A REVIEW - C.S. Ntloko, B.A.
Assistant Lecturer in Native Law & Administration

More than 24 years have passed since the first piece of Union legislation affecting Africans in urban areas was passed. The original Act has been amended many a time within that period, and owing to the multiplicity of its amendments, and in keeping with the then Government's programme of consolidating its legislation, it was re-introduced into Parliament in 1946, and passed together with its amendments in a consolidated form. In spite of all the need for amendments, up to 1946 no government had ever appointed any commission to enquire into the operation of laws affecting Africans in urban and peri-urban areas, to say nothing of these laws, such as the Apprenticeship Act and the Mines and Works Amendment Act, which thwart the industrial development of the African people. That fact bears out the importance of the Report of the Native Laws Commission 1946-47, not only to those who are concerned with the framing of Native policy, but also to those who are engaged in its study. When the original Act (The Natives Urban Areas Act No. 21 of 1923) was passed, secondary industries in the Union, then still in their infancy, had just received a fillip from the conditions prevailing during the first World war. That impetus to industrial development necessitated greater and greater utilisation of African labour. Normally it meant the acceleration of the process of urbanisation of a cross-section of the population in general, and of the Africans in particular, since they constitute a majority of the less productive rural population. But the objects of the Act, taken by and large, were diametrically opposed to that process of urbanisation as far as Africans are concerned. This conflict between the operation of Union legislation on the one hand, and the operation of economic and natural laws on the other, has resolved itself into certain urban Native administrative problems which, staring at the government, call for readjustment of policy so as to bring it into line with economic laws.

The Native Laws Commission, under the chairmanship of Mr Justice Pagan, a former Minister of Native Affairs in the Hertzog Government, was appointed in 1946, to enquire into the various aspects of Urban Native Administration. The terms of reference of the Commission were as follows:

To enquire......
To enquire into and report upon -

(a) The operation of the laws in force in the Union relating to Natives in or near urban areas, and in areas where Natives are congregated for industrial purposes other than mining;

(b) The operation of Native Pass Laws and any laws requiring the production by Natives of documents of identification;

c) The employment in mines and other industries of migratory labour; its economic and social effect upon the lives of the people concerned; and the future policy to be followed in regard thereto;

and draft such legislation as may be necessary to give effect to the recommendations of the Commission.

After tracing the nature of pre-Union and Union legislation affecting Africans in urban and peri-urban areas, and after showing the distribution of the African population between the reserves, European farms, and urban areas, the Commission has applied itself to the working out of the principles of policy which must serve as guide in the framing of legislation affecting Africans in urban and peri-urban areas. The Commission is conscious of the fact that some urban problems are merely a result of decentralisation of authority, and that there must be a 'shifting of the emphasis from the local to the central authority' (Para. 4.). In considering principles of policy relating to Africans in the Union one enters into a realm which fraught not only with facts and reasoning, but also with personal sympathy and sentiment, personal feelings and convictions. Hence the Commission tried to rise above sentiment and the rest, and purported to use facts and reasoning to assess the value of three main policies, namely, (i) total segregation which aims at an absolute territorial division between European and African; (ii) a policy of equality which allows no racial discrimination in law and administration; and (iii) a policy which allows the juxtaposition of European and African communities, but which provides for differential legislation and administration.

From the facts produced by the Commission before any consideration of any policy it is clear that the dice is heavily loaded against total segregation. In considering the amount of land set aside for African occupation the Commission says, "Increasing the production does not necessarily mean that the territory is enabled to carry a bigger population. The effect in the first instance should be in the direction of improving the health."
health of the inhabitants and raising their standard of living. Moreover
the first condition for increasing production in an overpopulated and
overstocked area is a reduction in the number of the population and of
the stock. In any event the figures and other data we have quoted lead to
the irresistible conclusion that it would be utterly impossible to put the
Native population which is already outside the Reserves back into the
Reserves, or even to keep the whole of the increase there in future" (Para. 22)
This statement is very noteworthy when we bear in mind the government's
attempt to reduce stock in the Reserves without encouraging permanent urban-
isation of Africans. At present we have a government which is committed to
policy of total segregation (apartheid) but in that does not mean we should not
emphasise the fact that government policy should not run counter to economic
laws. Urban problems cannot be divorced from rural problems. Urbanisation
always indicates the relative productivity of the rural and urban areas.
Now as regards Africans the amount of land available for their occupation
is so inadequate that many of them would earn a better living in industrial
centres if conditions were favourable.

The Commission has found that total segregation is impossible. But it
has not devoted the same amount of space to the evaluation of the other two
policies. It has merely dismissed the policy of equality as untenable, and
has accepted the third policy which in fact is supposed to be the policy
of the United Party.

The Commission has recommended the establishment of a Government sub-
Department which might be done by expanding the Urban Areas Section of the
Department of Native Affairs, to exercise supervision over peri-urban
villages such as Alexandra. What appears necessary is the expansion of the
Social Welfare Department so as to enable it to deal with the rehabilitation
of all workers regardless of their colour or race, who have migrated from
rural areas into urban areas. Peri-urban villages have come into existence
as a result of the operation of the Natives Urban Areas Act which is
inimical to urbanisation of Africans. If Africans are to be accepted as
permanent members of the urban community they must be given security in
many respects. They must be able to acquire full ownership of immovable
property in the urban areas i.e. in freehold tenure. They must be subject
to social insurance schemes on the same basis as other members of the
community, and they must be allowed to aspire to, and attain the highest
positions...........
positions in industry, which can be attained through efficiency and not colour. They must be allowed to sell their labour on the best market. This could involve the abolition of a number of restrictions such as are found in the Mines and Works Amendment Act, the Industrial Conciliation Act, the Apprenticeship Act, etc., and such as result in general from the 'Civilised Labour Policy' which in effect is 'White Labour Policy'.

According to paragraph (b) of the terms of reference the commission was required to enquire and report upon the operation of Native Pass laws. After reviewing legislation on Native passes the Commission has set itself three questions to answer, namely:

(a) Is it necessary in this regard to have special laws for the Native Natives?
(b) Are restrictions on the freedom of movement necessary? and
(c) Is it necessary to make the mere non-production of some document a punishable offence?

The Commission felt that the first question cannot simply be answered in vacuo but must be considered afresh in connection with the particular matter dealt with by the legislation. In spite of the fact that it is opposed to racial discrimination in legislation the Commission has felt that owing to the juxtaposition of European and African communities such legislation may be desirable.

As regards the second question the Commission appears to have departed from the standard it maintained in assessing the value of total segregation referred to above, and took the intense feeling for and against as one of the factors to be reckoned with in answering the question. It has contended that the large-scale movement of Africans from the Reserves to the towns is at present attended with difficulties some of which are the result of the defects in the system of control. The Commission then says, 'We therefore consider it essential, in the interests of the population as a whole but particularly in the interests of the Natives themselves, that the movement should be regulated' (Para. 43). From the analysis given both by the Commission and by Dr van der Horst in 'Native Labour in South Africa' (see P. 37 et seq.) one draws the conclusion that pass laws are a concomitant of territorial...
of territorial segregation, and until territorial segregation is abol-
ished passes will remain in one form or another. The Commission, however,
goes on to say, "We believe, however, that the regulation can be carried
out in a manner which will make it more effective than it is at present,
and which at the same time will greatly mitigate, and may in time entirely
eliminate, those features of the pass system to which the Natives object.
The general tendency of our ideas on this point can be summarised under
five heads: (1) The emphasis must be shifted from local to central regu-
lation; (2) the emphasis must likewise be shifted from compulsory measures
and from restrictive laws to machinery for advice, guidance and voluntary
regulation; (3) steps must be taken to ensure that everybody has
some fit place to which he is entitled to go; (4) while on the one hand
the object should be to reduce restrictive measures to a minimum in respect
of law-abiding people, there should on the other hand be strong and ener-
tic action against idlers, disorderly persons and other lawless elements;
and (5) a really efficient system of identification should be instituted,
both to assist and protect the honest man and to facilitate action against
disorderly elements. Where any of the measures we suggest can be put into
effect on a general basis, without racial discrimination, so much the better.
(Para. 43).

The Commission has also suggested that a system of registration
should be instituted. Under the system identity cards will be issued to
people, and a central record of such people will be kept. But one of the
most interesting suggestions of the Commission is that no penalty should be
imposed for the mere non-production of a document, with certain proviso
which in effect do not remove the irritation suffered by Africans from the
operation of pass laws.

The last paragraph of the terms of reference required the Commission
to deal with the employment in mines and other industries of migratory
labour, its economic and social effect upon the lives of the people concer-
ned, and the future policy to be followed in regard thereto. The report has
reproduced some arguments given for and against the utilisation of migrat-
ory labour especially on the mines. The weighing of these arguments by the
Commission is good but it is disappointing to note that the Commission has
adopted a defeatist attitude towards migratory labour, and that it has
revealed bankruptcy of remedies for the state of affairs. The exodus of
populations................/
populations from rural to urban areas is a world phenomenon. It is not a movement but a reaction to a change in the relative productivity of these areas. It is a movement which expresses disequilibrium in the productivity of these areas, and one that seeks to restore equilibrium. That is the fundamental cause of migration. As regards Africans this migration has been arrested on both sides. It is as though the balance has been tilted continuously on both arms so as to avoid restoration of equilibrium. On the rural side we find a system of land tenure which does not provide for any occupation of arable land more than five morgen on the average, and an individual system of land tenure which is based on the principle of 'one man one lot'. The report of the Native Economic Commission 1930-32 drew attention to this fact when it said, "If the country is to go forward on the assumption that every Native in the Reserves, with the exception of few employees of Government or of missionary societies or of traders, must be a peasant, the rule of one man one lot must needs continue. But your Commission is of opinion that this involves the maintenance of a system which cannot continue except on a very low economic level. It confines the development of special gifts in individuals within very narrow bounds, and deprives the individual and the community of the immense economic value which the development of such gifts under the influence of the division of labour has had in the progress of civilisation. If scope is not given for this development that system will drain the Reserves of all the able and more enterprising individuals who are not satisfied with such a narrow basis of existence, and drive them to the European areas where they are unwelcome" (Para. 143). To this must be added the inadequacy of the Reserves as shown also by the Nagan report itself, as well as the lack of financial assistance by the Government. We are very much aware of the financial assistance given by the Government to European farmers by way of rehabilitating them in times of drought especially. Farming, just as other industries, cannot develop without capital, and it is much more so in this country where farming is fraught with many risks such as drought and pests.

On the urban side we find a policy which regards Africans as temporary town-dwellers who have to remain in urban areas in such numbers as do not exceed the reasonable labour requirements of that industrial...
To the provisions of the Native Urban Areas Act must be added a number of laws which deny to the Africans the opportunity for rehabilitation in urban areas. The Apprenticeship Act of 1922, the Mines and Works Amendment Act of 1926 and even the Custom Tariff Amendment Act of 1925 deprive Africans Africans of free employment as skilled artisans, to say nothing of discrimination in the field of social insurance. These are the factors which have sustained African migrant labour in this country, as an essential feature of our economy. It is not surprising, therefore, to note that the Commission, having refrained from getting down to the root causes of migrant labour in our Native policy, has come to regard migrant labour as a feature which cannot be abolished for many generations.

The Fagan report is indeed an important document in that it gives the ordinary reader certain facts and figures which are not readily accessible, save to a research worker. It has this decided advantage over other reports that it has amassed some facts which, in the writer's opinion, have tended to knock the bottom out of the policy of apartheid as stated in the recent election campaign. The Commission has, however, failed to realise that the Natives Urban Areas Act, having been framed on the basis of the Report of the Transvaal Local Government Commission of 1922 (The Stellard Commission), and acting as a corollary to the Natives Land Act of 1913, is a piece of legislation which is designed to give effect to the interests of the protagonists of apartheid. When one reads that part of the report which deals with total segregation one expects to find this followed by a proposal for new legislation based on principles consonant with the facts. Instead one is disappointed to find the usual tinkering with existing legislation in the amendments which appear in Annexure 7. Nonetheless, the Report is worth studying, for its importance lies not only in its obvious merits but even in its shortcomings.