THE BEGINNINGS OF URBAN SEGREGATION IN SOUTH AFRICA

The Natives (Urban Areas) Act of 1923 and its Background

by

T. R. H. DAVENPORT

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I. Colonial Origins

At the time of Union, most non-White South African townsmen, whether African, Coloured or Indian, lived in special areas allocated to them, which were generally called locations. But there was considerable diversity in laws and in practice from one colony to another.

In the Cape Colony, the term 'location' at first stood for a rural settlement of Coloured or African (or, in the case of the 1820 Settlers, White) people, situated on either Crown or private land.[1] But settlements of African and Coloured labourers and their families had also appeared on the edge of every town, sometimes as a result of the deliberate allocation of sites, sometimes through the gradual consolidation of a squatters' camp. There was no mention of locations in the Village Management Act of 1881, or in the Municipal Act of 1882; but insofar as the village boards and the town councils were concerned with public health, they were already finding it hard to ignore the existence of locations in their neighbourhood. Worcester, for example, decided to raise a loan in 1873 'for the purpose of providing a supply of pure drink water for the use of the inhabitants of the town ... and the locations of the poorer classes adjoining thereto'.[2] When Queenstown became a municipality in 1879, its council was given the power 'to make all such sanitary and other regulations for the preservation of the health of the inhabitants of the town, and of natives and others residing within the native location, as may be deemed advisable', and in 1885 the council's power was extended to include the right to levy rates and other charges on the location.[3] New ground was broken in 1883, when Kimberley was given power to establish and control not only native locations but also 'locations for Indian immigrants, commonly called "Coolies"[4]'. This happened at a time when it was not so much the indentured 'Coolie' as the immigrant Asian trader, often referred to as an 'Arab' or 'passenger Indian', 'the man with a pack on his back' in W. P. Schreiner's phrase, who was beginning to cause anxiety among his White competitors.[5] Leaning on the Kimberley precedent, the East London Municipality asked for and was given extensive and very precisely defined powers in 1895 to establish locations, to compel Asians as well as Africans to live in or move out of them,

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1. The Cape Acts Nos. 37-1884, section 7, and 30-1899, section 2, defined locations in this sense.
2. Municipality of Worcester Loans Act, No. 23-1873.
3. Queenstown Municipality Acts, Nos. 39-1879 and 19-1885.
4. Kimberley Borough Act No. 11-1883, section 49.
5. See H. J. van Aswegen, 'Die Oranje-Vrystaat en die Asiate', S. A. Hist. Journal I (1969) pp. 29-45; Mabel Palmer, The History of the Indians in Natal (Cape Town, 1957), pp. 42-3.

to control trading, apply curfews, and even regulate and set apart 'portions of the rivers and sea where natives and Asiatics may not bathe'.[1] But if this was one example of the Cape's approach, the Cape Town municipal statute of 1893 was another: it contained no reference to locations at all. Nor did Grahamstown's of 1902, while that of Graaff-Reinet, promulgated in 1880, contained one oblique reference to the employment of 'location constables' by the local authority, but that was all. Yet it was perhaps indicative of a trend that Port Elizabeth in 1897 and Uitenhage in 1904 should both have taken power to establish and control locations, and that at the start of the twentieth century Cape Town should have reached the same end by a different route.

The establishment of Uitvlugt, outside Cape Town, as a location on Crown land in 1901 achieved the segregation of the Cape Division's six or seven thousand Africans in an unexpected way. Fear of plague had led to this decision, and when the danger was over the Sprigg Government decided in 1902 not to allow them to move back into their previous residential areas. It therefore secured the passage of a Native Reserve Location Act which turned Uitvlugt (now renamed Ndabeni) into an urban location under the direct control of the central government, a location to serve the needs not only of Cape Town but of the 'several Municipal Areas within the Cape Division'.[2] In conformity with Cape custom, the Act defined 'native' so as to include 'Hottentot, Bushman and Koranna' and exclude 'Cape Coloured' and 'Malay' (two human categories it was not proposed to segregate) and gave the Governor power to proclaim locations in municipal areas and compel 'natives' who could not claim exemption to live in them. This power balanced that already possessed by the Governor of proclaiming locations in rural areas, but it enabled him for the first time to impose restrictions more suited to urban than to rural conditions: the prevention of influx and overcrowding, the provision of properly constructed houses, medical services and schools, control over livestock, public transport, curfew regulations, trading, and the registration of individuals for one purpose or another. When Sprigg introduced the Bill he claimed that there was a wide demand for it, above all from Port Elizabeth, where the village of Korsten had been obliged to absorb a sudden influx of Africans from the municipality on account of the plague, and where the Village Management Board had been unable to cope with the problems.[3] There New Brighton was established as a reserve location like Ndabeni, and the Reserve Locations Act was amended in 1905 in the light of Port Elizabeth's experience.[4]

The presence of Africans in the towns was relatively marginal to the Cape's experience; but in Natal, where the urban centres were close to the African reserves, it was soon a central issue.

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1. East London Municipality Amendment Act, No. 11-1895, section 5, sub-sections 24-31.
2. Act No. 40-1902, section 5.
3. Cape Hansard, 1902, pp. 144-47.
4. Cape Hansard, 1905, pp. 223-29.

A memorandum by Theophilus Shepstone, Secretary for Native Affairs, put the problem of African influx in search of casual work as the major difficulty:

> 'Lately the idea of day, "togt" or jobwork seems to have been imported from the Cape Colony, where it is extensively followed; and the consequence is that a large proportion of these men refuse to accept any employment that will bind them longer than a day. As a rule they demand, and employers are compelled by their necessities to give, wages far in excess of the highest rate paid to monthly servants, while, with few exceptions, the skill and value of the labour so highly paid for are less.
>
> These men have no homes, and as soon as their hours of work are over, they are free to wander about by night, and to resume or not their work by day, as they please. This system is calculated to produce, and does produce, insecurity in the towns ... It creates in the midst of plenty unnecessary uncertainty in the supply of daily labour ... It discourages orderly and regular monthly service ... It destroys or fails to create any feeling of mutual interest between master and servant, and threatens, if not checked [to produce] a large but fluctuating native population living in the towns, but having no home in them, subject to no restraint but that of their own convenience, combining to enrich themselves at the expense of the householders by excessive demands, or by directly dishonest means.
>
> With regard to the effect of this upon the general government of the natives, it must be remembered that the towns are the points at which most contact takes place between the races; that this fluctuating population in them is the main channel through which impressions of the white man are conveyed to the mass of the native population outside: and that these impressions will agree with the experience of those who carry them...'[1].

Natal towns in general, and Durban in particular, sought protection from an inrush of disorientated peasants, and Shepstone's memorandum contained the germ of the regulations which were promulgated in the name of Sir Benjamin Pine, Lieutenant-Governor and Supreme Chief, in March 1874. No casual workseeker was to stay for more than five days in Pietermaritzburg or Durban without becoming enrolled as a 'togt' or daily-paid labourer, which meant having his name placed on a register, wearing a badge 'in some conspicuous part of his person', paying 2s. 6d. a month, and offering his services to any householder who required them at a rate of pay determined by the magistrate.[2] In due course these 'togt' regulations promulgated by the Supreme Chief would be superseded by an enabling Act of 1902 which removed the supervision of 'togt' labour from the

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1. Text in Mayor's Minute, Durban, 1873, pp. 4-5. See also M. W. Swanson, 'Urban Origins of Separate Development', Race, X (1968-69) pp. 31-40.
2. Natal Government Gazette, 31 March, 1874.

office of the Governor and placed it in the hands of the municipal authorities, which were empowered to administer the system in their own way, and could require 'togt' labourers to live in compounds.[1] The necessity for providing special accommodation was underlined by R. C. Alexander, Superintendent of the Durban Police, when he gave evidence to the Lagden Commission in 1904:

> 'During the last three years I have had 7,500 "togt" labourers, with sleeping accommodation for only 450. The remainder lodged wherever they could, in anyone's back yard, or with a friend. It has been going on since I was in Durban, and since 1878 I have written annually begging the Corporation to put a place on one side for these Natives: to take them away from temptation. How on earth can I take charge of Natives that are allowed to squat in every yard, hole and corner in Durban, where everyone is allowed to go except a policeman?'[2]

Before Alexander spoke, the Natal legislature had in fact taken action to deal with the accommodation problem of urban Africans by enabling town councils to establish locations on lines similar to the Cape Act of 1902, save that the initiative was left with the town council and not given to the central government.[3] By 1910, Natal had worked out the main lines of its labour policy and its accommodation policy, and in the Native Beer Act of 1908 it also devised the system of a municipal brewing monopoly which would later secure widespread acceptance among local authorities, though rather less among location residents, as a revenue-raising service for the location.

The urban location had no legal existence until the twentieth century in Natal; but in the Transvaal, as in the Cape, it had an earlier origin. In the Transvaal, however, urban locations were at first conceived as places for Asian rather than African residence. Thus the Republican Act of 1885 which gave the Government power 'for purposes of sanitation, to assign to them certain streets, wards and locations' was directed at 'the native races of Asia, including the so-called Coolies, Arabs Malays and Mahomedan subjects of the Turkish Empire'.[4] The existence of the mine compound system, which would receive an additional boost with the arrival of the Chinese labourers in 1905, undoubtedly reduced the need for any special provision to be made for Africans in the early Transvaal municipal laws. At all events, the legal recognition of urban African locations in the Transvaal was a gradual process. The Town Regulations of 18 September 1899 made no reference to them at all, but merely laid down that 'coloured persons' (a term taken to include Africans)

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1. Natal, Act No. 28-1902.
2. Report of the S. A. Native Affairs Commission, 1903-5, vol. III, pp. 640-41.
3. Natal, Act No. 2-1904.
4. South African Republic, Law No. 3-1885.

> 'may not reside in places abutting on the public streets in a town or village, but it shall be permitted to every householder or owner of an erf to keep in his back-yard the servants he requires for domestic service'.[1]

Town councils were authorised to lay out locations in the Crown Colony Government's Municipal Corporations Ordinance of 1903, which also allowed them to regulate 'the housing of natives by their employers' and the licensing of casual labour'.[2] Like the Natal Act of the following year, this was enabling legislation; but the drawing-up of location regulations was vested in the Lieutenant-Governor. The right of town councils to control both locations established under the 1903 Ordinance and those which were already in existence before that Ordinance was not clearly laid down until 1905. The Precious and Base Metals Act of 1908 further restricted 'any African or Asiatic native or any other person who is manifestly a coloured person' from residing on land proclaimed for mining purposes 'except in bazaars, locations, mining compounds, and such other places as the Mining Commissioner may permit'; but the Act did not promote strict residential segregation on the Rand, for its provisions were not to apply

> 'to coloured persons in the employ of a white person insofar as they live on the premises where they are so employed nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises'.[3]

This was a wide enough loophole to permit not only the continued residence of domestic servants on their employers' premises, but the survival of unsegregated residential areas in Johannesburg and elsewhere.

This could not happen in the Orange Free State, the most deliberately segregationist province of all. There 'coloured people', defined as members 'of any native tribe in South Africa, and also all coloured persons',[4] could neither own nor lease fixed property.[5] Asians, confined to restricted areas in Natal, the Transvaal and in parts of the Cape, were excluded from the Free State altogether.[6] Town councils were empowered to 'keep separate one or more locations where coloured people must reside within the municipal or town limits', with the normal exception of those living on their employers' premises.[7] After the establishment of British rule, the Bloemfontein Municipal Ordinance of 1903 carried rules for the

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1. Regulations for Towns in the South African Republic, 18 September 1899, printed in Statutes of the South African Republic, 1837-99, pp. 429-33.
2. Transvaal, Ordinance No. 58-1903, sections 37, 42.
3. Transvaal, Act No. 35-1908, sections 3, 131 (1).
4. Orange Free State, Law No. 8-1893, section 8.
5. O. F. S. Lawbook, Chapter XXIV.
6. Van Aswegen, op. cit., p. 37; Law No. 29-1890. An article by H. J. van Aswegen on the Free State origins of urban segregation is due to appear in the 1970 issue of the S. A. Historical Journal.
7. Orange Free State, Law No. 8-1893, section 1.

running of locations which were extended to other municipalities in 1904 and to the villages in 1906.[1] These prohibited white people from living in locations, and required all location residents to obtain either a certificate showing that they were employed or a permit to work on their own account, within forty-eight hours of their arrival in the town for the first time. The town council was given blanket control over the location, and it was laid down in all three ordinances that

> 'no churches or schools or other educational or social institutions for natives, other than those already existing at the date of this Ordinance, shall be allowed within the municipality outside the limits of the recognised native locations established under this Ordinance'.

Here was a blueprint for absolute cultural segregation between the races in the towns. The Imperial authorities were helping the Orange Free State Whites to build up their sense of manifest destiny, not only as the province which was pioneering the policy of strict equality between English and Dutch, but also - though far less credibly - as 'the one province in the Union which has introduced no problems'.[2]

II. The First Union Government Takes Stock

Thus in all colonies similar problems had led White governments to propose similar, but by no means identical, solutions. Regulations for the control of Africans, Indians and Coloured people were drafted and enforced, partly because they were not as White men were, partly to cushion their unfamiliarity with the culture of White men's cities, partly to control and canalize their labour, check their ill-health and prevent its contagion, deal with their misfits and contain crime. The most characteristic development in all colonies - and this was a phenomenon of the whole of White-settled Africa - was the location. But the location, conceived as a part of the solution to the urbanization problem, quickly became a problem in its own right. Ironically, the establishment of locations in Cape Town, Port Elizabeth and Johannesburg had been precipitated at the beginning of the twentieth century in a frantic effort to scotch the bubonic plague. But the first systematic inspection of the Union's locations, that was carried out by the Tuberculosis Commission in 1914, not only found tuberculosis flourishing in locations but reported that the kinds of conditions in which it flourished were the rule rather than the exception in locations throughout South Africa:

> 'As regards situation, the location is usually placed in the outskirts of the town, which is a desirable arrangement, but the site is in many cases ill-chosen,

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1. Orange River Colony, Ordinances Nos. 35-1903, 6-1904 and 18-1906.
2. Words spoken by W. J. M. Visser, M. P. for Senekal, H. of A. Deb., 1930, cols. 1278-79, in the course of a classic exposition of this view.

> generally ... not far from the town sanitary tip, the refuse dump, and the slaughter poles, and at the same time away from the possibility of procuring any proper domestic water supply ... Rarely has any attempt been made to systematically lay out the site. Huts are dumped down anywhere; no proper streets are laid out, and little if any attempt made for surface drainage... Consequently sanitary control is difficult ... Very few indeed of the dwellings are provided with sanitary accommodation of their own, and public latrines in the location are few and often entirely absent ... Refuse is in most cases not collected ... But it is with the character of the dwellings that the greatest fault must be found. With few exceptions they are a disgrace, and the majority are quite unfit for human habitation. Of course, in every location there are a certain number of better class inhabitants who have erected reasonably satisfactory dwellings, and in some cases the local authority has ... itself erected dwellings of a better standard ... but speaking generally the dwellings are mere shanties, often nothing more than hovels, constructed out of bits of old packing case lining, flattened kerosene tins, sacking and other scraps and odds and ends. They are put up on the bare ground, higgledy-piggledy, without any sort of order, often propped up one against another ... The dwellings are low, dark and dirty, generally encumbered with unclean and useless rubbish, mud floors are the rule, often below the ground level and consequently sometimes apt to be flooded in the wet weather. Overcrowding is frequent; and altogether one could hardly imagine more suitable conditions for the spread of tuberculosis ...'[1]

The Tuberculosis Commission also drew attention to an undesirable state of affairs where location finances were concerned, asserting that 'in many instances in which we have made enquiry ... the local authority has been making a considerable profit out of the running of its locations, which profit has been placed to General Municipal Revenue'. This was said to result 'more from want of consideration of the true character of the policy involved than from its deliberate adoption as a sound principle'. The Commissioners accepted that overhead administrative charges were a fair call on location funds, but considered it unreasonable that the location resident should be 'taxed for the general upkeep of the town':

> 'He is really there for the use and benefit of the town, and personally he derives very little, if any, advantage from any municipal improvements. Parks, baths, entertainments and such amenities do not benefit him in the least. He certainly uses the streets, but only as a pedestrian and then to a very limited extent.'

They preferred 'that every local authority should be required to keep a separate account of all revenue and expenditure connected

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1. U.G. 34-1914. Report of the Tuberculosis Commission, paras. 234-37 (my emphasis).

with its location and native administration, that such accounts should be subject to proper audit, and that any surplus of revenue over expenditure should be strictly devoted to the betterment of the location and the improvement of the condition of its native and coloured inhabitants'.[1]

The governments of Botha and Smuts, taking their cue perhaps from the Lagden Report of 1905, hungered for a uniform policy for the solution of South Africa's racial problems; but they advanced into the minefield of race relations with their eyes focussed neither on a distant star nor on the ground immediately below their feet. Not surprisingly, they took some unwise steps. Thus they strove after a code of safety in mines and factories, and inadvertently created an industrial colour bar, which would later be thrown out by the courts. They deliberately introduced a colour bar in the matter of land ownership, but discovered that their proposals for a fair distribution of land were unenforceable only after many Free State farmers, thinking they were obeying the new law, had begun the wholesale eviction of African squatters. In 1917 they tried to introduce territorial segregation through a Native Affairs Administration Bill, but hooked themselves on one of the only two barbs in the constitution, and had to take another run at that fence in 1920. Where segregation in the towns was concerned, the Government reached an agreement with the provincial authorities on the need for uniformity as early as 1912; but a Bill drafted in that year was understandably not proceeded with because, in the words of the Department of Native Affairs,

> 'it has been felt by successive Ministers of Native Affairs that such legislation must be complementary to the general policy of the Government. That policy as expressed in the Natives Land Act and the Native Affairs Administration Bill has not yet been fully accepted by the country and the Urban Areas Bill must accordingly bide its time.'[2]

When, in 1918, the Department of Native Affairs released its proposals for the urban areas for the first time, it was understandably but commendably anxious to test public opinion, and put out copies of the Bill in both official languages and in Xhosa, Sotho, Tswana and Zulu as well.[3]

Judged by the standards of subsequent legislation, this 1918 Bill made a humane and undogmatic approach to the problem of the towns. It proposed to let local authorities set aside for African use 'any areas ... as at the commencement of this Act are occupied by natives', and if necessary to add to them. It allowed the Governor-General to compel Africans to live in locations, but took over the exemptions allowed in the laws of the various provinces, and made

1. U.G. 34-1914, paras. 248-52. Examples cited were Cradock, Pretoria, Bloemfontein, Grahamstown, Graaff-Reinet, Kimberley, Beaufort West, Jagersfontein, Uitenhage and East London.
2. U.G. 7-1919, p. 16.
3. ibid., p. 17. See Union Gazette Extraordinary, 19 Jan. 1918, for the text of the Bill.

a general exception of Africans living on their employers' property. The Bill introduced several new ideas which would eventually become part of the South African location system, such as the separate native revenue account, introduced to check the profiteering tendency deplored by the Tuberculosis Commission. It allowed for representative government in the form of advisory boards, but made no attempt to define them. It revealed considerable concern for the welfare of locations, and not only required draft regulations to be screened by both the provincial and central authorities, but also gave the magistrates independent authority to inspect locations and ensure 'good order and proper standards of comfort and cleanliness'. The Bill also contained the provision that

> 'any local authority may set aside any location or portion of a location for the purpose of sub-division into building lots for sale or lease to natives on such terms and conditions as may be prescribed',

- a recognition of the right of Africans to buy property in towns, which they already possessed in some measure in the Cape, Natal and the Transvaal.[1] Existing trading rights inside and outside locations were to remain intact, whoever held them. On the restrictive side, however, control over the presence of Africans in towns was to be granted to local authorities in two ways: by empowering them to exclude 'any natives who are unable to give proof of their means of honest livelihood', and by granting them the power to register service contracts.

These restrictions, and the comments of the Department on them, reflect the beginning of real concern over the growth of African urbanization. There were already half a million Africans in the Union's urban areas, amounting to 12.64 per cent of the total African population, and the Department apprehended future difficulties:

> 'Assuming that the ideal to be arrived at is the territorial separation of the races there must and will remain many points at which race contact will be maintained, and it is in the towns and industrial centres, if the economic advantage of cheap labour is not to be foregone, that that contact will continue to present its most important and

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1. The Cape Native Reserve Locations Act of 1902 did not provide for ownership, but the amending Act of 1905 allowed the local authority to make regulations 'providing for the lease or grant under title of building lots to any Native residents desirous of erecting their own dwelling-places within the Reserve Location, subject to such terms and conditions as the Governor may deem expedient' (section 7 [18]). The Natal Locations Act of 1904 exempted from its provisions 'those who are freehold owners of land within the Borough', but did not allow for sale of building lots in the location. The Transvaal Municipal Amending Ordinance of 1906, section 10, authorized informal leasehold grants in locations up to a maximum of thirty-three years.

most disquieting features. The above figures are eloquent of the number of natives in the towns in 1911; that number has increased and will increase... It is in the towns that the native question of the future will in an ever-increasing complexity have to be faced".[1]

III. The Problem of Social Control

Could the urbanization of Africans be controlled? Only, it seems, by means of a pass system. Pass laws which gave the authorities some check on Africans entering the towns existed in all provinces; but in the first decade after Union these laws came under heavy fire.

In the Cape, passes were required under the Native Reserve Locations Act. In Natal, they were built into the 'togt' labour regulations. In the Orange Free State the permit to be in an urban area and the permit to do almost anything after arrival there had become revenue-raising as well as control devices: there are references in a Report of 1922 to 'stand permits, residential passes, visitors' passes, seeking work passes, employment registration certificates, permits to reside on employers' premises, work-on-own-behalf certificates, domestic service books, washerwomen's permits and entertainment permits,' all of which had to be separately paid for.[2] In the Transvaal, Africans required travelling passes, identification labour passports whenever they entered a labour district, monthly labour passes when in employment, monthly permits to be in urban areas, and night passes whenever they were in the streets during curfew hours. An Urban Areas Pass Act of 1909 introduced the legal concept of a proclaimed urban area for the first time, as distinct from the labour district, and required Africans to carry passes while in it, as a means of control for health and welfare as well as industrial reasons.[3]

But in all provinces, and above all in the Orange Free State (the only province in which passes had to be carried by Coloured people as well as Africans, and by women as well as men), there was opposition among the pass-bearers to the system. Shortly before the first world war, unrest broke out in the Free State. In 1913-14, nearly a hundred African women accepted prison sentences rather than carry passes, a petition to the Minister of Native Affairs having failed in April 1912. Further petitions in 1913 and 1914 yielded no relief, though there is a suggestion in

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1. U. G. 7-1919, p. 17.
2. U. G. 41-1922. Report of the Inter-Departmental Committee on the Native Pass Laws, pp. 3-4.
3. Transvaal, Urban Areas Native Pass Act, 1909. For a general summary of pass legislation in all parts of South Africa down to 1922, see E. Kahn, 'The Pass Laws', in E. Hellmann (ed.), Handbook on Race Relations in South Africa, (Cape Town, 1949) pp. 275-83.

one official report that the Government had tried and failed to persuade the Free State authorities to check the misbehaviour of 'native police and others molesting native women under cover of demanding their passes'.[1] A parliamentary select committee under the chairmanship of General Botha investigated the pass laws during the 1914 session.[2] It refused to commit itself to root-and-branch reform until the whole range of native policy could be brought under review, but it admitted 'certain defects and grievances' to be real, and drafted a Bill designed to alleviate the burden by making exemptions easier to obtain, especially for Coloured people and African women in the Free State. But the Bill was dropped, and the outbreak of war was given as the reason. At the end of the war, at a time when there was considerable labour unrest, the anti-pass agitation was revived on the initiative of the main Coloured and African industrial and political organizations. The South African Native National Congress obtained an interview with the acting Prime Minister, F. S. Malan, who told its deputation that although he agreed to a liberal policy of exemptions from the pass laws, he would have to oppose the Congress demands for abolition.[3] Malan's refusal gave birth to a passive resistance movement. Passes were collected in sacks for return to the Government. Violence broke out, especially in Johannesburg in 1919. G. J. Boyes, the Kimberley magistrate who was commissioned to investigate this outbreak, cleared the police of the charge of improper conduct but proposed the holding of a general inquiry into the pass laws, urging that it would be 'dangerous to allow this important question to drift' as African feeling was 'very intense'. The Government responded by appointing an inter-departmental committee under Lieutenant-Colonel G. A. Godley, Acting Secretary for Native Affairs, with instructions to examine alleged grievances, suggest how such controls as were considered necessary could be made effective, and recommend the simplification of the pass laws.[4]

The Godley Committee recommended radical reform. They found that 'the great weight of evidence' from employers and officials showed that the various pass systems operating, especially in the rural areas, had been 'of little practical value in the tracing and identification of natives', while they inflicted real hardship upon them. They found African opinion divided between those who rejected any means of identification out of hand, and those who admitted a need for some kind of identification documents in the interest of 'the vast mass of unsophisticated natives' as well as the community at large. For identification purposes, the Committee recommended the repeal of all existing pass laws and the institution of 'registration certificates' made of parchment,

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1. U. G. 41-1922 pp. 3-4.
2. The Report is given in full in U. G. 7-1919 pp. 5-6.
3. U. G. 41-1922 p. 6.
4. Report of Commissioner appointed to hold an inquiry regarding alleged ill-treatment of Natives by Members of the Police Force during the recent Native unrest in Johannesburg, 7 May 1919. For the Report of the Inter-Departmental Committee, see U. G. 41-1922, quoted above.

which African males should be given at the age of 18, containing 'full particulars of domicile and personal identity', the serial number of the district of issue, and the signature or left thumb print of the holder.[1] They proposed that Africans should carry registration books whenever they were outside the ward of issue, but that authority to demand production should be restricted to White police officers of sergeant's rank, justices of the peace, registering officers, and men with special authority from the Minister of Native Affairs, and that there should be 'no interference with natives by the police unless they came under suspicion'. They proposed to record service contracts in the registration books, as a means of controlling urban influx, and to do away with the monthly pass required in the Transvaal labour districts. To deal with the indolent, the vicious and the urban misfits, they proposed a special court comprising 'an experienced official with two native assessors as advisers', with authority to send such people out of town or, under special circumstances, to a labour colony. They did not think that existing curfew regulations could be abolished in view of the amount of European support for them; but they proposed to restrict the operation of curfews from 11 p. m. to 4 a. m., and to permit their extension to locations only at the request of the location residents. They insisted that African women should be 'excluded from registration for identification purposes, the operation of curfew regulations, and the compulsory registration of contracts of service'. They were prepared to recommend exemptions from the pass laws to all who already had letters of exemption, to Africans who had passed the fifth standard of education, to parliamentary voters, chiefs recognized by the Government, 'skilled artisans certified as such and persons exercising approved businesses or trades', and 'respectable and intelligent natives who are certified as having rendered faithful and continuous service for a period of not less than ten years' - always with the possibility that exemptions could be withdrawn for serious crimes, but with the evident intention of increasing rather than restricting the number of exempted persons. They proposed further that no pass fee should be payable by Africans, and that local authorities should be 'prohibited from requiring natives to carry or produce passes or permits which are not applicable to other sections of the community'.

These were the salient features of a report which, while not recommending the abolition of passes, tried to remove the rough edges of the existing system, and looked forward to a lightening of the burden through a rapid and substantial increase in the number of exemptions. A major recasting of the legal position of Africans in towns, it was now fair to assume, would include a significant alleviation of the pass laws. The Department of Native Affairs did in fact draw up a Bill, the Native Registration and Protection Bill of 1923, which was very closely based on the recommendation of the Godley Report, and introduced it simultaneously with the Native (Urban Areas) Bill of 1923.[2]

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1. They went out of their way to distinguish between the use of a thumb-print in lieu of a signature and the taking of finger-prints for criminal record purposes.
2. See Union Gazette Extraordinary, 9 January 1923.

IV The Passing of the 1923 Act

A bad influenza epidemic hit South Africa in 1918, and in the words of the Department of Native Affairs it 'afforded to the general public a startling revelation of the distressing conditions under which the Natives live in our urban centres and to what a great extent these conditions were a standing menace to the health of the whole population, European and native alike'.[1] It was an incentive to press ahead with the urban areas legislation, and in this task the Department now had the assistance of two new bodies, the statutory Native Affairs Commission set up under the Native Affairs Act of 1920, and the Transvaal Local Government Commission under Colonel C. F. Stallard. The Department announced a revised Bill in its Report for 1922. It contained most of the clauses of the 1918 Bill, had a pronounced welfare focus, and aimed to give local authorities necessary powers to provide adequate housing and services, if necessary by borrowing money and recouping themselves through trading ventures in the locations. As in 1918, it was still the intention of the Department to give Africans a stake in their locations:

> 'Encouragement is given to the Native himself to improve his surroundings by providing for the establishment of Native villages where fixity of tenure can be secured and the Native may build his own house subject to the health and sanitary requirements of the local authority.'[2]

But it was not the intention of the Transvaal Local Government Commission to give any such security, for that Commission was wedded to the dogma that 'the native should only be allowed to enter urban areas, which are essentially the White man's creation, when he is willing to enter and to minister to the needs of the White man, and should depart therefrom when he ceases so to minister'.[3]

The task of reconciling these different views - if that were possible - fell to the Native Affairs Commissioners, Dr A. W. Roberts of Lovedale, General L. A. S. Lemmer, a Transvaler who had been Kruger's Receiver of Revenue, fought in the Anglo-Boer and First World wars, and sat in the Transvaal Legislative Assembly as a member of Het Volk, and Dr C. T. Loram, who had been Chief Inspector of Native Education in Natal. At a relatively early stage, between 10 and 12 August 1921, they met the members of the Transvaal Local Government Commission together with departmental representatives, and drew up a joint Memorandum of Conclusions.[4] This Memorandum shows how close an agreement there already was as to the kind of provisions an urban areas act should contain. But on the fundamental point of whether the Black man should be regarded as a permanent resident of the urban area, there was at least a difference of emphasis in the thinking of the Transvaal Commissioners and the N. A. C., perhaps a fundamental difference of approach, with the spokesmen of the Department standing somewhere in between.

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1. U. G. 34-1922 p. 13
2. ibid., p. 14.
3. T. P. 1 - 1922, para. 42.
4. ibid., Appendix VII.

This can be seen, first, in the way the Native Affairs Commissioners equivocated over the Stallard doctrine of unequal rights in the towns, and based their argument for restricting Africans in urban areas on sociological rather than dogmatic grounds. South African natives, they argued, 'are not by nature town dwellers', and their presence in towns raised 'hygienic, economic and social problems of considerable magnitude' which had now become acute. It was a 'truism that the native has not yet made a success of city life', though it had to be admitted that he was 'there and likely to remain there'. They continued:

> 'At the same time, it seems only right that it should be understood that the town is a European area in which there is no place for the redundant native, who neither works nor serves his or her people but forms the class from which the professional agitators, the slum landlords, the liquor sellers, the prostitutes, and other undesirable classes spring. The exclusion of these redundant Natives is in the interests of Europeans and Natives alike.'[1]

But it was illogical to profess loyalty to Stallardism on the one hand, yet accept the principle of vested land rights for Africans in the neighbourhood of urban areas on the other, which is what the Native Affairs Commissioners, taking their cue from the Department with its reference to 'Native villages with fixity of tenure', now proceeded to do. The Stallard Commission, in the body of their Report, envisaged the selection of sites within easy reach of the resident's place of work, reserved 'exclusively for ... natives so long as they are in employment of European masters or have definite work to do for the good of their own community'.[2] Houses could be built, they suggested, either by the municipality, or by the employers of labour, or by the Africans themselves, on land acquired by, and therefore presumably owned by, the municipality. By contrast, the Native Affairs Commission set its sights on what it termed 'a new phase of Native life' in its Report for 1921, namely 'the Native Township apart from the European city'. It went on to explain:

> 'A number of such groups of Natives exist at such places as Evaton, Alexandra Township, Lady Selborne, Korsten, etc. This seems an inevitable and desirable development of Native life ...'[3]

The Commissioners would examine this kind of model more closely, and their Report for the following year was much less reassuring;[4] but during the debates on the Urban Areas Bill they would remain

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1. U.G. 15-1922 p. 25. My emphasis. The distinction between 'redundant' natives and others seems to imply resistance to the sweeping assertion of Stallard, though it occurs in a passage which pays lip-service to the Stallard doctrine.
2. T.P. 1-1922, paras. 281-83.
3. U.G. 15-1922, p. 28.
4. U.G. 36-1923, pp. 8-9.

committed to the principle of giving urban Africans vested property rights in or near the towns.

They worked hard to prepare the way for the Bill, introducing it at all the provincial Municipal Association conferences between May 1922 and January 1923, and taking it to a large number of other bodies, official and unofficial, White and African.[1] They reported a considerable range of views 'upon such matters as Native Tenure in urban areas, Native control of locations, Municipal control of the ingress and egress of Natives, [and] municipalization of kaffir beer'; but they tried hard to adjust the proposals to the criticisms made, and claimed in retrospect that 'there are probably few instances in the history of legislative measures where a Bill has been more thoroughly and more widely amended'. The Governor-General had convened a Native Conference in terms of the Native Affairs Act, at Bloemfontein in May 1922, attended by 'twenty prominent Natives of the Union', who had conferred with the Commission for three days. The Commission claimed to have received a clear impression of African opinion, and as the report in Imvo Zabantsundu shows, this hand-picked African conference felt free to criticize.[2] The President of the S. A. N. N. C. was nevertheless reported in the Cape Times to have described the Bill as 'an honest and fair attempt to solve the problem of ameliorating existing conditons in the locations'.[3] It is clear, however, that some Africans feared that the Government was 'selling them to the municipalities'.[4]

The ground was well prepared when General Smuts opened the second reading debate on the Urban Areas Bill on Wednesday, 7th February 1923. He recalled the great changes which had

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1. U. G. 36-1923, pp. 4-5; U. G. 15-1922, pp. 25-28.
2. U. G. 36-1923, pp. 4-5; S. C. 3-1923, pp. 178-79. Imvo Zabantsundu carried a report of this conference on 23, 30 May and 6 June 1922. The Africans present requested, among other things, that the position of the Coloured people should be better clarified, that advisory boards should be assured of elective majorities, that African traders in locations should be protected against competition from the municipality, that domestic brewing of Kaffir beer should be permitted, and the Durban municipal brewing monopoly not made general. They were insistent that the ownership of property in locations should not be linked with an obligation to reside there. They also expressed doubts over 'the principle of segregation': 'This was taken for granted by the Government', runs the report, 'but in as much as it was the first time in history that the feeling of Natives was being tested on the matter the latter wished it to be clearly understood that they do not admit it as a principle, although people do in many cases find it convenient to live apart and in towns tend to gravitate to a particular quarter for residence'.
3. Cape Times, 27 May 1922.
4. U. G. 15-1922, p. 26.

occurred in his own lifetime with respect to the influx of Africans into the towns, above all in his own Western Province. He deplored the unsatisfactory urban living conditions; but he felt sure that the position could be remedied - 'Housing and the urban control of natives is manageable even at this late hour, if we undertake the task with energy and good will'.[1] He explained that the intention was to give power to the towns to take control of their own social problems with government backing, though the Government would not intervene save in cases of 'culpable or prolonged neglect'. He then went on to explain the proposals for the housing of Africans. There were to be 'locations of the ordinary type', he said for natives who had 'not emerged from barbarism'. But for the more advanced natives the Bill made provision for 'native villages', in which there would be 'better houses' and arrangements made for them to 'acquire their own plot of ground ... and put up their own houses'. Smuts hoped that the Africans would themselves want to live in the native villages rather than in the White areas, even those exempted from the obligation to do so, so that in due course there might be 'complete segregation of the native population out of the White area'. This reference to native villages, he said, was 'the novel part of the proposal before the House'. Then, after touching on the proposals for a separate native revenue account, for native advisory boards, and for the control of brewing locations, Smuts explained that, after reflection, he had decided to leave all proposals for the control of Africans out of this Bill and include them in a separate measure (the Registration and Protection Bill referred to earlier), and refer both to a Select Committee after the second reading.

General Hertzog, speaking immediately after Smuts, went almost straight to the issue of urban tenure, and scarcely moved off it. According to the Land Act of 1913, he argued, the urban areas were clearly 'white man's land', and the Native Affairs Commission had had no right to abandon this principle - a very dangerous concession:

> 'Now they told the native that he could purchase land in the locations where he and his children could remain for all time to come. And if conditions should arise in days to come when, on the ground of public policy, it was found that the native could not remain there, they would give the impression again of being guilty of breaches of faith. The Commission should have had its attention drawn to that principle so that the native would have been given the opportunity of securing certain other rights, but it should have been made clear that on the white man's land the native could only be a temporary resident.'

He ended by expressing the fear that, if the Bill went through as it stood, 'the Free State dorps would be turned into Kafir locations'.

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1. The Cape Times reports of proceedings are followed.

As the debate progressed, speaker after speaker came to Hertzog's support on this point of urban tenure.[1] Very few speakers supported the principle of urban title, though Lemmer of the Native Affairs Commission was one who did so. When Smuts wound up the debate, he remarked that he 'was not wedded to any particular method of giving effect to the idea', and the question was still wide open when the Bill went to select committee on 14 February.

The select committee on native affairs, however, not only rejected the principle of individual tenure, but threw out the ameliorative proposals in the Registration and Protection Bill with regard to passes, and then incorporated the control provisions of that measure in the Urban Areas Bill.[2]

These control provisions included the power to compel the registration of service contracts; to require African work-seekers to report their arrival in proclaimed urban areas, and on discharge to report again; to repatriate juveniles, run hostels for work-seekers, impose conditions on 'togt' labourers, deal with the unemployed, and apply sanctions against defaulters and document-dodgers. The Report of the Select Committee, which contains no record of its discussions, offers no explanation of this decision to abandon Godley's proposals for the reform of the pass system. But the debate in Committee of the Whole on the new Clause 12 of the Urban Areas Bill (one of the clauses transferred from the Registration Bill) revealed considerable disagreement among the men who had been members of the Select Committee.[3] Thus W.H. Stuart moved that exemptions from the pass laws be extended to all categories included in the Godley Committee's proposals, whereas Keyter still wanted African women to carry passes, while Smuts himself thought the proposed exemptions were too generous: 'You don't want thousands of people walking about without identification documents', he urged - no passless artisans or passless standard sixers for him! Perhaps the legislators wanted more time before committing themselves to the reform of so venerable an institution as the pass system. Perhaps the tactic of removing the Bill from the party arena had put the Government at the mercy of the combined pressures of the Opposition and its own back benchers. Whatever the explanation though, the two most valid reasons given for not proceeding with the Registration Bill - that African opinion had not been consulted, and that it would involve the introduction of a pass system in the Cape[4] - applied equally to

1. Grobler (Rustenburg), Keyter (Ficksburg), Creswell (Troyeville) who feared 'great black cities around our industrial centres', M. L. Malan (Heilbron), Jansen (Vryheid), Raubenheimer (Bechuanaland) and Beyers (Edenburg).
2. S. C. 3-1923 (Report dated 20 April 1923). Its members were the Prime Minister, the Minister of Mines and Industries (F. S. Malan), General Hertzog, Col. Creswell, Brigadier-General L. A. S. Lemmer, Messrs R. Feetham, J. G. Keyter, J. S. Marwick, P. W. le R. van Niekerk, W. H. Stuart, P.G. W. Grobler, L. Moffat, I. P. van Heerden, and the Rev. J. Mullineux.
3. Cape Times, 8 May 1923.
4. U. G. 41-1922, pp. 21-22. Memorandum by W. T. Welsh protesting against the extension of restrictions to the Cape. Imvo Zabantsundu had expressed strong disapproval of this aspect of the Registration and Protection Bill on 27 February 1923.

those sections of the Bill which were incorporated in the Urban Areas Act as Sections 12 to 15. This was the first, and not the last, occasion on which a South African Government would toy with and then fail to implement a substantial reform of the pass laws, and the price paid in loss of African good will must have been considerable. Smut's Native Conference, meeting in Pretoria in September, after the Urban Areas Act had passed into law, considered the terms of the Registration Bill and rejected out of hand the extension of registration to the Cape. But it carried by 15 votes to 10 a motion which almost exactly reproduced the Godley Committee's proposal for a uniform registration certificate.[1]

Smuts was hard put to explain the Select Committee's rejection of the principle of individual title in the 'native villages'. He claimed that it had been strongly influenced by the views of the Municipal Association of the Cape Province,[2] which had urged that where such title existed it was too difficult to keep proper control over the locations. But his remarks scarcely did justice to the work of the Select Committee, or to the amount of thinking which had been done on the subject of land tenure for Africans. Smuts and other members of his Government were moved by the Report of M. C. Vos on Native Location Surveys, published in 1922. Vos, an ex-Secretary for Native Affairs, had been asked to investigate individual tenure in the rural areas, and his report, which was endorsed at a meeting in the Department of Native Affairs at which Smuts was present in November 1922, reached the conclusion that many Africans neither understood the intricacies of individual title nor valued it as a superior form of tenure; but he went on to state that a simplified system of survey, combined with cheap transfer, was worth experimenting with.[3] Introducing the second reading debate in the Senate on 30 May, Smuts defended the Government's change of front by saying that 'he did not attach too great importance to the native objection to leasehold title as freehold individual title to land was not a native system', and a reading of the Vos Report seems to be reflected in his subsequent comment that 'individual tenure of land by natives had not worked well. The natives shifted beacons and did not apply for new titles when a change of ownership took place'. He used the negative arguments of the Report, but in quoting it as evidence against granting title in locations, he was turning his back to its main recommendation. Yet witnesses before the Select Committee who testified against individual tenure for Africans in urban areas were moved not so much by Vos as by objections of a different order. There was the fear, for example, that freehold title would make the African location-dweller too independent of the municipality,[4] that the result would be a wholesale buying up of

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1. U. G. 47-1923, pp. 34-47.
2. Cape Times, 5 May 1923.
3. U. G. 42-1922. Report of Native Location Surveys. See also E. R. G[athorne], Report of Conference upon Native Land Tenure, 17 Nov. 1922, J. F. Herbst Papers, University of Cape Town, for evidence of governmental support for the Vos proposals.
4. e. g. S. C. 3-1923, p. 46 (W. C. Gardiner, ex-Mayor of Cape Town), 132-34 (C. F. Layman, Manager, Native Affairs Department, Durban), 154 (M. G. Nicholson, Town Clerk, Pretoria).

property by Africans 'throughout the country' which would of necessity lead to the municipal enfranchisement of Africans everywhere.[1] Something like the rural confusion described in the Vos Report was suggested in respect of Lady Selborne, near Pretoria, by C. M. de Vries of the Transvaal Municipal Association. There he claimed to have given Africans 'absolutely freehold title', and they failed to grasp the importance of legal transfer. 'I was sued from time to time for sanitary and assessment rates', he added, and he had had to pay out about £ 1, 500.[2] C.M.van Coller, representative of Eastern Province interests in the Cape Municipal Association, and a man who would emerge in the 1930's as a defender of the rights of urban Africans, saw a problem where the succession to property was concerned, on the ground that the Estates Act made no provision for the estates of natives, or for polygamous marriages. He also took it for granted that local authorities had the right to move the locations if they wished to do so, and saw the title deed as an obstacle to such action.[3] M. G. Nicholson, Town Clerk of Pretoria, was still more forthright:

> 'We wish the natives prevented from obtaining ownership of land outside the areas occupied by them, that is to say, they should not own land in white areas. If the native is in his reserve we have no objection to his having ownership'.[4]

But some witnesses did speak in favour of freehold title.[5] Thus Selby Msimang urged that 'it is the general opinion of the native people that when they accept the principle of segregation they believe that segregation carries with it an idea that natives in their own areas will enjoy the rights and privileges as are enjoyed by Europeans in their (European) areas, and that therefore in their own areas whether rural or urban they should be entitled to hold land in their own names'. Dr Roberts of the Native Affairs Commission came out strongly in favour of 'unconditional tenure', though he would later weaken in the Senate.[6] But by far the most energetic defence of the original proposals came from his colleague on the Commission, Dr C. T. Loram.[7]

Loram went into the complexities of land tenure systems, and recommended the extension of the Glen Grey form of quitrent tenure to urban locations, arguing that simple leasehold gave inadequate security. As he saw it, Glen Grey tenure was precarious

1. ibid., p. 78 (F. G. Hill of the O. F. S. Municipal Association). The Stallard Commission had also voiced this fear.
2. ibid., p. 102.
3. ibid., pp. 122-23, 128-29.
4. ibid., p. 167.
5. e. g. pp. 16-17 (Professor D.D.T.Jabavu), 113-16 (Howard Pim and H. Selby Msimang of the Johannesburg Joint Council), 129 (Lt. Col. G. A. Morris, former Manager, Native Affairs Department, Durban).
6. ibid., p. 183; Cape Times, 31 May 1923.
7. ibid., pp. 175-98.

in that land was forfeitable for stock theft, rebellion or non-payment of quitrent. But it could not be mortgaged for debt, nor could it be alienated save under strict conditions. Loram thought that if liquor-selling could be added to the offences involving forfeiture, this would constitute 'a pretty good form of title' for urban areas, provided that appeal lay to the magistrate against penalties imposed by the local authority. Most important, he insisted that simple unemployment should not involve loss of title - a proposal far removed from the Stallard Commission's line of thinking. Where succession was concerned, he recommended that native custom be followed, but because of difficulties arising from the variety of customs followed in some towns, he considered that sale of the deceased's property and division of the proceeds among the heirs was the best solution - though 'if any member of the deceased's family is strong enough to buy the property, let him get it', and if the law permitted a man to devise by will, this too should be allowed to happen. He stated his reasons for granting secure title in these terms (it being understood that when he said 'freehold' he meant 'Glen Grey', a form of title under which 'it is a disputed point whether the dominium is vested in the native or whether it remains with the Government'):

> 'I think that if the native is not given freehold he will not take that interest in his property and do what he can to improve it that he would if he knew that on his death the Town Council could not expropriate it. No freehold would destroy the idea of a village. If we wish to lift up the native we must make him responsible for the well-being of the place in which he lives. If he knew that after his passing his family would be scattered he would take very little interest in the village or in his home. There would be no incentive for him to become the owner of property.'

Loram was prepared to stand by the basic principle of a residentially segregated South Africa, even agreeing that he looked upon the 'urban area' as 'a European area' -

> 'but I say that a certain portion of the urban area should be set aside for native occupation. Primarily it is a European area but natives will be allowed to have a part of that area for themselves, just as in Native areas European traders are allowed to have a certain part. I agree to native areas being established within European areas, provided the natives residing there are in the employ of the Europeans in the town.[1] The natives were very

1. The inconsistency between this statement and his insistence that loss of employment should not be a pretext for cancellation of title should be obvious. This was oral evidence, which perhaps explains the slip, though it is arguable that Loram was not clear as to the conditions under which an African should or should not be able to have rights in an urban area. Nor was the Native Affairs Commission, of which he was a member - see p. 14, note 1.

> emphatic that they should have freehold in the areas set aside for them.'

Loram's advice deserved more attention than it received. It followed very closely along the lines of M. C. Vos's recommendations for the rural areas, and Vos's advice was accepted without hesitation by the Department of Native Affairs.

After listening to witnesses on both sides, on 16 April the Select Committee carried a motion to omit 'ownership' from Clause 1 by six votes (Smuts, Hertzog, Feetham, Keyter, Marwick and Moffat) to one (Stuart) with three abstentions (Creswell, Lemmer and Mullineux).[1] Stuart tried to have this amendment rescinded in Committee of the Whole, with a little support from some South African Party and Labour members, but he was defeated by 69 votes to 18 in a debate marked by the absence of rigid party divisions.[2]

Between the passage of the Bill through the Assembly on 16 May and its second reading in the Senate on the 30th, the S. A. Native National Congress met in Bloemfontein. It reacted very strongly against developments in Parliament, expressing anger and disappointment at the rejection of the proposal to grant Africans property rights in urban areas, and alleging that the incorporation of clauses from the Registration Bill in the Urban Areas Bill, without consultation with African leaders in terms of the Act of 1920, was a breach of trust likely to shake the confidence of the black people in their rulers. The Congress therefore appointed a deputation to Cape Town in the hope of persuading the authorities to recommend that the Governor-General's assent be withheld and the Bill be reconsidered.[3]

Ten representatives of the Congress met Smuts, in company with Sir Walter Stanford[4] and Colonel Godley, on 1 June. Their leader, J. T. Gumede, protested that the Select Committee had 'created a new Bill altogether' without consulting the Africans, who had expressed satisfaction with the original Bill which 'did not propose to take away the right of ownership from them'. He complained, further, that on account of the promises made at the time of the Land Act being still unfulfilled, more and more Africans were having to drift into the towns. Selope Thema then read out the Congress resolution of 24 May and appealed to Smuts:

> 'We feel that even if we are not so civilised as members of the white races, still we have a share and a claim to this country. Not only is it the land of our ancestors but we have contributed to the progress and advancement of this country. We have sacrificed many lives in the mines, we have built this city, we have built the railways, and we claim that we should have a place in South Africa ...'

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1. S. C. 3-1923, p. xxii.
2. Cape Times, 5 May 1923. Stuart's supporters were Macintosh, General Byron, Oliver, Bisset, Brown and King of the S. A. Party, and Pearce, Major Ballantine and Snow of the Labour Party. Close (S. A. Party) considered that security of tenure could be obtained under a form of leasehold.
3. Cape Times, 28 May 1923.
4. Cape Times, 2 June 1923.

Smuts complimented the delegates on their moderation, but found fault with the Bloemfontein resolution on the ground that it would alienate white opinion. He defended the policy of the Land Act, which had been introduced by 'one of the best friends the natives ever had' (J. W. Sauer), with the comment that land was actually being bought by Africans in areas allotted to them by the Beaumont Commission of 1914-16. Turning to the Urban Areas Bill, he defended the abandonment of freehold, remarking that the Bloemfontein location, where no freehold existed, was 'one of the most orderly and best run in the country', that for effective administration leasehold tenure was necessary, and that in any case there had been no freehold under the Transvaal Gold Law. Although the Native Conference had not been consulted over the control provisions, Smuts continued, the views of Africans were wellknown from the evidence given to the Pass Laws Commission. He added:

> 'All that has been put into this Bill is not the Pass Law, but the registration of contracts, which are entirely in favour of the natives. It will prevent the natives from being swindled ... by bad Whites.'

He ended by saying that further delay in the enactment of the Bill was unthinkable: it had to be passed that session. Gumede then returned vigorously to the attack, and asked Smuts to advise the Governor-General to refuse his assent. Smuts refused with some asperity and the deputation then withdrew.

On the previous day, Smuts had taken the opportunity of the Native Affairs Vote to denounce 'vague formulae which do not work in regard to native affairs'. 'The large principles we must leave for the future', he said, 'however much a policy of going step by step may be criticized'. He had appealed for the application of a 'Christian standard in dealings with these people'.[1] To relate these precepts to what had actually been done would be a difficult exercise. The Stallard doctrine was hardly a vague formula; it was a 'large principle' and it had in effect been adopted - adopted before its implications had been thought through - at the expense of the pragmatic approach which Smuts recommended. When, some years later, the Native Representative Council debated urban areas legislation, Councillor B. B. Xiniwe reminisced:

> 'The debate which has taken place here and the statements made remind me of the time when the Native Affairs Commission went through the country in connection with the Urban Areas Bill. I well remember that they told us that the intention of the Bill was that Native people should own their own houses in the Native Location. We were deeply disappointed when the Bill became law, when after the meetings of the various municipalities it was decided that Africans were to be denied the right to own property in urban areas.'[2]

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1. Cape Times, 1 June 1923.
2. Native Representative Council, Verbatim Proceedings, Adjourned 8th Session, 1945, p. 283.

Could this disappointment have been avoided? It seems clear that what Africans felt the need of in the early 1920's was above all security in the urban areas at a time when their security in the rural areas had been undermined as a result of snags encountered in the applications of the Land Act. Whether they received freehold title or some qualified form of quitrent would probably have been immaterial, provided the substance of security and succession under clearly defined conditions, unrelated to employment, were guaranteed. This seems to have been the substance of Vos's and later Loram's arguments. Smuts played down the desire of urban Africans for such security, and ended by expressing views which were inconsistent with his introductory second-reading speech. The cynic might even argue that he adopted the Opposition's Bill in place of his own. Although his hurry to get the Bill on the Statute Book is understandable in view of the enormous amount of preparatory work which lay behind it, the facts still remain that he reversed an important principle of the Bill at a late stage without consulting the Native Conference which he had set up for just this sort of purpose, having obtained its consent to the original version; and that at the end of a long period of friction over the pass laws, he chose to take over from the Inter-Departmental Committee's Bill those sections which covered the control of the movement and employment of Africans and to reject those parts of the Bill which offered alleviation to pass law distress. This did not mean that the Natives (Urban Areas) Act was in all respects bad law. The motivation behind its drafting, as shown above, had much more to do with welfare than with ideology, and it contained a number of provisions which were certainly desirable. It systematized and unified the diverse laws of four provinces; it provided a policy of slum clearance and the containment of disease; it regularized the financial system of urban locations at a time when it was advantageous to the location residents to have a separate revenue account; it provided for an embryonic form of consultation through advisory boards, which was capable of developing into something more substantial; it brought location brewing and location trading under a system of control, which it was for the local authorities to use or abuse; it laid down rules for dealing with urban misfits - not necessarily good rules for it is questionable whether it was better to expel them from the urban area than to handle them as casualties of an urban environment for rehabilitation on the spot; but at least something could be done to or for them. One thing the Act did not do was control influx of Africans to the urban area; this would be the function of subsequent amendments in 1930, 1937 and 1952, bringing greater regularity to the labour market, and some easing of the housing problem, but undoubted hardship to individuals and to families. The 1923 Act, by contrast, did not create conditions of hardship. Its worst flaw was the damage it did to the Black man's confidence in the word of the White legislator.[1]

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1. For an appraisal of the 1923 legislation in the light of subsequent amendments, see Ellen Hellmann's chapter on 'Urban Areas' in the Handbook on Race Relations, and the present writer's 'African Townsmen? South African Natives ('Urban Areas) Legislation through the Years', African Affairs, vol. 68, no. 271, April 1969, pp. 95-109.