67. Figures from House of Assembly Debates, Question Cols and proportional figure cited by West.
68. Quoted by Paul Stewart 'A Worker Has a Human Face' unpublished Industrial Sociology Honours thesis, University of the Witwatersrand, June 1981, p. 126.

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