

THE EFFECT OF THE MARIKANA EVENTS ON THE COLLECTIVE BARGAINING PROCESS IN SOUTH AFRICA

by

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DECLARATION

I, Boitumelo Cordelia Butjie, Student Number 212451782, hereby declare that the treatise for the Magister Legum (Labour Law) to be awarded is my own work and that it has not previously been submitted for assessment or completion of any postgraduate qualification to another University or for another qualification.

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SUMMARY

The basic structures of collective bargaining in South Africa have evolved since industrialisation, through the Wiehahn-Commission era until the Farlam one and beyond, resulting in a number of legislative changes from 1924 to 2014. While dealing with collective bargaining, it is not possible to divorce the powerful history of mining from the South African story, from the diamond fields in Kimberley to the discovery of gold on the Witwatersrand in 1886, where the mine employees' focused on cheap, unskilled labour and migrant system in the 1900s to the tragic events at Marikana in 2012.

In the advent of the industry revolution, employment relationships changed as competitive demands placed a great need for advancing economic developments which are often expressed through collective-bargaining. The objective of collective bargaining is to arrive at an agreement between the employer and employees to determine mutually beneficial terms and conditions of employment such agreement may prohibit unions to embark on an industrial action for as long as it is in place.

Strikes became important during the Industrial Revolution, when many worked in factories and mines. Often when employees' demands are not met, they resort to strike action. Strike action is when a number of employees stop rendering their service in protest to express their grievances. These strikes are usually led by labour unions to get better pay, working hours or working conditions during collective bargaining as a last resort. While trade union leadership fails to advance employees' cause, employees resort to informal alternative structures to negotiate on their behalf.

South Africans have a tradition of taking to the streets in protest when unhappy about issues and this tradition did not spring up during the apartheid era but has been around from as early as 1922 to date. Protests in South Africa today draw from past repertoires and at the same time push for new political practices and directions.

Strikes are often used to:

- Pressure governments to change its policies like in the Rand Revolt.
- Strikes can destabilise the rule of a particular political party like a series of strikes by blacks in the 1970s and 1980s including the 1973 Durban dockworkers and the 1987 miners' strikes.
- Strikes are often part of a broader social movement taking the form of a campaign of civil resistance like Treatment Action Campaign and community struggles such Abahlali Base Mjondolo.

On the strike issues in South Africa, the researcher draws from the terrible incident that transpired in August 2012 at Lonmin Mine-Marikana and how it has affected the collective bargaining landscape in South Africa. The first real and significant labour unrest, the Witwatersrand miner strike rocked South Africa to the core in 1922 and in 2012, ninety years later the violent strike by the Rock Operational Drillers at Lonmin following the Marikana massacre and as such did not enjoy statutory protection under the LRA because was classified as wildcat strike. Normally, a wildcat strike constitutes a violation of a collective bargaining agreement in place and as such is not protected unless a union joins it and ratifies the protest. The union may, however, discipline its members for participating in a wildcat strike and impose fines.

Among other things miners mainly demanded a wage increment of R12500 per month. The fight between AMCU and NUM for organisational rights also found its way into the equation. A strike wave, not only linked to the mining sector, made 2012 the most protest filled year since the end of apartheid, rolled out across South Africa, closing some industrial operations and crippling others.

Commentators argue that the strike wave emerged from a landscape of extreme inequality and poverty, made intolerable by the additional financial burdens arising from the migrant labour system. These factors influenced the industrial action and institutions of collective bargaining comprising of both company and union structures and processes, were found wanting in their ability to address the root causes of the crisis.

The post-Marikana strike wave made a mark in the workers struggle movement as it drew in thousands of workers to join AMCU and at the same time weakening NUM, the then majority union. The strike led to the rise and growth of AMCU which was seen by miners as the driver for change. The 2012 strike wave and the Marikana massacre not only changed the balance of forces on the ground against the NUM, but also generated divisions within COSATU. The divisions were between those who decided to remain deaf to the workers' call for transformation and those who had already realised that a decisive turn in economic policy was needed to avoid a social, economic and political crisis. In the aftermath of the strike, a number community struggles increased as 2012 began and on the other side, a number of splinter groups from COSATU mushroomed which was hobbled by in fights. NUM's collapse is indeed part of a series of recent failures for COSATU.

Historically, workers saw trade unions involved in the bread-and-butter issues as part of the anti-apartheid struggle, but now, because policies are shaped at a political level than in the past that fails. Now the role of trade unions remains questionable in the current context as workers are not only critical of management motives but also question those of trade union leaders.

South Africa has a history of authorities breaking union strikes by force which was the case at both Witwatersrand and Marikana miners leading to the death miners and peace keepers. Similar elements were reflected on the 1973 strike wave which led to the Wiehahn commission, the 1987 miners' strike, the Sharpeville massacre, Soweto massacre in 1976 as well as the Bisho massacre. Most strikes were characterised by collective violence aimed at employers, non-striking employees or the general public. Tracing the significant peaks and troughs of collective violence boils down to what kind of processes are applied to intervene between the acquisition of violent promoting ideas and a direct hand causing mayhem.

Despite the Constitution, Labour Relations Act and other international laws providing to employees the right to strike and employers to manage the strike, the South African collective-bargaining system is still under threat. It is within the same ambit that both employers and employees are to exercise their right within specific frameworks, with discipline and in accordance with the democratic precepts of the

constitution. Hence, it is asserted that both employees and their trade unions should take into account the provisions of the law and respect others' rights when exercising this right to strike. Furthermore, strikers must exercise their right peacefully and unarmed and that will significantly ensure immunity from civil and criminal liability and strengthen the fundamental values of the Constitution.

To restore effective collective bargaining, a number of interrelated strategies can be deployed and that include elevating management of people, union stakeholder relations, focusing on financial literacy of employees, implementing a business model and the competitive environment in which companies, agencies or organisation operates help to engage workers more meaningfully in organisational decision-making and overhauling of the statutory laws to suit the current situation.

In many ways, Marikana inaugurated a new cycle of struggles by defining the new oppositional subjectivities. The massacre led to a sequence of further occurrences, notably a massive wave of strikes, which are changing structures that shape people's lives. Marikana has also revealed structures unseen in normal times by providing an exceptional vantage point, allowing space for collective creativity and enabling actors to envisage alternative futures. Marikana highlights how the mining industry hasn't changed much in over the past 100 years. Although Marikana might be a turning point, we have not yet reached the end of this chain of occurrences and the scale of the turning point remains uncertain.

CHAPTER 1

RESEARCH PROPOSAL

1.1 BACKGROUND AND RATIONALE OF THE STUDY

The past two decades brought about many changes in South Africa and these changes caused individuals to want and achieve improvements in their daily lives and work environment. Competitive demands also place the need for advancing economic development, social justice, labour peace and democratisation of the workplace.¹ The merging black capital also subjects the post-apartheid state to pressure to give it more economic space much as the National Party did for Afrikaner capitalists in the past.² At the same time South Africa was swept by a transitional wave to democracy which was concurrently threatened by the flight of capital, labour disputes as well as strikes and these processes were often stabilised through pacts negotiated at the workplace, political, social and economic levels. Negotiations at different levels may have been fractious but overall reflected choices made by parties, even as they pushed against one another, to build a common vision of a better society and then to use their joint effort to push for achievement.³

With the dawning of the industrial revolution, the face of the employment relationship changed.⁴ The contract of employment, a common law agreement, was used and the terms and conditions contained therein changed as the relative negotiating power of skilled and specialist employment increased. The importance of the employment contract increased even more as large-scale employment in factories took place. The relative value of the services provided by workers increased due to their skills, giving them more economic power and power to shape their role and positions in the

¹ Constitution 1996; Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* (Vaal Triangle Campus of the North-West University) 2004 ii; Kruger and Tshoose (2013) "The Impact of the Labour Relations Act on Minority Trade Unions: A South African Perspective" <http://www.ajol.info/index.php/pelj/article/view/99737> (accessed 2015-10-10) 1.

² Ashman and Fine 2012 *Think Africa Press* 1 5; Ashman and Fine "South Africa: The Meaning of Marikana" (2012) <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> (accessed 2014-08-09) 5.

³ Anstey "Marikana – and the Push for a new South African Pact" 2013 37 *South African Journal of Labour Relations* 133 133.

⁴ Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

workplace. Individually however, employees could not exercise sufficient pressure on the owners or management but found that collectively they could.⁵

Collective labour law developed due to the demand for employees to have better working conditions, a living wage and the right to organise opposed by the demand of employers to keep labour costs low. Often employers' costs can increase due to workers demanding higher wages or by laws imposing costly requirements, such as health and safety or restrictions on their free choice of whom to hire. Workers' organisations may also transcend purely industrial disputes and gain political power. The state of labour law is seen as the product of and component of struggles between different interests in the workplace which often cause conflicts. Such conflicts of interest are governed by laws of some kind, especially true of the struggle for power in the labour relations arena.⁶

Collective labour law regulates the relationship between employees/trade unions, employers and the government – the tripartite and seeks to promote collective bargaining by entrenching individual freedom of association as well as collective organisational rights. Collective bargaining acts as an economic function in that it regulates the individual and collective relationships at the workplace. It also acts as a social function by establishing a system of industrial fairness for the employees to protect them from arbitrary action from management and to acknowledge their rights as employees.⁷ Moreover, it fulfills a social function in that it allows employees to have a say in workplace matters that may affect them. The bargaining process begins when the trade union places its demands on the table. Management then compares the demands of the union with its own and then responds to such demands.⁸

5. K & S Consultants *Walking with the union The Principles of Collective Bargaining & Co - determination in the workplace (A South African Perspective)* Paper presented at seminar on the Dynamics of Collective Bargaining in the Workplace in Cape Town (June 2013) 5.

6. Gregory "The Collective Bargaining Agreement: Its Nature and Scope" (1949) *Washington University Law Review* 3 3; Kenya Laws Online "labour Laws in Kenya" (not dated) <http://kenyalawsonline.blogspot.co.za/2013/06/labour-laws-in-kenya.html?&session-id=de09ec4e3e8d2bf9bb43381b8dff1485> (accessed 2016-02-01) 1.

7. Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

8. *Ibid.*

To institutionalize conflict, most societies have developed rules, institutions and procedures to regulate conflict. Some rules are prescribed by the state in various labour laws; others have been developed through agreements between employers and unions to institutionalise the process of collective bargaining. Collective labour law rules and principles govern the relationship between labour collectives and employers, who may in turn be organised into their collectives. The rules are aimed at ensuring that both employees and employers discharge their respective responsibilities and flow from the acceptance that both employer and employee formations constitute different interest groups with different objectives. In the process employees seeking to receive a fair return for their labour while employers strive for high returns⁹ and these differences often cause conflict. The rules leave parties to determine the dispute outcomes by using power with the assumption that parties will pursue their competing goals through collective bargaining process which is backed by industrial action threats. Labour law ensures that the conflict between the disputing groups is subject to rules and those breaking them are subjected to scrutiny and the power of the judicial system.¹⁰

1 2 PROBLEM STATEMENT

Prior to the arrival of platinum miners and before the 16 August 2012, the platinum-mining town of Marikana was largely unknown¹¹ and of little significance outside the mining sector. On the said day, the mining industry saw the most explosive and significant strike wave since the defeat of apartheid and most dramatic event in labour relations since the Wiehahn Commission in 1978. The Marikana tragedy was the peak of a strike wave that started in January 2012 at the Impala platinum mine following the action by the disgruntled Rock Drill Operators (RDOs) after having been excluded from a retention allowance awarded to mine blasters. The conflict spread beyond the platinum sector, characterised by similar claims and violence. The workers set obdurate demands, one of them being a pay increase to R12 500 per month for RDOs negotiated by independent workers' committees directly to the mine

⁹ Grogan *Collective Labour Law* (2012) 2.

¹⁰ Harrison *Collective bargaining within the Labour Relationship* 1.

¹¹ Harvey "Marikana as a Tipping Point? The Political Economy of Labour Tensions in South Africa's Mining Industry and How Best to Resolve Them" (November 2013) <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> (accessed 2015-02-16) 1.

management, disregarding industrial relations structures and the National Union of Mineworkers (NUM) in particular¹² and their militancy was unprecedented. The strike actions propelled the labour movement into severe crisis, as most NUM members rejected the union's conservative leadership leading to some joining the Association of Mineworkers and Construction Union (AMCU), a rival union formed in 1998.¹³ The massacre was the most publicised aspect of the turmoil and highlighted how features of the apartheid system have been preserved and reproduced. These events drew attention to the scale of South Africa's mineral wealth and the industry's dependence on cheap, black and often migrant labour.¹⁴

Marikana raised political, social and economic issues, exposed the deep fissures in society, encountered unprocedural strikes at an unprecedented level and experienced what appears to be the collapse of collective bargaining structures in the mining sector as highlighted by the emergence of informal groupings of workers which displaced recognised bargaining representatives to pursue their interests outside of the established structures. In this context, a concern is raised about the adequacy of the existing legislation regulating collective bargaining and the issue of strike- related violence.¹⁵

Maybe the time has come for another holistic revision, on a par with what happened in the 1990s when the then segregated black trade unions were integrated with formal legal frameworks.¹⁶ The Marikana events compel the country to confront the issues of how to reform the inherited economical system with its structural inequalities, by ensuring that the economy benefits ordinary South Africans and not

¹² Chinguno "Unpacking the Marikana Massacre" Global Labour Column (February 2013) <http://column.global-labour-university.org/> (accessed 2014-08-20) 1.

¹³ Harvey Marikana as a Tipping Point? The Political Economy of Labour Tensions in South Africa's Mining (November 2013) http://dspace.africaportal.org/jspui/bitstream/123456789/34258/1/saia_sop_164_harvey_20131205.pdf?1 (accessed 2015-02-16) 1.

¹⁴ Ashman and Fine 2012 <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> 5. Anstey 2013 *South African Journal of Labour Relations* 135.

¹⁵ Van Niekerk *Marikana: The Perspective of the Labour Court* Keynote Address at the Saslaw Conference in Johannesburg (October 2012) 1.

¹⁶ Coetzer "Labour Dispensation Urgently Needs Review" (18 October 2013) <http://www.leadershiponline.co.za/articles/labour-dispensation-urgently-needs-review-2663.html> (accessed 2014-08-30) 1.

just the national elites.¹⁷ While it is important for the events surrounding the Marikana massacre to be clarified, the writer contends that the focus of public attention should be broadened to examine the causes of issues outlined above.¹⁸ To understand the choices by different stakeholders, it is essential to unpack the political, historical, social and economic context as it becomes clear that the socio-economic and political factors are impacting on labour issues.¹⁹

Marikana might be a turning point of the current collective bargaining system. The current discourse centres around the Farlam-Commission of Inquiry which was appointed by President Jacob Zuma to investigate the matters arising from the events hoping it will bring to light as to what happened.

1 3 RESEARCH QUESTIONS

Being regarded by many as a model for negotiated transition processes, South Africa has been a constitutional democratic state for two decades. However, a surge of industrial actions and social differences in recent years gave rise to questions not only about the degree to which its democracy has been consolidated but also about the merits of the pacts that enabled it to come into existence. These questions have increased since August the 16 of 2012 when the state crushed the strike at Marikana leaving 34 dead and 78 injured.²⁰ In the wake of the Marikana events the following key questions arise:

- Was Marikana tragedy a once off event or is there the risk of repetition elsewhere?
- Has the workplace become the centre stage for social protest?
- Is it failure by government, business, labour unions, the labour law system or a failure of South African society as a whole?²¹

¹⁷ Wambu "Back to the Future, Marikana and the Unfinished Liberation" 2012 *New African Magazine* 94.

¹⁸ Ashman and Fine 2012 *Think Africa Press* 1 7; Ashman and Fine <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> 7.

¹⁹ Coetzer <http://www.leadershiponline.co.za/articles/labour-dispensation-urgently-needs-review-2663.html> 1.

²⁰ Anstey 2013 *South African Journal of Labour Relations* 133.

²¹ Creamer "One Marikana after the other unless underlying causes tackled" (19 October 2012) <http://www.miningweekly.com/article/one-marikana-after-the-other-unless-underlying-causes->

- How did a wage dispute transform itself into a tragic political event?²²
- What motivated the strikes, why things turned violent?
- What is the outlook for the labour market after Marikana?²³
- Why have strikes on the platinum mines been non-procedural and why have they turned violent?
- Does Marikana have wider implications than simply the need to sort out labour relations in the platinum sector?
- What explains the surge in industrial action at a national level?
- Does it suggest that the first democratic pact has run its course?
- What needs to be fixed, at what levels and how?²⁴
- Will the Marikana events turn out to be the democratic era's equivalent of the 1973 strikes?
- Is the powerful COSATU on the brink of collapse?
- Does Marikana lead to the rise of a new powerful and independent political movement that will realign politics in South Africa?²⁵
- Is Marikana a crisis linked to the intersection of instability and fragmentation of workers?

According to Coetzer there are wider issues than the shooting at Marikana that are in need of in-depth consideration if labour relations are to be stabilised and such issues are:

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- tackled-says-labour-doyen (accessed 2014-06-12) ; Giraldo "Labour Law South Africa" (October 2012) <http://www.apso.co.za/news/104284/Labour-Law-South-Africa-October-2012-.htm?&session-id=6526f5303fb4600167f198652b84a47c> (accessed 2014-06-12).
- 22 Van Niekerk "Keynote Address: Saslaw Conference 2012 Marikana: The Perspective of The Labour Court" (8 October 2012) <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> (accessed 2014-08-20) 1.t.
- 23 Montalto "A failure to learn the lessons of Marikana will put mining at risk" (13 August 2013) <http://www.iol.co.za/business/opinion/> (accessed 2014-09-28) 1.
- 24 Anstey 2013 *South African Journal of Labour Relations* 137.
- 25 Twala "The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa" (2012) [file:///D:/Users/User/Documents/final%20research%20o_n%20marikana%203/all1\(2\).pdf](file:///D:/Users/User/Documents/final%20research%20o_n%20marikana%203/all1(2).pdf) (accessed 2014-11-11) 62; Twala "The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa" (2012) [http://saccps.org/portuguese/pdf/1-2/all1\(2\).pdf?&session-id=0fe2b9eb502e5282181328ed181a7ce4](http://saccps.org/portuguese/pdf/1-2/all1(2).pdf?&session-id=0fe2b9eb502e5282181328ed181a7ce4) 62 (accessed 2014-11-11) 62.

- To what extent has COSATU'S involvement as a formal alliance partner in Government impacted on its relationship with workers?²⁶
- To what extent has the informal deal, struck with the Lonmin workers outside of the official LRA structures and without the involvement of trade unions, set a process in motion that could deinstitutionalise labour relations?²⁷
- To what extent did the appalling living conditions at many mines contribute to the crisis?
- To what extent has the introduction of living-out allowances, instead of direct housing payments by mines and other fringe benefits like bonuses contributed to the poor living conditions and the development of informal settlements around many mines?²⁸

Suggestions to each question vary across ideological groups; some argue that parties at different levels must find a way forward through negotiation and perceive the breakdown of the system signaling the need for a negotiated redesign of operational aspects of the labour relations system. Others argue that such conflicts are rooted in the deep injustices of a capitalist system creating imbalances that undermine the regulatory capacity of collective bargaining, perceiving the conflict to be over the fundamentals of the system itself and collective bargaining and social pacts to be a process of covert system maintenance prohibiting meaningful change. Such ideological divides remain alive in the South African society and such divergent views exist not only about what Marikana means but about how the problems in South Africa should be addressed.²⁹

1 4 AIMS AND OBJECTIVES OF THE STUDY

The aim is to examine how the social structures, social processes and social context in relation to Marikana events impact on the current dispensation of collective bargaining and their significance to that regard. The research aims to reveal phenomena that are hidden, rather than rely on reports of what is immediately visible.

²⁶ Coetzer <http://www.leadershiponline.co.za/articles/labour-dispensation-urgently-needs-review-2663.html> 1.

²⁷ *Ibid.*

²⁸ Coetzer <http://www.leadershiponline.co.za/articles/labour-dispensation-urgently-needs-review-2663.html> 1.

²⁹ Anstey 2013 *South African Journal of Labour Relations* 137.

The research is more concerned with understanding the social phenomenon by all role players being through the historical empathy with participants in past social events.

1 5 RESEARCH METHODOLOGY

There are various types of research that can be used, namely, empirical research, literature research, experimental research and historical research.³⁰ In this study the researcher focuses on a literature method and qualitative research design will be used to describe the effects of Marikana events on collective bargaining as informed by literature.

To understand the processes that characterise the events:

- Data will be reviewed, analysed and evaluated using a range of primary information sources such as academic abstracts, bibliographic databases, legislation, treaties and conventions, published books and relevant court decisions. The secondary sources include journal articles, guides to adoption and other electronic sources using internet search engines. The main purpose of literature review is to put the hypothesis to be examined in the research report into proper perspective by supplying a theoretical foundation for the research.
- A systematic collection and objective evaluation of data related to past occurrences in order to clarify issues concerning causes, effects or trends of events that may help to explain present events and anticipate the future will be developed so that data can be viewed from different perspectives.³¹

1 6 RESEARCH LIMITATIONS

The purpose of the study is to investigate how the Marikana events impact on the current dispensation of collective bargaining based on literature review towards a possible solution. The methodological limitation in this research program is the

³⁰ Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

³¹ Gay "The New Religion Pop Culture: The New Religion: Pop Culture"(1996) <https://www.ukessays.com/dissertation/examples/media/the-new-religion-pop-culture.php?&session-id=3106bb9f77d11dda2de9092fa88d6c2e> (accessed 2014-07-17).

reliance of on the literature based on others research and not conduct own empirical study. Another limitation of this study is the fast evolution of collective events in the labour arena.

1 7 OUTLINE OF RESEARCH

Given the labour-employer and inter-union labour tensions as precipitating factors to Marikana, this treatise contends that there is a significant negative relationship between labour and investment attractiveness³² and asks what effect these tensions might have on collective bargaining in South Africa. It also suggests how such an outcome could plausibly be achieved within the existing parameters³³ in South Africa's mining sector and the labour fraternity in general. This study seeks to address these concerns bearing in mind that tragedies such as Marikana which is a potential tipping point on the trajectory of South Africa's political³⁴ economy tend to catalyse change.

In addition to Chapter 1 which is the research proposal, Chapter 2 outlines the origin and dynamics of collective bargaining in the workplace in the South African context, Chapter 3 analyses the evolution of collective bargaining from Witwatersrand to Marikana, Chapter 4 deals with the legal position in South Africa in relation to collective bargaining with specific reference to Marikana. Chapter 5 argues the road ahead; how negotiations between unions and employers are to be understood as a two-level game framed by the institutional context,³⁵ combines relevant theories to suggest alternatives, looks at ways of possibly resolving the apparent tensions. Lessons are to be learned from knowledge gained in the literature study and the importance of future studies on collective bargaining. These are discussed in the

³² Harvey "Minefield of Marikana: Prospects for Forging a New Social Compact" (2014) <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> 1; Harvey <https://www.africaportal.Org/dspace/authors/harvey-ross?&session-id=6526f5303fb4600167f198652b84a47c> (accessed 2015-07-17) 1.

³³ *Ibid.*

³⁴ Davenport "The 1987 mine strike" (27 September 2013) <http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27> (accessed 2015-08-20) 1; Hartford "Alienation, paucity and despair make for toxic catalysts"(12 October 2012) <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> (accessed 2014-08-28) 1.

³⁵ Harvey <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> 1.

final chapter, where recommendations for future research and practice are made.³⁶

³⁶ Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

CHAPTER 2

THE ORIGIN AND DYNAMICS OF COLLECTIVE BARGAINING IN THE WORKPLACE IN THE SOUTH AFRICAN CONTEXT AND THE DEVELOPMENT TO THE PRESENT POSITION

2 1 INTRODUCTION

Collectivism in the workplace is indeed as old as the history itself. When the Dutch settlers arrived at the Cape in 1652, the need for labour was a crucial issue. The indigenous people were seen as inferior and were used to provide cheap labour for these settlers and this is how slavery became an essential part of the Cape Colony. The then Boer farmers carried these ideas into the interior of the country and blacks rendered their services to the farmer in return for the right to home on the land.³⁷

Collectivism in the workplace started with the discovery of diamonds and gold in the late 19th century during which, South Africa gradually changed from rural to industrial society. As the industry grew, the conflict also gradually started to show and was often racially influenced. Before the discovery of its mineral wealth, South Africa was a sleepy farming colony at the foot of Cape of Good Hope and that changed in 1867 when a Dutch boy found a shiny stone on the inland ridge where his family established a farm which turned out to be a 21-carat diamond. Within five years, thousands of other fortune-seekers from all over the world had converged in a diamond rush.³⁸

“Many of the new diggers were Africans. The mines’ European managers found them mystifying and hard to control. They came and went from their villages on their own time frames and also suspected them of selling diamonds outside of the managers’ established trading framework. So the managers came up with a system to control them. In this migrant-labour system, black workers had to live

³⁷ Harrison Collective Bargaining Within The Labour Relationship 23.

³⁸ Stoddard & Lakmidas “South Africa's labour struggles continue” (11 March 2013) <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> (accessed 2015-11-11) 1 ; Fairbanks "You Have All the Reasons to Be Angry" A mine massacre and the fight for South Africa's future (4 March 2013) <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> (accessed 2015-11-11) 1.

in all-male dormitories on the mines' locked-down compounds. They could only work if they possessed a pass, a permit that prescribed their movement."³⁹

Other mineral rushes were discovered in the late nineteenth and early twentieth centuries which revealed some of the world's richest mines of diamonds, gold, platinum, chrome and manganese, giving birth to Johannesburg, a mining hub that is now among the 50 biggest cities in the world. As mining created South Africa's economic infrastructure, it also changed the country's social culture.⁴⁰

This part of the treatise analyzes the recent protests in South Africa, providing the historical context for the current cycle of mobilisation. Taking the Marikana-massacre as a significant marker for the current cycle, the paper explores subsequent political shifts and trade union forms and reforms.

2 2 1 PRE-1994

South Africa is no stranger to politically driven, large-scale strike action. The Rand Rebellion of 1922 by white miners lasted for three months before suppressed by the military.⁴¹ The modern South African industrial relations system came into being when the government realised that such labour discontent could not be controlled solely by force.^{42,43} Its political and labour relations consequences significantly led to the fall of the government of the day and the promulgation of the Industrial Conciliation Act of 1924 which institutionalised collective bargaining in South Africa but did so on a racially exclusive basis, to appease white demands for colour bar by denying black employees the right to representation. This Act, provided for the registration of white trade unions and employers organisations, established the

³⁹ Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1.

⁴⁰ Fairbanks 2013 *The New Republic* 30; Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

⁴¹ Anstey 2013 *South African Journal of Labour Relations* 136.

⁴² Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

⁴³ This Act had apart from regulating labour aspects, also two political objectives: the provisioning of preferential employment opportunities to white workers in an attempt to appease white workers and to rally their support for Smut's government.

framework for and centralised collective bargaining and regulated strikes and lock-outs.⁴⁴

A number of legislative changes took place during the years 1924-1979, most notably, a series of amendments to the Industrial Conciliation Act 11 of 1924.⁴⁵ The act entrenched one characteristic of labour legislation that remained content until 1971, the exclusion of black employees. Despite the exclusion of black labour, a number of black trade unions sprang-up until its review in 1937, provisioning for the integration of pass bearing black workers.⁴⁶ Du Toit remarked that the amendments to the Act in 1930 and 1937 failed to solve many of the problems of the industrial relations system and this led to the appointment of the van Reenen Commission in 1935 to investigate and address some of these issues. Its recommendations led to the formation of trade unions representative of all classes of in the 1937 amendments. This Act was also replaced by Act 28 of 1956.⁴⁷

In 1948, the Nationalist government assumed power and its labour legislation was tailored to fit into the apartheid structure with clear racial separation in which the blacks were no longer classified as employees. In the 1950's, large numbers of trade union leaders were banned and arrested when the Nationalist government passed the Suppression of Communism Act. It was a period of rigorous political mobilisation that involved several stay-ways.⁴⁸

South Africa saw the promulgation of The Native Labour Act (Settlement of Disputes)⁴⁹ in 1953. This Act was primarily dedicated to entrenching a dualistic, racially segregated industrial relations system forcing non-racial trade unions to split on racial lines.⁵⁰ The War Measure 145 from 1942 was partly included in the Native Labour Settlement of Disputes Act 48 with the complete exclusion of blacks from

⁴⁴ K & S Consultants Paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 6.

⁴⁵ Harrison *Collective Bargaining within the Labour Relationship: In a South African Context* ii.

⁴⁶ Harrison *Collective Bargaining Within The Labour Relationship* 32.

⁴⁷ K & S Consultants Paper presented at seminar on the Dynamics of Collective Bargaining in the Workplace in Cape Town 12.

⁴⁸ Harrison *Collective Bargaining Within The Labour Relationship* 32.

⁴⁹ Act 48 of 1953.

⁵⁰ Harrison *Collective Bargaining Within The Labour Relationship* 32.

labour legislation as they were deemed to be covered by the new Act. Accordingly all black people were excluded from the definitions of the amended Industrial Conciliation Act of 1956.⁵¹

Reality emerged with a series of strikes by black employees in the 1970s and with the increased pressure of black trade unions, resulting in conflict and pressure. A strike wave starting in 1973 led to the appointment of the Wiehahn Commission. It was at that crucial stage in South Africa's political history that a new trade union, the National Mineworkers Union (NUM) was founded in 1982 and acted as a collective bargaining agent for the disenfranchised miners, particularly in the gold and coal sectors.⁵² In August 1987, South African saw yet another huge surge in its history when about 3, 5-million black mineworkers downed tools and embarked on a strike led by NUM. Miners fought against low pay, degrading tasks and the oppressive apartheid structure both in and outside the workplace. The strike was a success particularly at coal mines in the Witbank area but miners throughout the industry held out for the duration. The prolonged industrial action brought South Africa's mining sector to its knees. The recommendations of the Wiehahn commission were translated into legislation between 1979 and 1983.⁵³

The current arrangements were legislated and established after years of struggle by workers and that had significant dockworkers moments in the 1973 Durban' strike actions and the 1987 mineworkers' strikes, which led to the formation of Congress of South African Trade Unions (COSATU).⁵⁴ As part of one of its founding policies, COSATU sought to bring all organised workers in each industry into a single union and affiliates that had members in various sectors were expected to agree to the process of streamlining the federation's membership.⁵⁵ Pillay stated the position as follows:

⁵¹ K & S Consultants Paper presented at seminar on the Dynamics of Collective Bargaining in the Workplace in Cape Town 9.

⁵² Davenport <http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27> 1.

⁵³ *Ibid.*

⁵⁴ Motala "Why strikes are so violent" (8 Jul 2014) <http://www.iol.co.za/news/why-strikes-are-so-violent-1719501> (accessed 2015-09-20) 1.

⁵⁵ SAHO "Congress of South Africa Trade Unions" (not dated) <http://www.sahistory.org.za/topic/congress-south-african-trade-unions-COSATU> (accessed 2015-09-20).

“In South Africa “social movement unionism” was associated with COSATU during the 1980s and involved three dimensions: firstly, unions developed deep, shop-floor participatory-democratic internal processes; secondly, while focused on collective bargaining, they also addressed issues beyond the workplace and thirdly, they forged alliances with community and political organisations, both to support workplace struggles as well as to support local and national community-political struggles. In doing so, COSATU always maintained its independence and insisted on alliances based on equality between the partners.”⁵⁶

The government reformed by granting black trade unions access to institutions established by labour legislation like the industrial council and conciliation board and spelling the end of racial divisions in the labour arena. These reforms were effected by the Industrial Conciliation Acts - 94 of 1979 and 95 of 1980 and the Labour Relation Acts - 57 of 1981, 57 of 1982 and 2 of 1993;⁵⁷ providing the civil society legs for the country’s transition to democracy in 1994.⁵⁸

2 2 2 POST 1994-ERA

South Africa has undergone huge political and economic changes over the first ten years of democracy and these changes generated expectations of change in the workplace.⁵⁹ Given the role played by trade unions in bringing down apartheid, much attention was given to labour rights in the new dispensation and those rights are entrenched in the Constitution. One of the first legislative initiatives was the repeal of the 1956 Act. A new Labour Relations Act (LRA)⁶⁰ that was the outcome of the tripartite negotiations between government, organised labour and the major trade union federations under the National Economic Development and Labour Council (NEDLAC) was promulgated.⁶¹

The labour movement envisaged a democratic corporatist state with labour market reforms, hoping it would advance three crucial elements that together form the basis of a democratic corporatist state: the Reconstruction and Development Programme

⁵⁶ Pillay “Between Social Movement and Political Unionism: COSATU And Democratic Politics In South Africa” (2013) <http://rdi.andir-south.org/index.php/rdi/issue/view/2> (accessed 14-10-10) 1.

⁵⁷ Grogan *Collective Labour Law* 4.

⁵⁸ Anstey 2013 *South African Journal of Labour Relations* 136.

⁵⁹ Mpunzima *Unfinished Business: Current and Past Trade Union Leaders’ Perceptions of The Political, Transition After The First Decade Of Democracy (1994-2004) In South Africa* (University of Port Elizabeth) 2006 2.

⁶⁰ 66 of 1995.

⁶¹ Grogan *Collective Labour Law* 4.

(RDP), the creation and formalisation of NEDLAC and the Industrial Strategy Project. Most of these expectations did not come to fruition as South Africa's transition embraced neo-liberalism.⁶²

2 2 3 ENTERING THE NEW ERA OF THE STRUGGLE

Post 1994, South Africa became the developmental state characterised as a state leading catch up industrialisation using intervention to bring about structural change and provide a basis for capital accumulation.⁶³ These changes raised questions of the relevance of the current forms of trade unions, their organising methods and their appropriateness in articulating working-class struggles.⁶⁴

Dhiliwayo explains the position as follows:

“Since 1990, when COSATU became part of the triple alliance with the ANC and SACP, it has to some extent drifted towards a form of political unionism whereby it has narrowed internal democratic space and shown signs of creeping oligarchy; uncritically mobilising support for the ANC during elections and refusing to work with groups that argue for an end to the Alliance.⁶⁵ Whether or not COSATU should belong to this alliance has been a subject of debate, with some affiliates calling for greater independence from the ruling party and others claiming that it strategically positions COSATU to shape policy as well as giving it political influence valuable to members.”⁶⁶

Mpuzima argues that the Tripartite Alliance caused divisions within the labour movement. Some federations such as NACTU and FEDUSA believe that the political alignment with a political party polarises the trade union movement as they cannot speak as a united force without political leanings and this has not helped the cause of the labour movement to mobilise around the interests of the workers as a whole.⁶⁷

⁶² Satgar “Beyond Marikana: The Post-Apartheid South African State Question” (November 2013) <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> (accessed 2015-02-10) 1 36.

⁶³ Satgar <http://www.saiia.org.za/occasional-papers/435-marikana-as-a-tipping-point-the-political-economy-of-labour-tensions-in-south-africa-s-mining-industry-and-how-best-to-resolve-them/file> 37.

⁶⁴ Gentle “South Africa and the Changing Politics of Labour Part 2: NUMSA and the Emergence of a New Movement” 2014 1028 *The Bulletin* 1.

⁶⁵ Pillay <http://rdi.andir-south.org/index.php/rdi/issue/view/2,volume2> 1.

⁶⁶ Dhiliwayo “The Rise or Fall of Trade Unions in South Africa: The Marikana incident” (12 October 2012) <http://column.global-labour-university.org/Membership-Leadership> (accessed 2013-10-10).

⁶⁷ Mpuzima *Unfinished Business* 2.

2 2 4 KEY STRUGGLES

Between 1994 and 2002 COSATU largely ignored the struggles or dismissed them as opportunist and hostile to the ANC.⁶⁸ When the struggles continued, resolutions started to be passed by the new left in the Congress Alliance that COSATU and/or the SACP branches should provide leadership, which they hardly were able to do given their social distance from these struggles.⁶⁹ In that context, the vacuum was filled by the independent left like the Anti-Privatisation Forum in Gauteng and to a lesser extent the Treatment Action Campaign (TAC).⁷⁰ The on-going struggles continued and spread across the country.⁷¹ Involvement in these campaigns provided a fertile ground for the grooming of new generation of activists.

Although the strikes figures dropped slightly between 2009 and 2011, these struggles were joined by the 2012 mining strikes when miners demanded huge wage increases. The sector strikes were driven both by top-down and bottom-up dynamics, which suggested that the new trade union, while crucial to the sustainability of strikes, was not in full control of events.⁷² For example, from bottom-up, a workers' committee was formed by miners that operated outside of its control and a particular strike spread rapidly to other Lonmin operations where the new union had little, if any, presence.⁷³ From the top-down, the trade union officially avoided claiming paternity for a movement that was both illegal and marked by episodes of violence. At the same time AMCU leaders encouraged workers to voice their demands, supported the movement and partly led it.⁷⁴ AMCU's strategy was to

⁶⁸ Gentle "Debate: What about the workers? The demise of COSATU and the emergence of a new movement" (13 Jan 2016) <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> (accessed 2015-03-05).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Gentle "South Africa and the Changing Politics of Labour: Part 2: NUMSA and the Emergence of a New Movement" (29 August 2014) http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 (2014-03-05) 1; Gentle 2014 *The Bulletin* 1.

⁷² Botiveau "Briefing: The politics of Marikana and South Africa's changing labour relations". 128-137 (2014) <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903> (2015-09-09) 1.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

take advantage of the strike action in order to gain ground in its struggle against the NUM's dominance in the mining sector.⁷⁵

The post-Marikana strike wave made a mark in the workers struggle movement and drew in 100,000 workers across the country that joined AMCU.⁷⁶ Out of Marikana, AMCU succeeded in its objective of taking over from NUM as the voice of workers in the platinum-mining sector and⁷⁷ now represents around 60 per cent of Lonmin's employees, with a monopoly on collective bargaining.⁷⁸

It remains to be seen whether the militant workers will reform AMCU and enhance its status across the whole of mining or whether they desert it and seek other union homes or even revive their own structures. So does the imminent demise of COSATU in the context of a vibrant and growing movement of community-based struggles of the working-class.⁷⁹

Some commentators bewailed the fact that AMCU's lack of structures and experience might have made it difficult for its leadership to impose a settlement on its own members. The stubborn, uncompromising workers held the AMCU leadership accountable and defied the mine bosses' attempts to divide them by contacting workers directly through the medium of the sms.⁸⁰

Biyase points out:

⁷⁵ Ibid.

⁷⁶ Gentle "What about the Workers? The Old is Dead, the New is Emerging" (January 2013) <http://www.placesuncovered.co.za/what-about-the-workers-the-old-is-dead-the-new-is-emerging/?session-id=033932a18474fb16acf95075f51cab2a> (accessed 2015-08-16).

⁷⁷ Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1.

⁷⁸ Gentle "South Africa and the Changing Politics of Labour: Part 2: NUMSA and the Emergence of a New Movement" (29 August 2014) http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 (accessed 2015-02-29) ; Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1.

⁷⁹ Gentle http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 1; Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1; Gentle <http://www.placesuncovered.co.za/what-about-the-workers-the-old-is-dead-the-new-is-emerging/?session-id=033932a18474fb16acf95075f51cab2a> 1.

⁸⁰ Gentle http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 1.

“To date we have not yet seen them improving administration and communication is still difficult, said the analyst. If they cannot get this right, the danger is that AMCU could become a union of fragmented local branches, each driving its own agenda. This is already seen at many mines, where sometimes conflicting demands are made.”⁸¹

In the aftermath of the strike, as 2014 started, the number of community struggles increased. From Mthotlung to Valhalla Park; from the North-West to Limpopo and KZN to Western Cape, expressing their anger that 20 years after the end of apartheid the quality of life for the poor is the same or worse.⁸² These struggles can no longer be dismissed as just service delivery protests but a rebellion movement of the poor, unemployed, shack dwellers and small towns across the country.⁸³ The striking platinum miners also stood up against mine employers; the state and the strike-breaking unions are now lined up alongside the protesting communities in Bekkersdal, Burgersfort, Siqalo and other communities reshaping South African politics.⁸⁴

On the other side the new NUMSA-movement was being raised. This is a movement that no longer blames Apartheid for the ills of the past, but sees the ANC as having climbed into bed with the old Apartheid beneficiaries and confronts the neo-liberal order. The rise of Economic Freedom Fighters (EFF) as a force to the left of the ANC and the NUMSA-movement with its promise of a Socialist Party is also the driving forces of the changing political landscape.⁸⁵ The recent decision by NUMSA to withdraw its support for the ANC underlines the severity of the crisis. Rivalry between NUM and AMCU has also plagued the industry.⁸⁶ Although these struggles lacked a unified political expression, they changed the political landscape of the post-apartheid South Africa significantly. On the other hand the processes of fragmentation amongst

⁸¹ Biyase “How Amcu became so powerful” (14 April 2013). <http://www.bdlive.co.za/national/labour/2013/04/14/how-amcu-became-so-powerful> (accessed 2015-08-25); Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729>.

⁸² Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1; Gentle “South Africa: In the Run-Up to South Africa's 2014 Election, the Battle for the Future Commences” (2014) <http://allafrica.com/stories/201405030339.html> 1 (accessed 2015-08-25) 1.

⁸³ *Ibid.*

⁸⁴ Gentle http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 1; Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1.

⁸⁵ Gentle http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 1; Gentle <http://www.tandfonline.com/doi/full/10.1080/03056244.2015.1085729> 1.

⁸⁶ *Ibid.*

the restructured working-class gave rise to new movement of militancy in which the working-class activists pursue their struggles in both the sphere of production and reproduction and new forms of self-organisation that have the capacity to link these spheres of working-class life.⁸⁷ All protests can be painted with the same brush given that they tend to share similar repertoires of action including mass marches.⁸⁸

In the dark shadow of the Marikana tragedy, the Bill proposing amendments to the LRA was finally tabled in Parliament on 20 June 2013. The amendments changed substantially over the course of time since⁸⁹ the publishing of the draft for comments in December 2010 and the ultimate passing of Labour Relations Amendment Act⁹⁰ in 2014. Beyond Marikana there has been much debate over provisions presented by the LRA aimed at reducing strike violence as well as the majority union powers to control organisational rights of other unions.⁹¹

2 3 THE SPLINTER GROUPS

The industrial actions and the rise of AMCU should be understood as part of a history of splinter unions. ⁹² In the 1980s NUM faced a challenge of the United Workers' Union of South Africa (UWUSA) being formed by the Inkatha Freedom Party (IFP) to counter COSATU. Again in the late 1990s, the Mouthpiece Workers' Union (MWU) temporarily took over Amplats in a violent struggle with NUM. ⁹³ Later AMCU was launched in 1999 in the coalfields of Mpumalanga when 3000 workers embarked on a wildcat strike in support of their dismissed branch leader Joseph Mathunjwa at the Douglas Colliery. Mathunjwa was subsequently reinstated but refused to appear before the then NUM general secretary, Gwede Mantashe ⁹⁴ which led to his expulsion from NUM in 1999. Once outside NUM, Mathunjwa still had a group of

⁸⁷ Ibid.

⁸⁸ Naidoo 2015 *South Atlantic Quarterly* 436 439.

⁸⁹ Todd "Tinkering with the labour market: amendments to the LRA now imminent" (10 January 2014) <http://www.bowman.co.za/EmploymentLaw/Employment-Law-Articles.asp> (accessed 2015-08-14) 1.

⁹⁰ Act No 6 of 2014.

⁹¹ Todd "Tinkering with the labour market: amendments to the LRA now imminent" <http://services.bowman.co.za/Brochures/NatureOfLaw/2013/2/3726%20NOL%202-2013.pdf?&session-id=3106bb9f77d11dda2de9092fa88d6c2e> 1.

⁹² Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903> 1.

⁹³ Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903> 1.

⁹⁴ Ibid.

workers following him and continued bargaining with BHP Billiton, Colacor, Diesel Power and Shanduka on their behalf. This was the early genesis of AMCU, which was formally registered as a trade union in 2001.⁹⁵

In 2011, Impala Platinum had a problem of losing miners especially RDOs to its competitors, who offered better pay. However, NUM, the then majority union at Implats turned down attempts by Implats to increase the wages of rock drill operators by an extra 10%, because it wanted a blanket increase across the board, and not for a specific unit.⁹⁶ The rock drill operators were unhappy and AMCU spotted a gap. Few months later, AMCU followed the same *modus operandi* at Lonmin operations, which led to the wildcat strike that saw the killing of 44 people at Marikana. A strike at Anglo American Platinum followed.⁹⁷

Seeing AMCU as the driver for change, workers left NUM in numbers putting AMCU in majority in the platinum sector. AMCU represents about 14% of the workforce in the gold mining sector presently and also developed a noticeable presence in the coal and construction industries where it had no presence before Marikana.⁹⁸ The question that remains for the mining industry is, can AMCU continue to win over members in the sector and deliver on its promises or can NUM scramble to reclaim its dominant position?⁹⁹ Observers point out that AMCU's strategy is to feed on the dissatisfaction of workers, particularly where concerns are not receiving attention from existing unions. The fact that AMCU's membership is constituted mainly by dissidents and mavericks might be a weakness as its leadership may tend to comply with the wishes of its radical elements in fear of being ousted and replaced.¹⁰⁰

In the recent past, COSATU affiliates have been plagued by internal divisions mirroring the infighting in the federation. For example, the expulsion of South African Democratic Teachers' Union (SADTU) president Thobile Ntola divided the union,

⁹⁵ Biyase <http://www.bdlive.co.za/national/labour/2013/04/14/how-amcu-became-so-powerful?&session-id=5bb617cb4c4148b125b7407af2b71075> 1.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

upsetting members in the Eastern Cape.¹⁰¹ A breakaway from the SADTU resulted in the formation of a new splinter group South African Public Sector Union (SAPSU). It can be said that Ntola's woes at SADTU are linked to the broader divisions in COSATU. He was suspended for allowing Vavi a platform to address workers in the Eastern Cape, after Vavi had been suspended for allegedly having an affair with a junior employee. Ntola was then expelled over a string of corruption allegations. SADTU in the Eastern Cape has maintained that the move against Mr Ntola was politically motivated.¹⁰² The union described itself as a dynamic, independent and non-aligned organisation of public service workers and related fields.¹⁰³

The new union's formation came on the heels of the establishment of the NUMSA's inspired United Front (UF). COSATU expelled NUMSA from the federation, accusing the union of violating its constitution by allegedly expanding its scope and violating a founding COSATU principle of one union, one sector,¹⁰⁴ not supporting its alliance partner the ANC in the last general election, poaching members from affiliates and withholding its fee from the federation.¹⁰⁵ After years of challenging COSATU's leadership and its allies, a group of nine-plus unions, supported a national workers' summit to rebuild the movement that COSATU once was but following COSATU's special national congress, the unions found their goals cast in the wilderness. A new labour federation - United Front (UF) could potentially include some of those unions and if it is able to woo AMCU which has similar ideological views as NUMSA, it would pose a significant challenge to COSATU.¹⁰⁶ UF is a political instrument which

¹⁰¹ Nkosi "A watershed moment for Sadtu" (30 March 2012) <http://mg.co.za/article/2012-03-30-a-watershed-moment-for-sadtu?&session-id=de09ec4e3e8d2bf9bb43381b8dff1485> (05 December 2014) 1.

¹⁰² Marrian "SADTU division could see new union formed" (12 September 2014) <http://www.bdlive.co.za/national/labour/2014/09/12/sadtu-division-could-see-new-union-formed> (accessed 15-08-25); Dlamini "Ex-Sadtu chief to lead new union" (05 December 2014) <http://www.timeslive.co.za/thetimes/2014/12/05/ex-sadtu-chief-to-lead-new-union> (accessed 15-08-25).

¹⁰³ Enca "Former SADTU members launch new union" (4 December 2014) Sapa <http://www.enca.com/south-africa/sadtu-launches-new-union> (accessed 15-08-29) 1.

¹⁰⁴ HR PULSE NEWS DESK "New metal union Linumsa" (31 March 2015) <http://www.hrpulse.co.za/legal/labour-relations-act/232182-new-metalworkers-union-linumsa?&session-id=acc558d5e3186273e7db1392572511f9> (accessed 2015-07-30) 1.

¹⁰⁵ Dlamini <http://www.timeslive.co.za/thetimes/2014/12/05/ex-sadtu-chief-to-lead-new-union> 1.

¹⁰⁶ Nicolson "NUMSA: It's time to build a new labour federation" (23 JULY 2015) <http://www.dailymaverick.co.za/article/2015-07-23-NUMSA-it-time-to-build-a-new-labour-federation/#.Vd8M7SWqgko> (accessed 15-08-25) 1.

NUMSA will use to test the political landscape on whether or not the time is right to launch a workers' political party to contest for power.¹⁰⁷

Gentle puts it as follows:

"NUMSA has always been the left critic within COSATU. Its roots lay in the traditions of independent socialism of FOSATU and MAWU, which precede the formation of COSATU – a tradition to the left of the SACP and long castigated as 'workerism' by the SACP and the ANC in the 1980s. Not that NUMSA was ever politically monolithic – its leadership cadre make-up was always an entente between a political group located within the Eastern Cape SACP, an old independent socialist layer coming from the Wits region and a layer of syndicalist policy technocrats. This entente made NUMSA unique within COSATU and saw it campaign for a Workers' Charter in 1987 and for COSATU to break with the tripartite alliance in 1993. Already in the run-up to 2009's Polokwane ANC Conference there were moves within COSATU to discipline NUMSA for not being enthusiastic enough backers of the Zuma project."¹⁰⁸

The Liberated Metalworkers Union of SA (LIMUSA) has been admitted into COSATU fold supposedly to replace NUMSA, quashing any possibility of NUMSA returning to the federation fold and to compete with NUMSA on the shop floor in the automotive and metals sectors. LIMUSA was formed in December 2014 by former NUMSA president Cedric Gina who did not agree with NUMSA's decision not to campaign for the ANC in the 2014 elections. It remains to be seen whether it will massively upset the 340 000 strong NUMSA or not, but it is likely to intensify union rivalry in sectors traditionally monopolised by NUMSA.¹⁰⁹

A majority of members of the South African Municipal Workers' Union (SAMWU) ignored their leadership's call to strike ¹¹⁰ and its ousted members aligned to NUMSA also launched a rival union, Democratic Municipal and Allied Workers Union of SA (DEMAWUSA). The formation of DEMAWUSA came after SAMWU was racked by

¹⁰⁷ George and Macanda "New union to challenge COSATU" (18 October 2014) <http://www.dispatchlive.co.za/new-union-to-challenge-cosatu/?session-id=3106bb9f77d11dda2de9092fa88d6c2e> (accessed 2015-08-25) 1.

¹⁰⁸ Gentle http://www.globallabour.info/en/2014/08/numsa_and_the_emergence_of_a_n.html?&session-id=f01a989dd2510c0ba4060a04d88b4f57 1; Gentle 2014 *The Bull* 1028 1.

¹⁰⁹ Warwick "White-on-white violence: The 1922 Rand Revolution" (15 March 2012) <http://www.bdlive.co.za/national/labour/2015/03/30/COSATU-decides-to-admit-LIMUSA-into-federation> (accessed 2015-10-07) ; HR PULSE NEWS DESK <http://www.hrpulse.co.za/legal/labour-relations-act/232182-new-metalworkers-union-limusa?&session-id=acc558d5e3186273e7db1392572511f9> 1.

¹¹⁰ Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903> 1.

corruption and in-fighting, leading to the expulsion and dismissal of some 100 union leaders.¹¹¹ Similarly, a group of leaders from the South African Transport and Allied Workers Union (SATAWU) launched a splinter union in 2012 and a massive strike started on the Western Cape's farmlands just after Marikana, with strikers largely taking over the Food and Allied Workers' Union (FAWU).¹¹²

2.4 RACE COLLECTIVISM

Racialism has always been a matter of dispute in South Africa. The white mine owners and officials in reproduction, production and policing and the institutions of black trade unionism have been shaped by models of ethnicity and hidden political economy of regimentals and masculinity.¹¹³

1922 demonstrated the white South African state's determination to defend itself from rebellion with extreme violence if necessary against its own racial kin, whether Afrikaner or British South African. Rodney Warwick argues that this is the precedent which the post 1994 ANC government has shown itself prepared to match with state forces already utilised against black uprisings.¹¹⁴

Some of the key elements that drove Marikana events to their horrible conclusion especially the unions' organisational dependence on ethnic gangs and the power of forms of masculinity were present on the gold mines in the first months of the South African democracy.¹¹⁵ On 16 June 1994, workers at one of the oldest Witwatersrand mines in the east attacked the Zulu-speaking men brutally killing two of them.¹¹⁶ This event, one of hundreds of similar acts of violence in the mid-1990s, was explained as

¹¹¹ Aboobaker "New union to have 'fresh ethos'" (28 June 2015). <http://www.iol.co.za/business/news/new-union-to-have-fresh-ethos-1.1877347> (accessed 15-08-25).

¹¹² Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af9031>.

¹¹³ Breckenridge "A warning, missed" (1994) <http://wiser.wits.ac.za/content/warning-missed-10828> (accessed 2015-06-30); Breckenridge "A warning missed" (01 February 2014) <http://wiser.wits.ac.za/sites/default/files/Breckenridge-2014-Marikana.pdf?&session-id=194ba0854032f47edecb9d2ca1bdc3b8> (accessed 2015-06-30) 1.

¹¹⁴ Warwick <http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution-1>; Warwick http://historymatters.co.za/white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick/?utm_source=rss&utm_medium=rss&utm_campaign=white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick&session-id=01b37d924c8fda0daada317f9193f0b5 1.

¹¹⁵ Breckenridge <http://wiser.wits.ac.za/content/warning-missed-10828> 1.

¹¹⁶ *Ibid.*

yet another instance of normal traditional ethnic conflict.¹¹⁷ A crude sociology operated on the mines had the effect of isolating a small number of Zulu workers, attributing politics to them and affiliations that effectively isolated them from other workers, making the small numbers of migrants from KwaZulu and Natal very vulnerable at moments of crisis.¹¹⁸

The success of NUM in mobilizing and rallying mine employees in the compounds, especially after the strike in 1987 was driven in part by the union's reliance on secret networks of migrant solidarity which was modelled on memories and institutions¹¹⁹ of regimentals. In the history of South African mining, migrant system and violence, the power of the old stereotypes of the Tshangaan, the brave Swazi and the violent Mpondo remains undiluted in the present, as Marikana reports demonstrate.¹²⁰

The relationship between the union and the corporations changed after a massive strike in 1987 that saw NUM throw its weight behind the popular struggle against white authority. Mines like the old East Rand looked for alternatives to NUM and found them in the form of unions supported by Inkatha Freedom Party (IFP). In the effort to break into a mine that was dominated partially by a long history of racial paternalism and in part by the self-consciously counter-revolutionary unions of the IFP, NUM found itself drawing on the secret regimental organisations of Xhosa speaking migrants, mostly from Pondoland.¹²¹ This was the same tightly organised and fiercely violent migrant organisation that NUM faced at Marikana and the amabutho provided NUM with the keys to the compound. In the compound the Zulu-speaking men immigrants were attacked in 2008 because they were viewed by ANC-allied as undeserving citizens who were enjoying their freedom.¹²² The amabutho, in the meantime, vanished into the shack settlements around the abandoned compounds. These are the same themes that featured in Marikana. Many of the same sources of brutal conflict have since engulfed the platinum mines. The face of the mine owner changed to a new black empowerment company which rapidly

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

engaged in conflict over the basic elements of mine management with the most powerful NUM, which used ethnic patronage to control all appointments on the mine.¹²³

For quite some time after Mr Mathunjwa's expulsion from NUM, AMCU took the shape of a tribal formation that sought to represent Zulu-speaking employees from northern KwaZulu-Natal, specifically the former coal-mining towns of Nongoma, Dundee and Vryheid.¹²⁴ The same element featured in Marikana as most of the RDOs represented by Marikana AMCU come from Eastern Cape.

2 5 CONCLUSION

Looking at the history of collective bargaining, it can be identified how collective bargaining was established, changed and developed over the years.¹²⁵ The above information covers a lot of history of a community sorting itself out politically, socially and its industrial relations. This sorting out process was a painful journey which once again led to labour enticed actions being to a larger extent the driving force behind political change.¹²⁶

The scars of the past could however not be removed so easily since the Wiehahn Commission, changes in the labour legislation and accommodation of the union demands also did not remove the adverse approach or instill trust between the parties across the shop floor or between labour, employers and government.¹²⁷ The first real and significant labour unrest, the Witwatersrand miner strike, rocked South Africa to the core in 1922 and in 2012. Ninety years later the Marikana massacre following the Lonmin/Marikana unprotected strike, gave a clear message that organised labour is power that needs to be respected at all times and that the workplace is an extension of the community in which it is situated. It is therefore inevitable that the workplace is also influenced by the socio-political and socio-economic climates. From early on in history labour learnt that it has more power in

¹²³ *Ibid.*

¹²⁴ Biyase <http://www.bdlive.co.za/national/labour/2013/04/14/how-amcu-became-so-powerful> 1.

¹²⁵ Harrison *Collective Bargaining Within The Labour Relationship* 65.

¹²⁶ K & S Consultants Paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 16.

¹²⁷ K & S Consultants Paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 13.

numbers and that they are more able to enforce demands when acting collectively. Actions by unions to determine their own destinies incorporate both wider social and workplace dimensions. Labour is a phenomenon of societal functioning; it is impossible to divorce politics from labour sentiments or to prevent political influences to be reflected on the shop floor.¹²⁸

“The 2012 strike wave and the Marikana massacre not only altered the balance of forces on the ground against the NUM but also generated divisions within COSATU between those who decided to remain deaf to the workers’ call for change and those who had already started to realise that a decisive turn in economic policy was needed to avoid a social and political crisis. NUM’s collapse is indeed part of a series of recent failures for COSATU.”¹²⁹

In many ways, Marikana inaugurated a new cycle of struggles; the traditional face of the working class is at the centre of most recent struggles and helped to define the new oppositional subjectivities.¹³⁰ Marikana highlights how the mining industry hasn’t changed much in over the past 100 years. The collective bargaining architecture in South Africa has been shaped by workers’ struggles.¹³¹ Movement emerged from the mines and as mining created South Africa’s economic infrastructure, so it changed the country’s social culture¹³² and became the principal shaper of the country’s history. Marikana might be a turning point.

¹²⁸ K & S Consultants Paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 18.

¹²⁹ Botiveau <http://afrax.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af9031>.

¹³⁰ Naidoo 2015 *The South Atlantic Quarterly* 441.

¹³¹ Motale <http://www.iol.co.za/news/why-strikes-are-so-violent-1719501> 1.

¹³² Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1; Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

CHAPTER 3

FROM WITWATERSRAND TO MARIKANA

3 1 INTRODUCTION

Strike action, street violence, and violent protest in the gold and platinum mines in South Africa, including the deeply troubling clash between strikers and police at the Marikana mine in Rustenburg in 2012, brought protest action to the forefront of political discussions in South Africa. These strikes represent just one portion of a growing set of strike actions undertaken in recent years in South Africa.¹³³

South Africans have a tradition of taking to the streets in protest when unhappy about issues and this tradition did not spring up during the apartheid era but has been around from as early as 1922.¹³⁴ The Rand Rebellion of 1922 by white miners lasted for three months before being suppressed by the military. A strike wave in 1973 led to the appointment of the Wiehahn Commission, whose recommendations in 1979 kick-started a series of legislative reforms that created space for the social movement unionism, which catalysed political change, providing the civil society legs for the country's transition to democracy in 1994.¹³⁵

It is not possible to divorce the powerful history of mining from the South African story, from the diamond fields in Kimberley to the discovery of gold on the Witwatersrand in 1886, where the Randlords' focused on cheap, unskilled labour in the 1900s to the tragic events at Marikana in 2012.¹³⁶

¹³³ Holmes "United in Diversity or Divided in Difference: Belonging and Opposition in Democratic South Africa" 2012 2 *Southern African Peace and Security Studies* 1 11; Twala [http://saccps.org/portuguese/pdf/1-2/all1\(2\).pdf?&session-id=0fe2b9eb502e5282181328ed181a7ce4](http://saccps.org/portuguese/pdf/1-2/all1(2).pdf?&session-id=0fe2b9eb502e5282181328ed181a7ce4) 62.

¹³⁴ SRK Consulting South Africa "South Africa's Mining Industry: A Case for Partnerships" 2013 9 *Inside Mining* 94 94.

¹³⁵ Anstey 2013 *South African Journal of Labour Relations* 136.

¹³⁶ SRK Consulting South Africa 2013 *Inside Mining* 94; Michaelpes "Dolvin Blog" (19 August 2014) http://www.smiling-dolphin.com/my_blog/see/163/marley_and_me/page_5?&session-id=12acf0f563230efb458f67ad238ca4dd (accessed 2015-10-10) 1.

3 2 THE DISCONTENT OF STRIKERS

The Anglo-Boer/South African War of 1899 to 1902 caused extreme disruptions in the mining industry. At some stage mines were closed, which led to considerable loss of capital. In addition a racially hierarchical division of labour had developed in the mining sector, whereby the supervisory and skilled jobs were performed by whites, while unskilled and the poorly paid labour was done by African and coloured labourers.¹³⁷ When the Chamber of Miners gave notice to abandon the agreement in place with the intent to replace 2000 semi-skilled white miners with cheap black labour, the white workers reacted negatively as their jobs were threatened. Among other things the white mine employees perceived their work being highly dangerous and unhealthy conditions was the means by which their employers maximised profits and their own luxurious lifestyles. At the same time the mining magnates were working closely with Smuts' government, who provided political support for the industry.¹³⁸

Periodic industrial actions were launched throughout 1921 until the end of the year. This situation gave rise to the 1922 Rand revolt, one of the watershed moments in South African labour history. The Rand revolt was an armed uprising of white miners in the Witwatersrand mines of South Africa, in March 1922. The revolt started as a strike by white mineworkers on 28 December 1921 and shortly thereafter, it became an open rebellion against the state. The young Communist Party of South Africa (CPSA) took an active part in the uprising on grounds of class struggle while opposing racist aspects of the strike.¹³⁹

¹³⁷ Pruitt "Rand Rebellion South African History Online towards a People History" (not dated) <http://www.sahistory.org.za/topic/rand-rebellion-1922>(accessed 2015-09-09) 1.

¹³⁸ Warwic <http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution> 1; Warwick http://historymatters.co.za/white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick/?utm_source=rss&utm_medium=rss&utm_campaign=white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick&session-id=01b37d924c8fda0daada317f9193f0b51.

¹³⁹ Pruitt "<http://www.sahistory.org.za/topic/rand-rebellion-1922> 1; Davies "The Miners' Strike of 1922" (September 2014) http://samapsandflags.co.za/Collectibles/Battlefields/SA_Battlefields_Map_Events.pdf?&session-id=3d8d85b4a8780f446c921b249efd87b5 (accessed 2015-09-20) 1; Warwick "The Rand Revolt strikers stronghold at Fordburg Square falls the government" (Not dated) <http://www.sahistory.org.za/dated-event/rand-revolt-strikers039-stronghold-fordsburg-square-falls-government> (accessed 2015-09-20) 1.

Prior to the Marikana shootings, dissatisfied rock-drill operators started to seek better conditions and wages but felt they were ignored by both the mine management and the NUM. Wage bargaining at Implats in 2011 was protracted, starting in late April and ending in October when a two-year collective agreement was signed. During the negotiations, RDOs had managed to negotiate an increase for themselves.¹⁴⁰ Implats management recommended additional adjustments for RDOs but was rejected by NUM negotiators who preferred uniform increases across all employee bands irrespective of job nature.¹⁴¹ Within a month, however, management decided, after consulting NUM, to unilaterally adjust the pay of miners by 18 per cent, halfway through the first year of the collective agreement. RDOs received a smaller increase than originally negotiated for and it angered them because of the perception of unfair treatment at the hands of management and NUM leadership.¹⁴²

“The workers, most of them RDOs, had gone on strike in support of a demand for a minimum monthly wage of R12 500, a pay raise of 100 per cent, which was far more than they were being paid at that time. It was the latest episode in a wave of unrest in the platinum mining industry during which workers rejected their recognised union, NUM and went on strike on their own. Some were affiliated to a rival union, AMCU, which had not yet been recognised by mine management.”¹⁴³

At Marikana, among other grievances, miners fought for better working and living conditions as well as better wage against an employer and against lack of concern for workers by management.

3 3 COLLECTIVE VIOLENCE AND ITS REPETITION

In the Witwatersrand mines, while the trade union leadership were failing to advance the workers' cause, groups of strikers formed in mid-January 1922 known as commandos, were growing in strength and in influence. Organised on semi-military lines, they elected commandants, generals and captains. They were present in

¹⁴⁰ Hartford “Alienation, paucity and despair make for toxic catalysts” (12 October 2012) <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> (accessed 2014-08-28) 1.

¹⁴¹ *Ibid.*

¹⁴² Ngcukaitobi “*Strike Law, Structural Violence and Inequality in the Platinum Hills of Marikana*” 2013 34 *ILJ* 3; Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1.

¹⁴³ Jika, Ledwaba, Mosamo and Saba *We are going to kill each other today, The Marikana Story* (2013) 1.

districts and sub-districts and in every town on the Witwatersrand. Although they kept in touch with the local strike committees and some were formed by trade unions, they acted autonomously.¹⁴⁴ Weeks before the strike, Afrikaner militants began to assert amongst the miners who formed in *commandos*, drilling with arms, reflecting British and Boer military cultures. By mid-March 1922, the East Rand, in particular Germiston, Brakpan, Boksburg and Benoni, thousands of working men turned out under arms, estimated from 10 000 to 15 000 men, belonging to different commandos ranging from the east to west Rand.¹⁴⁵

Returning to Marikana, the miners, particularly the RDOs, that constituted the core of the strike, held fast to their informal workers committee¹⁴⁶ called *Amadoda*.¹⁴⁷ In the mist of the wage demand, tensions appear to have escalated and workers took to a hill adjacent to the Marikana mine as their common meeting point. It was at this hill and its surrounding field where the miners held their regular meetings, sent off the delegation to Lonmin and strategised to bring pressure on Lonmin to meet their demands.¹⁴⁸ 3 000 men followed the routine of gathering on a granite koppie in the area, armed with traditionally weapons. The strike had become increasingly violent. It emerged that strikers had killed two policemen, two mine security guards and several other mineworkers' days prior to August 16. Displaying an almost military discipline, the strikers moved around in armed formations and sometimes sat in eerie silence.¹⁴⁹

Fairbanks explained the position as follows:

¹⁴⁴ Higson "The general strike of 1922" (29 October 2003) <https://www.marxists.org/history/etol/revhist/supplem/hirson/1922.html> (accessed 2015-10-01).1.

¹⁴⁵ Warwick http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution_1; Warwick http://historymatters.co.za/white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick/?utm_source=rss&utm_medium=rss&utm_campaign=white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick&session-id=01b37d924c8fda0daada317f9193f0b5 (accessed 2015-09-20)

¹⁴⁶ Van Niekerk http://www.saslaw.org.za/2012conference/STRUCTURAL_%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022 1.

¹⁴⁷ A Xhosa word referring to men. The term is used to make a distinction between boys and men, the former being *amakhwenkwe* and the latter, *amadoda*.

¹⁴⁸ Jika *et al* *We are going to kill each other today* 1; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

¹⁴⁹ *Ibid.*

“But something was different this time. The Marikana strikers’ anger was mainly directed at the country’s black political leadership, particularly the NUM, a trade union that was famously active in the black-liberation struggle and that currently forms part of the ANC led ruling coalition. The level of their anger was much greater. They torched cars and fought with those still loyal to NUM and by the time they gathered on the soccer field, several among them were dead. There was a sense that the protest had a greater, more dangerous significance than an ordinary strike. Poor blacks seem to feel as frustrated with the democratically elected black government as they did with the apartheid-era white one and the government seems inclined to crack down on them in the same brutal ways the old white government did.”¹⁵⁰

Both strikes displayed elements of collective violence. Collective violence can only happen once a large number of people with access to weapons and their social power or political enfranchisement begin to feel a daily psychological discomfort with the way the political order interprets and caters for their expectations. Collective violence does not happen all the time, it rather takes to concentrate in large waves and subside for a substantial period of time. Often there are devastating attacks on people and property. Tracing the significant peaks and troughs of collective violence boils down to what kind of process intervene between the acquisitions of violent promoting ideas and a direct hand causing mayhem.¹⁵¹ This is what largely happened at Witwatersrand and Marikana.

3 4 THE GENERAL STRIKE

In January 1922, 22 000 white miners downed their tools and went on strike in what became known as the Rand Rebellion or the Red Revolt. Eventually the strike was crushed by the Smuts government by sending in the defence force resulting in 153 miners being killed, 500 wounded and 5000 being arrested of whom 4 were later hanged for treason. The breaking of the strike also resulted in the virtual destruction of the white trade unions’ bargaining power. Hundreds of white miners were subsequently laid off and those who were not, had to be satisfied with lower wages and the deskilling of certain jobs.¹⁵²

¹⁵⁰ Fairbanks 2013 *The New Republic* 28.

¹⁵¹ Higginson *Collective Violence and the Agrarian Origins of South Africa, Apartheid 1900-1948* (2015) 22.

¹⁵² SAHO “About 22000 miners on Witwatersrand Gold Mines go strike in what became known as the Rand Rebellion (9 January 1922)” <http://www.sahistory.org.za/dated-event/about-22-000-miners-witwatersrand-gold-mines-go-strike-what-became-known-rand-rebellion> (accessed 15-09-15).

August the 16th of 2012 began like any normal day at Marikana, with a wildcat strike which had been on for weeks but its end was very tragic with 34 people dead, 78 wounded, others were arrested and charged with murder but charges were later withdrawn.¹⁵³ The massacre has been the most publicised aspect of the recent turmoil and highlighted how the features of the apartheid system have been preserved and reproduced. The unfortunate incident transformed individuals concerned from illegal strikers into martyrs.¹⁵⁴ The incident was the final precipitating factor in a long line of happenings and the extreme point and use of violence. The Marikana strike was followed by similar strikes at other mines across the country and they collectively made 2012 the most protest-filled year in South Africa since the dawn of democracy.¹⁵⁵ Ngcukaitobi explains the situation as follows:

“Comparisons between the Sharpeville massacre of 1961, the Soweto massacre of 1976 and the Bhisho massacre of 1992 were bandied about, with reckless abandon. The tragedy lay not only in the scale of the deaths but also in the brutality of the violence and the manner in which the killings were executed. Unlike the Soweto massacre or the Sharpeville massacre, the Marikana tragedy did not start as a political event with a political end in sight. It started as a labour dispute about higher wages. Wage disputes are common in South Africa but the industrial action that followed the wage dispute did not enjoy statutory protection under the LRA, meaning it was unprotected strikes. Now the question is; how did a wage dispute transform itself into a tragic political event?”¹⁵⁶

In many respects, the Witwatersrand reference is appropriate. The breaking of the strike also resulted in the virtual destruction of the white trade unions' bargaining power. Hundreds of miners were subsequently laid off and others deskilled for certain jobs.¹⁵⁷ In both instances the existing collective agreements were unilaterally sidestepped by workers and undertakings of industrial peace in existing agreements were broken. Demonstrators assembled illegally but in the Witwatersrand era the

¹⁵³ Ngcukaitobi 2013 *ILJ* 2 ; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

¹⁵⁴ Ashman and Fine 2012 *Think Africa Press* 1; Ashman and Fine <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> 1.

¹⁵⁵ Poe “Alex Lichtenstein on *Marikana*: View from the Mountain and a Case to Answer” (15 January 2013) *LAWCHA* 1.

¹⁵⁶ Ngcukaitobi 2013 *ILJ* 2.

¹⁵⁷ SAOH “About 22000 miners on Witwatersrand gold mines go on strike in what became known as the Rand Rebellion” (not dated) <http://www.sahistory.org.za/dated-event/about-22-000-miners-witwatersrand-gold-mines-go-strike-what-became-known-rand-rebellion> (accessed 15-08-25).

laws were unjust, while at Marikana they were merely being applied incompetently, albeit with equally tragic consequences, yet on a symbolic level the analogy is appropriate. Both massacres represent thresholds. The consequences of Marikana might be less dramatic but the massacre will nonetheless come to draw a similar line between one era and another, with lives lost at the crossing.¹⁵⁸

3 5 EFFECTS OF THE STRIKE

The general strike of 1922 was one of the most traumatic events in the struggle of the mainly white working class against their employers and the South African state. Although it started as a dispute against wage cuts on the mines, the strike developed into a revolt and ended with the aerial bombardment of portions of Johannesburg and the Witwatersrand. The workers were pounded into defeat, leaders of the strike were killed or committed suicide and three men died on the scaffold.¹⁵⁹

It was a pitiless struggle, leaving the organisations that had been actively engaged in the strike severely weakened. The trade union movement went through a period of dormancy and the white miner's organisation, almost destroyed as a result of the strike, was effectively incorporated into the state machinery. The Communist Party suffered a decline that left it ineffective over many years. The strike also had a profound effect on the political future of South Africa.¹⁶⁰ The incumbent government of General Smuts was defeated at the polls by a coalition¹⁶¹ government of the National and the Labour Parties in 1924, leaving the way open for National Party hegemony, until it merged with the South African Party in 1934.¹⁶² Similar elements were present at Marikana:

"The strikes also threw the labour movement into acute crisis, as many members of the NUM resoundingly rejected the union's politically powerful but industrially conservative leadership. Some even joined AMCU, a rival union formed in 1998. Furthermore, most notably at Lonmin and elsewhere, workers sought to negotiate

¹⁵⁸ Gevisser "The Marikana Moment" 2012 *The Nation* 8.

¹⁵⁹ Warwick <http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution> 1.

¹⁶⁰ Davenport <http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27> 1.

¹⁶¹ Davies http://samapsandflags.co.za/Collectibles/Battlefields/SA_Battlefields_Map_Events.pdf?&session-id=3d8d85b4a8780f446c921b249efd87b5 1.

¹⁶² Warwick <http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution> 1.

with employers directly rather than through union representatives.¹⁶³ Informal groups attempting to negotiate undermined this relationship is an indication that "Workers have lost faith in industrial relations systems." This loss of faith has been in the making for years."¹⁶⁴

Beyond the economic uncertainty, created by the continued industrial action, its political consequences¹⁶⁵ were visible during the 2013 election with the rapid decline of the dominant trade union and the model of party-labour relations associated with it and that posed a serious challenge to South Africa's dominant party system.¹⁶⁶ Although the ANC secured another five-year term for President Jacob Zuma, it experienced a reduction in support at the polls with the simultaneous rise of new parties like Economic Freedom Fighters (EFF). The continuing labour unrest represents the significant internal crisis that faces the ruling Tripartite Alliance composed of the ANC, COSATU ¹⁶⁷ and the SACP since it came to power. The recent decision by NUMSA to withdraw its support for the ANC underlines the severity of the crisis.¹⁶⁸

3 6 SOCIO-ECONOMIC AND MIGRANT LABOUR SYSTEM

The majority of employees at Lonmin and other platinum mines are migrant workers. Most of the RDOs come from Eastern Cape where issues of education and employment are still a crisis with the highest unemployment rate. Given the struggling education system, skills and work opportunities are few, forcing job seekers to migrate. Most mineworkers in Marikana live in rented or self-built one-roomed shacks in the informal settlements of Nkaneng and Wonderkop. Many opted to live outside the hostels in order to receive a R1850 housing allowance and visitors for longer periods. This cost-effective solution allows them to repatriate some of

¹⁶³ Ashman and Fine "South Africa: The Meaning of Marikana" 2012 *Think Africa Press* 1; Ashman and Fine <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> 1.

¹⁶⁴ Swart "Labour action a breakdown in collective bargaining" (28 September 2012) <http://mg.co.za/article/> (accessed 2012-12-12).

¹⁶⁵ Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903> 1.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ Botiveau "Briefing the Politics of Marikana and South Africa's Changing Labour Relations" 2014 113 *Oxford University Press* 128-129.

these allowances to their home places.¹⁶⁹ The salaries are extremely low when regard is made to the social and economic challenges faced by the miners.¹⁷⁰

“The RDOs also have long standing perceptions of underpayment relative to other mineworkers. Unlike the gold sector, there are no serious service increment differentials for RDOs in the platinum sector or other significant allowances. And as such, there are few real cash incentives to do RDO work. In addition, there is no prospect of any career progression for RDOs, given their functionally illiterate status and the structure of the mining work team in respect of job categories, which requires basic academic training for advancement to blasting certificate status. They are a class of people who have gained the least from post-apartheid South Africa, a recipe for social alienation.¹⁷¹

After long hours of labour, the RDOs come back to the informal settlements with little evidence of service delivery, without basic services like water, electricity and ablution facilities with raw sewerage spills which are a health risk to these communities. The absence of local services has implications for law and order. In some settlements, vigilantism prevails representing no-go areas for SAPS. It is not surprising to find that violence is a common means of resolving personal and community disputes and that the same manifests itself in industrial disputes. There are also claims of corruption and mismanagement by local authorities and councilors. Allegedly, in some cases, substantial money paid over by mining companies to local authorities as part of social community plans, have not reached the target communities. It is alleged that such monies no longer exist and as such the socio-economic development initiatives are, in many cases, stop-start affairs with irregular sustainability, with initiatives to uplift local communities appearing to be short-lived. This would make it seem that mines are not seen as an integral part of the community despite the financial contributions made and there is the risk that community members will join in labour protests and disputes adding to the potential volatility and the risk associated therewith. Perhaps it is time that more of these monies are used directly to support local communities¹⁷² and is surprising that the recipients of such monies are not called to the Farlam commission to account.

¹⁶⁹ Fuzile “Strike was fueled by empty stomachs” *Daily Dispatch* (25-09- 2012). <http://www.dispatch.co.za/strike-was-fuelled-by-empty-stomachs/> (accessed 2012-12-12).

¹⁷⁰ Van Niekerk http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE_%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022 1.

¹⁷¹ Jika et al *We are going to kill each other today* 2013 161.

¹⁷² Lexis Nexis *Watershed Events for South Africa's Labour Relations System* Beaumont's Seminar (06 to 08 November 2012) 1.

The extreme poverty and inequality in South Africa provide the social and economic context for heightened expectations of wage increases. Combined with these factors of poverty and inequity, the harsh reality of the migrant labour system, including the double family burden borne by many migrant workers, together with their demanding and dangerous working conditions has further inspired migrants to go to the forefront of the industrial action.¹⁷³ All of these socio-economic features provide a contextual tinder box to fuel the fire of the mineworkers' anger and does not explain why institutions and processes of collective bargaining have failed dismally to proactively address these factors, let alone contain the strike action itself.¹⁷⁴ To find the reasons for this failure, we need to examine exactly why and how the relevant collective bargaining institutions have failed the parties so dismally.¹⁷⁵ The events that led to the Implats strike action and its resolution are instructive for distilling the underlying trends in and drivers of the industrial action that swept the industry. The question is; how did this strike come about? ¹⁷⁶

The brutal migrant labour system remains intact long after it was introduced. Ashman and Fine describe the system as follows:

"The migrant labour system, as established by the mining houses at the end of the 19th century, entailed the devastation of the 'labour sending' areas regions economically dependent on mineworkers' remittances. The Eastern Cape supplied labour to the gold mines of the Witwatersrand from the 1890s onwards and the area remains today a 'labour sending' area as well as one of the poorest regions in the country."¹⁷⁷

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- ¹⁷³ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1; Vavi and Kunene "Mining industry strike wave" (Oct/Nov 2012) <http://www.cosatu.org.za/docs/shopsteward/2012/oct-nov.pdf?&session-id=5ab9cf7909c228cc480efb0c14b3aab0> (accessed 2014-09-29) 1.
- ¹⁷⁴ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1.
- ¹⁷⁵ Jika *et al* *We are going to kill each other today* 2013 165.
- ¹⁷⁶ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1.
- ¹⁷⁷ Ashman and Fine 2012 *Think Africa Press* 4; Ashman and Fine <http://www.thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> 4.

3 7 THE ROLE OF TRADE UNIONS TOWARDS MARIKANA

Much has been said about the role of the South African trade unions¹⁷⁸ in the restructuring of work and transition to democracy. However, not much is said about the perceptions of affiliates on the manner in which their trade union leaders deal with various aspects relating to conditions of employment.¹⁷⁹ Ideally, union's responsibility is to the welfare of its members in return of its members' contributions and loyalty for the purpose of protecting their interests.¹⁸⁰ The Marikana tragedy did not only highlight the conflict between workers and the mine owners and managers but also within unions and their rank-and-file members since the rank-and-file members are not only critical of management motives but also question the motives of the trade union leaders.¹⁸¹

Pre 1994, workers saw unions involved in the bread-and-butter issues and workers saw political and bread-and-butter issues as part of the anti-apartheid struggle but now that fails because broader policies are shaped at a political level. Post 1994, improving living conditions outranked the political struggle in workers' minds. Because of that, unions lost their best leaders to politics and enjoy better perks. Such perks fed the worker perception that the unions had stopped fighting for them and are focused on enriching themselves. In the 1980s, union representatives used to walk; now they drive luxury vehicles.¹⁸² Workers have lost faith in industrial relations systems.

History tells that by the middle of the twentieth century, a number of black men pulled a stance on the mines by reacting to the pass system used by the National Party to regulate black labour. The mines became the staging ground for one of the most effective phases of the black resistance to white rule.¹⁸³ It took Cyril Ramaphosa,

¹⁷⁸ Dhlwayo Consultancy Africa Intelligence <http://www.consultancyafrica.com> 1.

¹⁷⁹ Phakathi "Membership-Leadership Conflict within a Trade Union on a South African Gold Mine: A Worker Perspective and Reflection on Marikana" (June 2013) <http://column.global-labour-university.org/2013/06/membership-leadership-conflict-within.html?&session-id=13fb383a71251e2db73c641b98211729> (accessed 2015-09-10) 1.

¹⁸⁰ Phakathi <http://column.global-labour-university.org/2013/06/membership-leadership-conflict-within.html?&session-id=13fb383a71251e2db73c641b98211729> 1. Swart <http://mg.co.za/article/> 1.

¹⁸¹ *Ibid.*

¹⁸² Swart <http://mg.co.za/article/> 1.

¹⁸³ Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1 ; Fairbanks <https://newrepublic.com/article/112499>

recruited by the anti-apartheid activists, to help run the newly formed NUM to channel the miners' anger into protest. He was to petition the mines' white management for organisational rights. Ramaphosa aimed at harnessing the discontent of NUM members to improve their work and living conditions as well as to challenge the apartheid regime.¹⁸⁴ In February 1987, at the union's fifth annual congress, NUM adopted the slogan "The Year the Mineworkers Take Control". Justifying the slogan, Ramaphosa argued that the state had been weakened by the wave of mass protest and that¹⁸⁵ a "dramatic transformation" was on the cards.¹⁸⁶ In the mid-'80s, multi-industry strikes led by miners, brought the apartheid economy, already crippled by international sanctions, to its knees.¹⁸⁷ NUM really helped deliver apartheid its deathblow.

"There is one big difference between then and now. Deputy President Cyril Ramaphosa and Mantashe both played prominent roles in the 1987 strike, Ramaphosa as NUM general secretary and Mantashe as one of his regional organisers. This time around, they appear to be sitting rather uncomfortably on the other side of the table."¹⁸⁸

Post Marikana, Eve Fairbanks conducted several interviews and captured different responses by miners and according to the miners:

"Cyril was one of us, someone who had come through, understood. That's why it's all the more ironic that, 20 years later, Ramaphosa has emerged as one of the chief enemies of the miners he once led to freedom."¹⁸⁹

[/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a](http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27). 1.

¹⁸⁴ Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1 ; Davenport (<http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27> 1; Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

¹⁸⁵ Davenport <http://www.miningweekly.com/article/the-1987-mineworkers-strike-2013-09-27> 1.

¹⁸⁶ *Ibid.*

¹⁸⁷ Stoddard and Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1 ; Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

¹⁸⁸ Butler "Platinum belt upheaval has parallels with 1987 strike" (13 JUNE 2014). <http://www.bdlive.co.za/opinion/columnists/2014/06/13/platinum-belt-upheaval-has-parallels-with-1987-strike> (accessed 2014-08-12).

¹⁸⁹ Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

A worker in the Impala's lamp house told a government representative who came to beg her to keep faith with NUM ¹⁹⁰that:

"I live in a shack. I have no money. You guys are eating. Your children are going to better schools. Ramaphosa has shares in the mine now, how can he speak for us?"¹⁹¹

"Malema will become president. But will he also forget the people? We wonder: Who will we believe? Who can we trust now? The same people we are complaining to turn out to be the people we are complaining about."¹⁹²

The above information is an indication that:

"Income inequality has actually widened since the end of apartheid in 1994. Driving this trend are so-called 'black diamonds'—wealthy blacks connected to the black liberation establishment whose fortunes have improved incredibly compared to the ordinary people they once represented. Ramaphosa serves as perhaps the most dramatic example. In October, he was discovered to have sent e-mails to Lonmin's management in the run-up to the Marikana massacre describing the company's striking miners as 'plainly dastardly criminal' and suggesting the police take action against them."¹⁹³

Black Economic Empowerment (BEE) as an affirmative action program introduced to address the exclusion of blacks from the South African economy but it provided an economic ladder to only the few, most educated and privileged blacks who invested in the same businesses such as mining that require cheap black labour.¹⁹⁴ Though it partially removed its association with skin colour, BEE deepened social inequalities and has opened up a great gap between the black elite and the black poor. Black leaders have substantially occupied former white identities.¹⁹⁵

¹⁹⁰ Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a> 1.

¹⁹¹ Fairbanks 2013 *The New Republic* 31.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1.

¹⁹⁵ Fairbanks 2013 *The New Republic* 31; Fairbanks <https://newrepublic.com/article/112499/julius-malema-anc-and-fight-south-africas-future?&session-id=033932a18474fb16acf95075f51cab2a>.

Jika states:

“The visible display of crass accumulation by union and political leadership fuels the fire of greater expectations among rank and file members. And there is no doubt that the gross and conspicuous over- spending by newly empowered black entrepreneurs and/or their colleagues in the white owner/ director class has deeply angered ordinary mineworkers and fuelled their demands ‘for a more reasonable slice of the economic cake.’ The vast inequity in remuneration structuring, where CEOs and owners earn thousands of times more than entry level miners, is not only morally untenable but also deeply insensitive to the conditions under which miners labour every day.”¹⁹⁶

In this context, Marikana marks the tipping point when the liberation movement moves close to becoming just another alienated party in power with the people losing faith in its transformative possibilities.¹⁹⁷

“One of the most significant changes, in the mining industry in particular, is the collapse of real constituency-based representation of members by shop stewards. Despite the fact that shop stewards are elected at the shaft level, they no longer account directly to members but prefer instead to move across shafts, mines and union offices above ground. Accountability to members has weakened as pressure to account to leaders higher up in the echelons has intensified. A number of features point to the emergence of union aristocrats who promote their own interests above those of rank and file members and that all the key decision-making structures with management are dominated.”¹⁹⁸

The current context presents an opportunity to trade unions to revisit what do in relation to member representation, organisation and also how they do these things. At the core, it is the reorganisation of employment relationships and the precariousness and separation this engenders, reinforces and perpetuates which provide the point of departure for any trade union that is serious about reflecting on its core business, organising and representing workers. There is a need to respond to the context by cultivating organisation and representation as sources of worker power, which provide a foundation for challenging the informalisation of rights and security.¹⁹⁹

¹⁹⁶ Jika *et al* *We are going to kill each other today* (2013) 165.

¹⁹⁷ Gevisser “The Marikana Moment” (8 October 2012) <http://workerseducation.net/2012/09/30/south-africas-marikana-moment/?&session-id=3106bb9f77d11dda2de9092fa88d6c2e> 2 3.

¹⁹⁸ Harvey “Marikana as a Tipping Point? The political economy of labour tensions in South Africa’s mining industry and how best to resolve them” 2013 164 *SAIIA* 1 1.

¹⁹⁹ Elsley, Mthethwa and Taal *Collective Bargaining Indicators* paper resented at COSATU Collective Bargaining, Organising and Campaigns Conference (13 March 2013) 3; Elsley, Mthethwa and Taal “Bargaining Monitor”(March 2013) <http://www.lrs.org.za>

3 8 CONCLUSION

The history of labour and collective labour cannot be considered without taking into cognisance of contemporary history and understanding of the events in the current labour arena to craft a way forward.²⁰⁰ In the average contemporary South African's historical consciousness, the Revolt strike is a long forgotten affair; but it has consequences as well as forewarnings for this country today. Today's middle class South Africans might find it difficult to appreciate the extent of hatred which the Witwatersrand strikers felt towards the Smuts government and the Rand Lords, who for the employees epitomised all the sins associated with greed and avarice.²⁰¹ But this is so relevant to the miners at Marikana.

The grim circumstances of 1922 are so far not yet removed from our current politics as some might assume. The political repercussions cut deep into the future. The tension between the state and powerful organised labour continues. The temptation remains for the current government; acting upon so many historical precedents, to use the army and police to resolve problems requiring a political solution.²⁰²

16 August 2012 was a key turning point of the strike and displayed that miners' strike has an integral place in the history of South Africa. Ever since mining began at the end of the nineteenth century, poor mine workers chafed against the mining enriched white establishment. Mine strikes in the 1980s kicked South Africa's black-liberation struggle into high gear by setting the stage for the fall of the white run apartheid government. In the 2000s, the strike at Marikana seemed like a continuation of this

[/docs/LRS_BM_Strategic%20Bargaining%20in%202013.pdf?&session-id=ea7446cc8ebbc0e0d75cf66e865c931f](#) (accessed 2014-10-10) 1; Elsley, Mthethwa and Taal "Collective Bargaining Indicators" (13 March 2013) <http://www.cosatu.org.za/docs/campbul/2013/cbi.pdf> (accessed 2014-10-10) 1.

200 K & S Consultants Paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 16.

201 Warwick <http://www.politicsweb.co.za/opinion/whiteonwhite-violence-the-1922-rand-revolution> 1. Warwick "History matters promoting citizenship and democracy in Africa by" (not dated) http://historymatters.co.za/white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick/?utm_source=rss&utm_medium=rss&utm_campaign=white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick&session-id=01b37d924c8fda0daada317f9193f0b5 (accessed 2015-09-20) 1.

202 Warwick http://historymatters.co.za/white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick/?utm_source=rss&utm_medium=rss&utm_campaign=white-on-white-violence-the-1922-rand-revolution-by-rodney-warwick&session-id=01b37d924c8fda0daada317f9193f0b5 1.

conflict between the rich whites and poor blacks with Lonmin's headquarters in London mostly managed by white managers.²⁰³ Fairbanks explains:

"While the conditions faced by the workers on the mines are often extreme and the social conditions shaped by the precariousness of migration, the events of Marikana suggest that nominal wage levels are not truly decisive in understanding the motivation of workers to strike. It could be argued that the NUM has won tremendous gains for workers in the mining industry since its formation in the mid-1980s. While wages are obviously important in shaping the material conditions of workers they are not generally capable of transforming material or social conditions, unless the wage level itself is radically transformed. We need to look beyond wages, the poster child of collective bargaining and of industrial action, to better understand the context."²⁰⁴

The South African trade union leaders' obsession with tripartite politics has rendered the union leadership ineffective in dealing with issues such the changing membership, meeting union members' expectations and managing the heightened political awareness of the rank-and-file members.²⁰⁵ It is the reorganisation of employment relationships and the separation that this engenders, reinforces and perpetuates which provides an important point of departure for any trade union that is serious about reflecting on its core business, organising and representing workers. The ability of trade unions to be seen to fighting the fight of workers is just as important as winning the fight.²⁰⁶

Lonmin may have set a precedent for wage settlements that could spread through an economy already saddled with globally uncompetitive costs. The wage cycle also took on a more structural tone; it is less about "X per cent" increases but rather "we need RX as a minimum wage".²⁰⁷ The spread of the wildcat strikes and the growing

²⁰³ Stoddard & Lakmidas <http://www.minesandcommunities.org/article.php?a=12184&session-id=d8719b0c04a03df9e120f43687988e9d> 1.

²⁰⁴ Elsley *et al* paper resented at COSATU Collective Bargaining, Organising and Campaigns Conference 3.

²⁰⁵ Phakathi <http://column.global-labour-university.org/2013/06/membership-leadership-conflict-within.html?&session-id=13fb383a71251e2db73c641b98211729> 1; Phakathi "Membership-Leadership Conflict within a Trade Union on a South African Gold Mine: A Worker Perspective and Reflection on Marikana" in *Global Labour Column* 2013 1.

²⁰⁶ Elsley *et al* paper resented at COSATU Collective Bargaining, Organising and Campaigns Conference 4.

²⁰⁷ Montalto "A failure to learn the lessons of Marikana will put mining at risk" *Business Report* 2013 1.

membership of the AMCU on the gold mines post-Marikana demonstrate that the origins of Marikana need not be confined to the Rustenburg.²⁰⁸

²⁰⁸ Phakathi <http://column.global-labour-university.org/2013/06/membership-leadership-conflict-within.html?&session-id=13fb383a71251e2db73c641b98211729> 1.

CHAPTER 4

THE LEGISLATIVE CONTEXT

4 1 INTRODUCTION

South Africa is both an old and new country in terms of the industrial relations. Although industrialisation commenced only at the end of the nineteenth century, South Africa had an Industrial Conciliation (Labour Relations Act) long before Great Britain had any comprehensive legislation governing labour relations. The South African labour/strike law can be traced back to 1922. The apartheid policies stratified the labour relations system until the late 1970's and left the country in a situation to constantly take quantum leaps to keep up with developments in the world.²⁰⁹

After April 1994 the country's labour law was amongst the first areas of law to be reformed²¹⁰ and the country's legislative framework for regulating labour relations was generally regarded as contradictory and disorganised. To rectify this, legislation to regulate labour relations was developed.²¹¹ Since then, the South African industrial/strike actions enjoy recognition and protection by law. The country's laws permit workers to embark on strike as amplified by the LRA which grants every employee the right to strike and every employer the recourse to lockout striking employees subject to limitations.²¹²

4 2 THE LEGISLATION FRAMEWORK ON COLLECTIVE BARGAINING

4 2 1 THE INTERNATIONAL LABOUR ORGANISATION (ILO)

Collective bargaining is regarded as a labour right and is recognised through international human rights Convention 87 concerning Freedom of Association (1947) and Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949) which allow employees and employers

²⁰⁹ Harrison *Collective bargaining within the labour relationship* 23.

²¹⁰ Bhoola "National Labour Law Profile: South Africa" (17 June 2011) http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang--en/index.htm (accessed 2015-09-09) 1.

²¹¹ Benjamin "Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)" 2013 *International Labour Office* 1 4.

²¹² Rapatsa and Matloga "The Practice of Strikes in South Africa: lessons from the Marikana quagmire" (2014) <http://borjournals.com/a/index.php/jbmssr/article/view/1687?&session-id=4f2ce0009ac6d4dd8f98ae488c12e26c> (accessed 2015-07-15) 1; See also s 64 of LRA.

to enter and conclude collective agreements. Article 23 of the Universal Declaration of Human Rights identifies the ability to organise trade unions as a fundamental human right and item 2(a) of the ILO's Declaration on Fundamental Principles. Rights at Work recognise freedom of association and the recognition of the right to collective bargaining as an essential right of workers.²¹³ South Africa as a member of the ILO has ratified both conventions which are regulated by the LRA.²¹⁴

4 2 2 THE CONSTITUTIONAL RIGHT TO BARGAIN

A new Constitution²¹⁵ was adopted in 1996, which entrenches fundamental rights. These rights which also reflect the labour arena are captured in various sections, for example:

- Section 7(3)-limitation of rights clause.
- Section 18: Freedom of Association
- Section 23(1)-(6): Labour Relations: Everyone has the right to fair labour practices; every worker has the right to form and join a trade union and to participate in the union's activities; every worker has the right to strike, every employer has the right to form and join an employers' organisation and to participate in the activities of the organisation and every trade union, employers' organisation and employer has the right to engage in collective bargaining.²¹⁶

The Constitution of South Africa confers the right to collective bargaining on every employer, employee unions and employer' organisation which are enshrined in the Bill of Rights (Chapter Two).

²¹³ Klein "Countervailing what? After unions"(28 February 2011) http://www.economist.com/blogs/democracyinamerica/2011/02/countervailing_what?page=2&sort=2&session-id=3106bb9f77d11dda2de9092fa88d6c2e (accessed 2014-09-09) 1.

²¹⁴ *Ibid.*

²¹⁵ 108 of 1996.

²¹⁶ Bill of rights; Bhoola http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang--en/index.htm 1.

4 2 3 THE LABOUR RELATIONS ACT

Collective bargaining is regulated by the LRA²¹⁷ and its interpretation by the judicial systems. In its preamble, the LRA encompasses the right to collective bargaining at the workplace and sectorial levels, regulation of strikes, lockouts as well as the establishment of workplace fora. The LRA establishes the platform for collective bargaining pronouncing the rights of the role players to freedom of association in chapter II.²¹⁸ According to Bhoola the key bargaining-promoting measures include:

- Organisational rights, which allow unions with a membership base to establish themselves in the workplace;
- the self-governance benefits flowing from participation and bargaining councils, particularly now that council agreements can override many of the restrictions imposed by the BCEA;
- the moral force of CCMA advisory awards under Section 64(2) in the event of the refusal to bargain;
- the socio-political leverage of NEDLAC, whose peak employer bodies cannot be seen to countenance a refusal by members to impress the collective bargaining ethic; and
- the right to engage in a protected strike over an employer's refusal to bargain.²¹⁹

The LRA gives effect to the Constitution and regulates collective bargaining by:

- conferring Organisational Rights (prescribing a procedure for acquiring them);
- giving Legal effect and regulation to collective agreements (CA); and
- promoting negotiation and providing a DR mechanism.²²⁰

The LRA gives effect to all three elements of the right to bargain.

²¹⁷ 66 of 1995.

²¹⁸ K & S Consultants paper presented at seminar on the Dynamics of collective bargaining in the workplace in Cape Town 31.

²¹⁹ *Ibid.*

²²⁰ Bhoola http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang-en/index.htm 1.

- Gives effect to the freedom to bargain collectively by providing the institutional infrastructure for voluntary collective bargaining at sector level and for the binding nature of collective agreements.
- Gives effect to the right to use collective economic power in the provisions relating to strikes, lockouts, replacement labour and picketing.
- Imposes a positive right and structure to bargain collectively in the public sector.²²¹

4 3 ORGANISATIONAL RIGHTS

The current labour system does not incorporate a compulsory duty to bargain but supports collective bargaining²²² through organisational rights being secured for representative trade unions under chapter III of the LRA. Sufficiently representative unions can acquire rights of access, stop orders and leave for union office bearers, though majority unions can acquire both shop stewards and access to information rights.²²³ However, it remains a system of voluntarism in which parties would determine their own bargaining arrangements through the exercise of power. In the *Hospersa v Zuid-Afrikaanse*,²²⁴ organisational rights are suggested as a means to enable unions to get a foot in the door of the workplace.²²⁵

Part A of Chapter III of the LRA²²⁶ establishes various organisational rights for the benefit of trade unions and regulates the granting of such rights to registered trade unions as found in the provisions of s23 of the Constitution. It further gives effect to the right to organise and participate in the activities of a trade union, within certain limits and provides a platform for the enforcement of organisational rights conferred

²²¹ *Ibid.*

²²² Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

²²³ Robertson "Worklaw Newsflash, Strike violence: A suggested legislative response" (August 2012) www.worklaw.co.za (accessed 2012-09-09) ; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

²²⁴ Unreported case no GA 637(CCMA) dated 3 February 1997.

²²⁵ Van Niekerk, Christianson, McGregor and Van Eck *Law@Work* (2008) 329.

²²⁶ 66 of 1995.

on representative unions in Part A but has no application to organisational rights sought outside Part A.²²⁷

Not all trade unions qualify for organisational rights, only those that are representative may acquire such rights in terms of the LRA. The act draws a distinction between sufficiently representative and sufficiently representative unions with majority support in the workplace.²²⁸

There are three organisational rights that a trade union or two unions acting jointly can exercise in the workplace where it enjoys sufficient representivity, namely:

- access to the workplace (s12 of the LRA);
- deductions of subscriptions (s13 of the LRA);
- leave for trade union activities (s15 of the LRA).²²⁹

Leppan indicates two more additional statutory rights can be exercise by a majority trade union in the workplace (or two or more acting jointly), such rights are as follows:

- The right to appoint trade union representatives/shop stewards (s14 of the LRA); and
- The right to disclosure of information (s16 of the LRA).²³⁰

4 3 1 WHAT DOES SUFFICIENTLY REPRESENTATIVE MEAN?

The LRA does not define what sufficiently representative is.

“In the *SACTWU vs Sheraton Textiles (Pty) Ltd*,²³¹ the Commissioner noted that a union is sufficiently representative if it can influence negotiations, financial interests of those engaged in the industry or influence peace and stability within an industry or any segment of that industry and made reference to the 30%

²²⁷ Leppan “Employment Case Law Update 2013: Organisational Rights” (2013) <http://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/legal/practice-areas/downloads/Employment-Case-Law-Update-2013.pdf?&session-id=12acf0f563230efb458f67ad238ca4dd> (accessed 2013-10 15) 4.

²²⁸ Van Niekerk *et al* *Law@Work* 329.

²²⁹ Leppan <http://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/legal/practice-areas/downloads/Employment-Case-Law-Update-2013.pdf?&session-id=12acf0f563230efb458f67ad238ca4dd> 4

²³⁰ *Ibid.*

²³¹ (1997) 7 SALLR 48 (CCMA).

numerical threshold which applies where a union(s) seek(s) to establish a statutory council at sectoral level on the basis of it being sufficiently representative.

*In the UASA & AMCU v BHP Billiton Energy Coal South Africa Ltd and another*²³² Prof Martin Brassey, indicated that the objective of s18 of the LRA is to enable parties to the agreement to attach a numerical figure to the somewhat indeterminate concept of 'sufficiently representative' which is required in terms of s12, 13 and 15 of the LRA. Moreover, Brassey states that the primary purpose of s18 of the LRA is to promote *workplace majoritarianism*, which is the system under which a single union or group of unions enjoy exclusive rights by virtue of its/their representivity in a workplace."

4 3 2 THE BACKGROUND OF ORGANISATIONAL RIGHTS AT MARIKANA

Prior to the Marikana events of 2012, NUM was the recognised trade union at Lonmin and other two major platinum producers, on the basis that, NUM represented the majority of their workers and enjoyed the above mentioned organisational rights. In May/June 2011, 8 500 striking workers at Karee mine were dismissed and automatically ceased to be members of NUM. The majority of employees were subsequently re-employed and some were not re-employed and referred the dispute to CCMA, assisted by AMCU. In July/August 2011, most of the re-employed workers did not re-join NUM but joined AMCU, making the majority trade union at Karee mine. AMCU was registered as a trade union in 2001 and its presence at Lonmin started at Karee mine in 2010.²³³

25 July 2011, AMCU had 1110 members at Karee Mine and requested organisational rights from Lonmin in terms of the provisions of the LRA: sections 12, 13, 14, 15 and 16. Failure by Lonmin, AMCU referred a dispute to the CCMA. Following conciliation on 10 November 2011, the CCMA issued a certificate entitling AMCU to strike over the organisational rights dispute.²³⁴

²³² (J 354/13).

²³³ The Institute of Development and Labour "The labour relations system and the Marikana Massacre: Report submitted to the Marikana Commission of Inquiry" 2014 *University of Cape Town* 1 6-8; Mathunjwa "Witness Statement" (not dated) <http://marikanacomm.org.za/exhibits/Exhibit-NN.pdf?&session-id=acc558d5e3186273e7db1392572511f9> (accessed 2015-10-17)

²³⁴ The Institute of Development and Labour 2014 *University of Cape Town* 6-8; Mathunjwa <http://marikanacomm.org.za/exhibits/Exhibit-NN.pdf?&session-id=acc558d5e3186273e7db1392572511f9> 1.

On 15 December 2011, AMCU entered into a recognition agreement with Lonmin and only got limited organisational rights at Karee mine. The organisational rights granted to AMCU in terms of the agreement were access to the workplace and stop order facilities only. The agreement further did not recognise AMCU as the bargaining agent, though it represented about 70% of category 4-9 workers constituted by miners and rock drill operators.²³⁵

4 4 COLLECTIVE AGREEMENTS

The objective of collective bargaining is to reach agreements between management and organised labour in terms of which their relationship is formalised, conditions of service and other matters of mutual interests are regulated in a specified period of time.²³⁶ Collective agreement can be defined as written agreement concerning matters of mutual interest concluded between a registered trade union and one or more employers, registered employers' organisation or one or more employers and one or more employers' organisation.²³⁷ In terms of section 18 of the LRA:

“An employer and a registered trade union, whose members are a majority of the employees employed by that employer in a workplace, or the parties to a bargaining council, may conclude a collective agreement establishing a threshold of representativeness required in respect of one or more of the organisational rights referred to in sections 12, 13 and 15.²³⁸

The Act requires that the parties are representative in order to have an agreement extended but the Minister retains the discretion to extend the agreement if the parties are only “sufficiently representative” and failure to extend the agreement would threaten bargaining at the sector level.²³⁹

4 4 1 THE BACKGROUND OF COLLECTIVE AGREEMENTS AT LONMIN

Lonmin entered into various collective agreements with NUM, UASA, NUMSA TAWUSA, Solidarity and AMCU and for the analysis of such *agreements* the Institute

²³⁵ *Ibid.*

²³⁶ Grogan *Collective Labour Law* 123.

²³⁷ S 213 of 66 of 1995.

²³⁸ S 18 of 66 of 1995.

²³⁹ Godfrey, Theron and Visser “The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining” 2007 07/130 *Labour and Enterprise Policy Research Group: University of Cape Town* 1 13.

of Development and Labour Law; University of Cape Town situated them to examine how these collective agreements have addressed key labour relations issues and their effect on the issues at Lonmin.

(i) Is the workplace a single place or several places for the purpose of recognition?

In the 2002 Central Recognition Agreement with NUM, UASA and Solidarity the workplace is a single place (i.e. Lonmin comprising Western Platinum and Eastern Platinum, excluding only the Western Platinum Refinery).

Separate recognition agreements are signed with NUM, UASA and Solidarity in 2011 that are to all intents and purposes the same. The agreement is with Lonmin Platinum as a single place.

In 2011 a Limited Organisational Rights agreement is signed with AMCU that applies to Lonmin Platinum at Karee Mine and the workplace is now two places. But the agreement envisages that AMCU will reach a threshold of 50% plus 1 at Lonmin Marikana Operations, at which point it will be granted full organisational rights, i.e. the workplace will again become one place.²⁴⁰

(ii) Is there one bargaining unit or more than one within the workplace as defined?

The 2002 Central Recognition Agreement refers to bargaining units but these are not defined. Given that the agreement recognises UASA and Solidarity it is likely that there were three bargaining units: the 3-8, artisans and miners and the officials categories.

The 2011 Recognition Agreement refers to two bargaining units: Category 3-9 Bargaining Unit; and the Category B and C Upper Bargaining Unit. 2011 Limited Organisational Rights agreement signed with AMCU makes no reference to a bargaining unit but a later addendum refers to one bargaining unit.

²⁴⁰ The Institute of Development and Labour 2014 *University of Cape Town* 6-8.

(iii) Is the threshold for organisational rights and collective bargaining rights the same or are there different thresholds within the bargaining unit (or units) as defined?

The 2002 Central Recognition Agreement grants the signatory unions the organisational rights in the LRA. It does not provide thresholds for achieving these rights. "Sufficiently representative" is defined as 33% of employees in a bargaining unit.

The 2011 Recognition Agreement provides for different thresholds for each bargaining unit: 50% plus 1 in the category 3-9 bargaining unit; and 20% plus 1 in the category B and C upper bargaining unit. These thresholds apply to organisational rights and collective bargaining rights in the two bargaining units and are granted on signing the agreement and have 15 months to meet the thresholds.

The 2011 Limited Organisational Rights agreement signed with AMCU grants only the rights of access and stop orders, although a later addendum adds trade union representatives, meetings and access to offices and facilities as well as participation in certain forums at Karee Mine. It does not grant collective bargaining rights. It should be noted that it does not set thresholds for these rights; as with previous recognition agreements these rights are granted on signature rather than with reference to a threshold. An obvious question is why AMCU received only limited organisational rights and was not given full organisational rights and collective bargaining rights like NUM, UASA and Solidarity, and also had 15 months to reach one or other of the thresholds.²⁴¹

(iv) Is there one threshold for organisational rights or different thresholds within the bargaining unit (or units)?

The 2002 Central Recognition Agreement granted the signatory unions all the organisational rights without reference to a threshold.

The 2011 Recognition Agreement provides for different thresholds for each bargaining unit: 50% plus 1 in the category 3-9 bargaining unit; and 20% plus 1 in the

²⁴¹ *Ibid.*

category B and C upper bargaining unit. These thresholds apply to all organisational rights without any differentiation in the two bargaining units.

The 2011 Limited Organisational Rights agreement signed with AMCU grants only the rights of access and stop orders, although a later addendum adds trade union representatives, meetings and access to offices and facilities as well as participation in certain forums at Karee Mine.²⁴²

(v) What is the threshold for stop order rights within the bargaining unit (or units)?

The 2002 Central Recognition Agreement did not set a threshold for any organisational rights, including stop order rights.

The 2011 Recognition Agreement provides for different thresholds for each bargaining unit: 50% plus 1 in the category 3-9 bargaining unit; and 20% plus 1 in the category B and C upper bargaining unit. These thresholds apply to all organisational rights, including stop order rights, without any differentiation.

The 2011 Limited Organisational Rights agreement signed with AMCU grants only the rights of access and stop orders, although a later addendum adds trade union representatives, meetings and access to offices and facilities as well as participation in certain forums at Karee Mine.²⁴³

(vi) Does the collective agreement set a threshold for stop orders for newcomer unions and what is that threshold?

The 2002 Central Recognition Agreement set a threshold of 33% within a 'currently recognised bargaining unit' for a new union to be recognised. There is no reference to what organisational rights such a union would acquire if it was recognised.

The 2011 Recognition Agreement provides that a newcomer union (or non-founding union) would need to achieve a threshold of 35% for any of the two bargaining units.

²⁴² *Ibid.*

²⁴³ *Ibid.*

The agreement does not refer to what rights such a union would obtain. The 2011 Limited Organisational Rights agreement signed with AMCU makes no reference to newcomer unions.

(vii) How does the agreement regulate how trade union representatives are elected, operated and removed?

The 2002 Central Recognition Agreement with NUM, UASA and Solidarity made provision for trade union representatives as per the LRA. However an addendum introduced provision for full-time shop stewards and full-time NUM branch chairpersons and secretaries.

The 2011 Recognition Agreement with NUM makes provision for part-time shop stewards and full-time shop stewards. Also, the top five branch committee members are designated as full-time as well as the shaft committee chairperson and secretary, some of whom could play a coordinating role.

This agreement provides that full-time shop stewards are paid at the rate for the job they held prior to their election and will get any increases that the equivalent jobs get during the term of their election.

An addendum to the 2011 agreement with AMCU makes provision for part-time and full-time shop stewards who are elected for a demarcated constituency in terms of the union constitution. It does not make provision for a coordinator or deal with the terms of office of either part-time or full-time shop stewards. The agreement is silent about who the shop stewards report to as well as the issue of their remuneration.²⁴⁴

Issues in question from the above analysis are the determination of thresholds and what constitutes a workplace and a bargaining unit. In this regard the principle of a trade union representing a majority in the workplace not being able to negotiate with the employer for thresholds to exercise the rights referred to in sections 12, 13 and 15 of the LRA being wrong but the manner in which this has in certain instances been done. In the case of Lonmin, different thresholds being applied to workers in the

²⁴⁴ The Institute of Development and Labour 2014 *University of Cape Town* 13-20.

bargaining unit, represents inconsistency in which the relations between different trade unions operating in the same workplace have been managed.²⁴⁵ The above analysis is an indication that whilst a variety of collective bargaining agreements have been negotiated, recognition agreements play a central role in the labour relations system that is in place at Lonmin and other platinum producers.²⁴⁶

“In the context of the events at Marikana, the parties to a collective agreement, including both employers and trade unions, may have a vested interest in maintaining a status quo that is perceived as beneficial to either or both parties and may set inappropriate or unfair thresholds for new entrants, such as a competitor trade union, which is illustrated by the 2011 recognition agreements between Lonmin and NUM, Solidarity and UASA respectively illustrate this danger. Can it be said that Lonmin together with NUM for this reason wanted to destroy AMCU and to restore NUM’s control over the sector?”

Given the situation of AMCU and NUM in the mining industry, the question is, to which extent should minority unions be granted organisational rights and be allowed to participate in collective bargaining?²⁴⁷

4 5 STRIKE ACTION

The right to strike is one of the fundamental rights of employees as given recognition by section 23(2)(c) of the Constitution²⁴⁸ and is given effect by section 64(1) of the LRA. The main purpose of this labour legislation in respect of strike action is to provide for regulated dispute resolution in the realm of collective bargaining before the commencement of strike action or legal action. Section 213 of the LRA defines a strike as:

“the partial or complete concerted refusal to work or the retardation or obstruction of work, by persons who are or who have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee and every reference to ‘work’ in this definition includes overtime work, whether it is voluntary or compulsory.”

²⁴⁵ The Institute of Development and Labour 2014 *University of Cape Town* 21.

²⁴⁶ The Institute of Development and Labour 2014 *University of Cape Town* 9.

²⁴⁷ Robertson “Worklaw Newsflash, Strike violence: A suggested legislative response” (August 2012) www.worklaw.co.za (accessed 2014-09-09).

²⁴⁸ Van Niekerk http://www.saslaw.org.za/2012conference/_STRUCTURAL%20VIOLENCE_%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022

4 5 1 PROTECTED AND UNPROTECTED STRIKES

One of the duties of the LRA is to regulate the strike and further distinguishes between protected and unprotected strikes.²⁴⁹ An industrial action that is staged after compliance with all the legal requirements assures protection, including immunity from dismissal and the reaches of civil legal²⁵⁰ proceedings (section 67(4) and (6) of the LRA) respectively.²⁵¹ Such participation does not constitute misconduct/breach of contract. If industrial action does not fall within the statutory definition, it is unprotected and participation in such a strike is considered as misconduct that may constitute a fair reason for dismissal (section 68(5) of LRA).²⁵²

Section 65 of the LRA sets out the circumstances which had to prevail and the procedures to be followed before a strike or lock-out is considered to be lawful, by specifying negative rights and circumstances under which a strike or lock-out may not be held. These limitations include:

“During the period of currency of any binding agreement, award or determination and any provision dealing with the matter giving rise to the strike or lock-out and which binds the parties concerned.”

The LRA requires that all disputes of interest be referred for conciliation prior to parties giving notice of strike or lock-out. Conciliation may take place at the CCMA, a bargaining council or in accordance with a collective agreement. No industrial action may take place in sectors that are defined as essential services and unresolved disputes in these sectors may be referred to compulsory arbitration.

²⁴⁹ Van Niekerk http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE_%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c_3295dfa540db0e_1fc9db79022 1.

²⁵⁰ Bhoola http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles_/WCMS_158919/lang-en/index.htm 1.

²⁵¹ Van Niekerk http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE_%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c_3295dfa540db_0e1fc9db79022 1.

²⁵² Ngcukaitobi 2013 *ILJ* 12; Van Niekerk http://www.saslaw.org.za/2012_conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022 1.

It is argued by different commentators that despite the above information the current provisions in the LRA have not prevented violence during both protected and unprotected strikes²⁵³ because

- It provides incentives such as protection for strike action.
- It does not prescribe criminal sanctions for unprotected strike action or protest action that does not comply with its provisions,
- Is save for instances such as contempt of court proceedings.²⁵⁴

Despite employees being granted constitutional rights to engage in collective bargaining and strike action, industrial actions are still characterised by a significant amount of violence and intimidation.²⁵⁵

4 5 2 LIMITATIONS TO STRIKE

There are limited circumstances in which a protected strike would avail a trade union that is denied rights such as access and stop order facilities, since any trade union seeking these rights will represent less than half the workforce. The remedies in respect of non-conforming or unprotected strike action include an application to the Labour Court to interdict and restrain unlawful conduct.²⁵⁶ However a protected strike was clearly viable at Lonmin's Karee mine in 2011, because AMCU seeking the organisational rights did in fact represent a majority of the workforce at the mine. This is explains why Lonmin acceded to their demand as indicated above.²⁵⁷

²⁵³ Van Niekerk. <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

²⁵⁴ Jazbhay "Right to know: Analysis and discussion on South African Law and jurisprudence" (14 December 2014) <http://saberjazzbhaylaw.blogspot.co.za/undefined?&session-id=3b49ffebea7a9b5c1ae20ef8d83184768> (accessed 2015-08-09) 1.

²⁵⁵ Jazbhay <http://saberjazzbhaylaw.blogspot.co.za/undefined?&session-id=3b49ffebea7a9b5c1ae20ef8d83184768> 1 ; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

²⁵⁶ S 68(1)(a) of 66 1995; Jazbhay <http://saberjazzbhaylaw.blogspot.co.za/undefined?&session-id=3b49ffebea7a9b5c1ae20ef8d83184768> 1.

²⁵⁷ The Institute of Development and Labour 2014 *University of Cape Town* 10.

4 5 3 REGULATION OF THE STRIKE

The objective of the Regulation of Gatherings Act²⁵⁸ is to regulate the holding of public gatherings and demonstrations at certain spots. In its preamble, the Act warrants every person the right to assemble with others, to express his/her views on any matter freely in the public domain and to enjoy the protection of the State while doing so. The Act further provides that the exercise of such right shall take place peacefully and with due respect to the rights of others. Section 11(1) of the Act creates a liability²⁵⁹ on the part of the organiser of a gathering to be liable for any riot/damage resulting from that gathering like in the *Garvis and Others v SATAWU*.²⁶⁰ The union embarked on a protected strike on 16 May 2006 in the Cape Town City Bowl. The strike escalated into a full scale riot leading to deaths of nearly 50 people and causing damage and loss of private and the Cape Town Municipal Council property.

After finding that the trade union instigated the strike, the court ordered Mouth Peace Workers Union to pay compensation to the sum of R100 000,00 in respect of the losses suffered by Rustenburg Platinum Mines as a result of an unprotected strike in the *Rustenburg Platinum Mines Limited v Mouth Peace Workers Union*.²⁶¹

In *Mangaung Local Municipality v SAMWU*,²⁶² the court found SAMWU liable for losses that the Mangaung Local Municipality suffered due to the unprotected strike by its members and ordered SAMWU to pay compensation in the amount of R25 000-00. Maresumule AJ indicated that in terms of section 68(1)(b)(i)-(iv) either a trade union or its members or both to be held liable for damages consequent to an unprotected strike. In *Algoa Bus Company v SATAWU & others*,²⁶³ employees embarked on an unlawful strike resulting in many buses of the employer not operating. The employer suffering a financial loss allegedly amounted to R46500.³⁴

²⁵⁸ 205 of 1993.

²⁵⁹ Jazbhay <http://saberjazzbhaylaw.blogspot.co.za/undefined?&session-id=3b49ffeba7a9b5c1ae20ef8d83184768> 1.

²⁶⁰ 2010 (6) SA 280 (WCC).

²⁶¹ (2001) 22 ILJ 2035 (LC).

²⁶² (2003) 24 ILJ (LC).

²⁶³ [2010] 2 BLLR 149 (LC).

The court ordered the trade unions to compensate the employer for the losses suffered.²⁶⁴

A lesson from these jurisprudences is that, apart from observing the requirements of section 67 and section 68, employees are also required to comply with procedural requirements laid in section 64 and 69 of the Chapter IV of the LRA.²⁶⁵

4 6 CAN THE LRA BE BLAMED FOR MARIKANA?

In the context of whether the LRA is to be blamed for Marikana or not, commentators differ. According to Bruce Robertson, the current system promotes a 'winner takes all' majoritarian approach to collective bargaining in many ways. ²⁶⁶ For example, in terms of section 21(8) (a) of the LRA a commissioner resolving an organisational rights dispute must seek to:

- “(i) minimise the proliferation of trade union representation in a single work-place and, where possible, to encourage a system of a representative trade union in a work-place; and
- (ii) minimise the financial and administrative burden of requiring an employer to grant organisational rights to more than one registered trade union;²⁶⁷

s 23(1) enables an employer to conclude a collective agreement with a majority union which is then binding on the entire bargaining unit, whether or not they are members of a rival minority union. Consider how that would be accepted in the context of the current NUM/ AMCU conflict.”²⁶⁸

Authors argue that union recognition and bargaining rights have been dependent over years on majoritarianism, majority union bargains on behalf of all employees and regarded as the sole conduit for their points of view.²⁶⁹ The authors further indicate that the LRA gave statutory legitimacy to the same trends in many instances²⁷⁰ resulting in negotiating parties placing themselves in an erroneous and

²⁶⁴ Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 122.

²⁶⁵ *Ibid.*

²⁶⁶ Robertson www.worklaw.co.za 1.

²⁶⁷ Robertson www.worklaw.co.za 1; section 21(8) (a) of LRA; Leppan <http://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/legal/practice-areas/downloads/Employment-Case-Law-Update-2013.pdf?&session-id=12acf0f563230efb458f67ad238ca4dd> 4.

²⁶⁸ Robertson www.worklaw.co.za 1.

²⁶⁹ Jika *et al* *We are going to kill each other today* 165.

²⁷⁰ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1.

co-dependent comfort zone and as such, failed to check out and hear the signals of the rising discontent by employees and fellow colleagues.²⁷¹

In addressing the Saslaw Conference on 8 October 2012, Judge van Niekerk expressed his different view and said:

“while the failure of collective bargaining and its structures was no doubt a contributing factor to what happened at Marikana and what continues to happen at a number of mining operations, this should not be blamed on the LRA or on the approach that the Act adopts to the rights of freedom of association and to engage in collective bargaining. He added that while the LRA is broadly supportive of a majoritarian system of bargaining, it does not compel this. The LRA does not prescribe that employers and unions should enter into agency shop agreements, nor does it compel parties to conclude agreements that impose thresholds of representivity that have the effect of closing the market to outsiders by denying organisational and other rights to minority unions. Marikana contributed to a sense of alienation and powerlessness on the part of some workers and then it is these agreements that should be revisited and not legislation”.²⁷²

4 7 CONCLUSION

The strikers at Marikana were observed armed with knobkerries, pangas, spears and other related traditional weapons that resulted in the loss of lives. This then prompts the understanding that the strike was an irresponsible act, hence the need to establish the wrongdoer and eventually hold such liable. Evidently, the Marikana incident was the result of an unprotected strike. An important comment about section 17 of the Constitution made by Mogoeng CJ needs to be highlighted in this regard when he said:

“Everyone who is unarmed has the right to go out and assemble with others to demonstrate, picket and present petitions to others for any lawful purpose. This therefore requires that we diligently reflect on the experience of Marikana. The Lonmin strikers were clearly not acting in accordance with the expectations of the law. Their strike and conduct therefore did not match this assertion of Chief Justice Mogoeng. Therefore, a fundamental question which opens space for further legal commentaries is who must be held liable for the damages suffered? This would include the resultant deaths and other damages to properties.”²⁷³

²⁷¹ Jika *et al* *We are going to kill each other today* 165.

²⁷² Manyathi “Saslaw Conference and AGM: Is the LRA to blame for Marikana?” 2012 *De Rebus* 1.

²⁷³ Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 123.

Trade unions were to repudiate the strike in writing to striking members and the employers as soon as it was practicable after the commencement of the strike. The union also had a duty to behave in a manner consistent with the repudiation by encouraging employees to return to work and condemned the continued industrial action, until procedures were followed and processes were in place to legalise the strike.²⁷⁴

“From a legal point of view, it would be held that the trade unions in the case of Marikana have failed to execute their duties of ensuring a peaceful strike in compliance with the law. This might be attributed to either deliberate ignorance of the law, by oversight or due to lack of knowledge. Therefore, that strike resulted into some incident of monumental crisis. Hence, the trade unions should at a certain point in time do some retrospection and ask if they could not have done better under those circumstances.”²⁷⁵

²⁷⁴ Mdaka “Revolutionising Workplace Relations” (October 2008) <http://www.ccma.org.za/UploadedMedia/CCMAil%20October%202008%20%282%29.pdf?&session-id=600668644c8edc8ba999bb7f276feca7> (accessed 2015 10 10) 23.

²⁷⁵ *Ibid.*

CHAPTER 5

THE ROAD AHEAD

5 1 INTRODUCTION

This section of the treatise argues that the strike wave emerged from a landscape of extreme inequality and poverty, made intolerable by additional financial arising from the migrant labour system. These factors influenced the industrial action and institutions of collective bargaining comprising of both company and union structures and processes, were found wanting in their ability to address the root causes of the crisis. ²⁷⁶

The Marikana experience has afforded the Government, labour and businesses the opportunity to²⁷⁷ appreciate that the country is plagued with social and economic ills which if left unresolved, would soon assume the status of atomic bombs. On a daily basis, industrial relations are becoming sour and sour. It is an indictment that some resolute action is indispensable. The Marikana experience serves just as an indictment and a warning.²⁷⁸ The value of good labour relations cannot be underestimated by focussing on the following factors:

- The state of dispute resolution, collective bargaining trends, effects of the global economic down-swing.
- Impact of the changing nature of work.
- A specific focus on the challenges of migrant labour in South Africa.
- How do you balance out employee rights with employer desire for a flexible market?
- As we mourn the deaths at Marikana, we need to reflect on the impact of the massacre on our social fabric, democracy and economy. We are also obliged to

²⁷⁶ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1; Angeli "Labour Law in National, Integrated and Transnational Legals Systems (2015) http://www.francoangeli.it/Area_PDFDemo/300.72_demo.pdf?&session-id=01b37d924c8fda0daada317f9193f0b5 (accessed 2015-09-29) 21.

²⁷⁷ Dhliwayo <http://www.consultancyafrica.com> 1.

²⁷⁸ Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 124; Rapatsa and Matloga <http://borjournals.com/a/index.php/jbmssr/article/view/1687?&session-id=0b39f45864804701c0f41b688b1e881c> 1.

look ahead and consider how to ensure that tragic incidents of this nature are never repeated.²⁷⁹

Apart from the findings of the Independent Judicial Commission of Inquiry on what precipitated the Marikana tragedy, according to Motau and others there are socio, economic and cultural factors that influenced Marikana events, attributable²⁸⁰ and not limited to:

- a labour regime that relegates members of non-ANC affiliated unions to outsider status;
- a police service uses excessive force to maintain public order in the event of mass demonstrations; and
- a minerals sector under severe pressure as a result of policy paralysis from a government wary of alienating its political allies.²⁸¹

To ensure that the events of that tragedy are not repeated here, the researcher interprets these and other events and then provides some suggestions on possible ways forward on collective bargaining trends and projections.

5 2 INTERVENTIONS TO BE DEPLOYED

The strike action raised many challenges for collective bargaining institutions and there are a number of interrelated interventions which would restore the industry to good health. These would need to be driven by government, labour and corporate leaders with a will to transform the industry²⁸² and should comprise:

5 2 1 INTRODUCTION OF A NEW MIGRANT LABOUR

It should be founded on human dignity and to include:

- shorter work cycles and continuous operations;

²⁷⁹ Motau, Lorimer and Barnard <http://www.politicsweb.co.za/party/how-to-prevent-another-marikana-massacre-da> 1.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² Jika *et al* *We are going to kill each other today* 165.

- significant pay rewards in a flatter remuneration structure for reorganised work processes;
- modern, world-class, living quarters for migrants linked to an efficient (flight, rail or road) migrants commuter transport network;
- restoration of the migrants nuclear family to good health; and
- new banking procedures for facilitating remittance to rural areas.²⁸³

5 2 2 OVERHAULING STAKEHOLDER RELATIONSHIPS AND CAPACITATING FRONT LINE MANAGERS

This should include:

- ensuring that all choices on union rights, levels of bargaining, recognition producers and the like are guided by the principles of freedom of association and worker democracy;
- ensuring constituency-based union accountability and democracy;
- deepening freedom of association and union accountability in respect of bargaining units, the rights of shop stewards and threshold representation levels;
- rapidly transforming line management functions to create a language synergy and strong people problem-solving skills;
- restoring the accountability of line function for people problem-solving and employee communications; and
- measuring and rewarding line management for effective problem-solving and communications.²⁸⁴

5 2 3 TO BETTER TRADE UNIONISM

This paper has reflected on the modern trends of unionism. Trade unions are today much more politically orientated than being workers interests orientated. This has clearly diluted an understanding of their mandate in the modern political economy. To resolve collective bargaining challenges, trade unions should try to always adhere to the following guides:

²⁸³ *Ibid.*

²⁸⁴ *Jika et al We are going to kill each other today 165.*

- Trade unions should embrace the ideology of responsible trade unionism.
- Educate and encourage their membership to adhere to common principles that echoed the need for the living democratic right to strike.
- COSATU, as the largest labour federation in South Africa, yields a lot of power; power that could be effectively used as an agent in holistic development efforts by acknowledging the deteriorating labour market conditions and the structural adjustments its institutions have to go through is the first step to improved trade unionism.²⁸⁵
- Trade unions should not lead irresponsible collective bargaining and strikes that are detrimental to workers and the economy. Wage demands should be sustainable and take into account market and economic conditions.²⁸⁶
- Union leaders should deter from using the union as a platform to advocate for their political inclination. They also need to protect their autonomy from political parties in order to be objective and unbiased in their policies. ²⁸⁷
- Trade unions can stimulate job creation through skills development. Human capital development through education, training and health programmes are crucial in reinforcing a strategic factor in advancing development by improving the quality and efficiency of workers.²⁸⁸
- Trade unions to ensure that their shop stewards acting in full authority are well acquainted, with the procedural requirements of such strike and legal consequences of unprotected strike. ²⁸⁹
- The trade unions have to always ensure that their members comply with the specifications as set out in the Labour Relations Act prior to commencing any strike action.
- If the employees embark on unprotected strike, the unions of such employees must ensure that it repudiates such industrial action in writing to its representatives, striking members and the employers as soon as practicable after the commencement of the strike.

²⁸⁵ Dhlwayo Consultancy *Africa Intelligence* <http://www.consultancyafrica.com> 1.

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

- Employees or members of a trade union must behave in a manner consistent with the repudiation by encouraging employees to return to work and discouraging continued strike action.
- And, that the omission by union representing striking employees to intervene in unprotected strike or delegating the responsibility to shop-stewards, who fail to discharge this obligation, can render such a union liable for losses suffered by the concerned employer.²⁹⁰

Going back to the basics aspect, one draws from the Report of September Commission on the future of the unions to COSATU of August 1997 which in its findings indicated that there is a general problem of lack of service to workplace structures of the unions and recommended that unions should adopt strategies for sharing information, experiences and strategies across COSATU and that COSATU and affiliates need to assess the role and training needs of full-time shop stewards as well as ways to make them more effective as agents for building the union. Some possibilities are:

- All affiliates would benefit from regular meetings of officials involved in workplace change and democracy projects, where information and strategies can be shared and discussed.
- Annual conferences of shop stewards and officials could share and assess experiences and develop new strategies and policies.
- The *Shop Steward* magazine should publish regular articles on struggles for workplace change and democracy.
- COSATU could publish a regular newsletter with information and case-studies of workplace change and democracy.
- Experience gained in workplace struggles could form the basis for education programmes to empower shop stewards and organisers to engage proactively on workplace issues.²⁹¹

²⁹⁰ Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 124.

²⁹¹ COSATU Central Executive "The Report of the September Commission on the Future of the Unions to the Congress of South African Trade Unions" (August 1997) COSATU <http://www.COSATU.org.za/docs/reports/1997/sept-ch6.htm> (accessed 2015/09/09) 1.

5 3 BRIDGING GAPS

Inclusive amongst others is the worsening disparities in wealth between the rich and the poor and poor transformation of various socio-economic dynamics of the country in general.²⁹² The major value gaps that will have to be bridged if the process does work, is to span the most basic of shop-floor bargaining issues, right through to political issues that concern us all as they directly impact on collective bargaining in every industry structure. In the medium-term our system of collective bargaining will collapse under their weight if they cannot be bridged. They place pressure on bargaining at every level. The building of the middle ground needs urgent attention as nothing else will fight pressures on collective bargaining effectively²⁹³ and some possibilities are:

5 3 1 SALARIES

The process of collective bargaining is primarily about wealth distribution, the ability of organisations to create jobs and the sustainability of businesses by remaining competitive in the medium term. Wealth distribution is a short-term solution as juxtaposed to wealth creation being about long term goals. To strike a balance between the two, there is no better place to start than creating an alignment between the business and collective bargaining on the one hand.²⁹⁴

At Lonmin after the strike, workers not only received a hefty increase but also a once-off bonus of R 2000.²⁹⁵ For the duration of the resultant collective agreement, employees enjoyed upward adjustments in wage levels and terms and conditions of employment in return for industrial peace. The employer, in particular, has certainty over payroll costs and the assurance that production will not be interrupted through industrial action for the term of the agreement and as such parties reached a temporary accommodation of their respective needs.²⁹⁶ This act seems like a quick fix the company employed just resume operations and has raised more questions.

²⁹² Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 114 123.

²⁹³ Jowell "The Bargaining Triangle Beyond the Wiehahn Decade" 1989 6 *Graduate School of Business, University of Cape Town* 75 79.

²⁹⁴ LexisNexis "Legislation and Strategy: Labour Market Preview" 2013 15 *Beaumont Express* 1 3.

²⁹⁵ Dhliwayo <http://www.consultancyafrica.com> 1.

²⁹⁶ LexisNexis 2013 *Beaumont Express* 3.

What really is the justification of rewarding an illegal strike? Will the country see the end of these wildcat strikes in all sectors of the economy? What happens the next time workers decide they want higher salaries?²⁹⁷ Financial literacy to address, amongst others, the indebtedness of employees.

Although increase in salaries and wages may have inflationary pressures on production costs, wage levels must be sustainable as well as business models, which seem not to have been the case at Lonmin. The Lonmin saga seems to have left more questions than answers.²⁹⁸ At the time of publication the bad effects of the increase are evident at Lonmin with a retrenchment of workers estimated at 6000 due to a new recruitment plan looming, which includes the closing down of some of its shafts.²⁹⁹ It is important that trade unions, who loudly boast their militant and revolutionary ideologies, learn from this disastrous situation.³⁰⁰

At the same time salary scales and, in particular, salaries for new entrants should encourage rather than deter job creation unlike in other sectors like the clothing industry where new entrants are paid 30% below the previous minimum wage in an effort to boost job creation.³⁰¹ The unemployed also wish to gain entry in the labour market by offering their services at a lower price. The employed seek to entrench their position in the labour market through unions. The same rationale applies to employers; established ones seek to exclude new entrants into the market. On this analysis, collective bargaining and collective bargaining structures are nothing more than high barriers of entry into the labour market, excluding minority unions and other outsiders by serving their converging interests, creating conflict.

5 3 2 HOUSING

The South African mining industry has always relied on migrant labour from all provinces and neighbouring countries such as Lesotho, Mozambique and Zimbabwe.

²⁹⁷ Dhlwayo <http://www.consultancyafrica.com> 1.

²⁹⁸ *Ibid.*

²⁹⁹ Whittlers “Lonmin could retrench 6000 during restructuring” (24 July 2015) <http://ewn.co.za/2015/07/24/Lonmin-restructuring-could-see-estimated-6000-job-loss> (accessed 15-11-09) 2.

³⁰⁰ Secombe “Lonmin plunges as more cuts loom” (27 July 2015) <http://www.bdlive.co.za/business/mining/2015/07/27/lonmin-plunges-as-more-cuts-loom> (accessed 15-11-09) 1.

³⁰¹ LexisNexis 2013 *Beaumont Express* 3.

In the past this resulted in migrant workers being accommodated in barrack-style hostels.³⁰² At the same time, research and experience have shown that many migrant employees do not wish to move to the mining towns on a permanent basis but prefer to maintain and return to their homes in rural areas or other towns. Providing permanent urban residences as well as urban home ownership is therefore not necessarily the solution to migrant labour problems. It's well known that migrant labour can result in the separation of families or the establishment of dual families, one near the workplace, the other back home.³⁰³ The secondary home is characterised by the needs for their material comfort, the new transport costs associated with living out and the ablutions as well as other services.

- The introduction of family units for employees from far near mine areas instead of the single-men's hostels abolish the living out cash allowance because miners use it to supplement their pay packets and head to shack lands to create their homes. An associated pay increase will go a long way.
- Alternatively, a home ownership bond subsidy to be offered to employees to purchase a house for those willing to relocate.
- A speedy job creation programme near miners' home towns and the re-skilling associated with that.

Provisioning of decent and affordable housing and accommodation in the sector remains a challenge for the industry but this is not a challenge for the mining sector only. There has been rapid urbanisation into regions where employment opportunities have declined due to the shrinking economy. This is exacerbated in the mining towns, as thousands of people are attracted in search of jobs, therefore place more pressure on housing and infrastructure. Mining companies are increasingly being expected to shoulder a greater developmental burden in the regions in which they operate.³⁰⁴ To take pressure off the mining companies, all stake holders including local government authorities up to national need to play their role in this regard.

³⁰² Russel "Fact Sheet: Housing and Accommodation". *This is gold* (not dated) file:///D:/Users/User/Downloads/tig_fs_housing_and_accommodation0%20(2).pdf 1 2.

³⁰³ *Ibid.*

³⁰⁴ Russel file:///D:/Users/User/Downloads/tig_fs_housing_and_accommodation0%20(2).pdf 1 2.

5 3 3 COMMUNICATION

One of the reasons for violence and protest action in collective bargaining is the sense by workers that they have not been heard. They believe that employers and senior management only take the collective bargaining process seriously when faced with unrest and disturbances. This point is no better illustrated than the trashing of public places during protest marches over collective bargaining. The need to improve communication during collective bargaining involves those directly involved in the negotiations as well as wider constituents. Senior managers, in particular, will do well to be visible at intervals during collective bargaining and for them to confirm that worker demands have been heard. The fact that they are being taken seriously by management does not entail a message that the same will be agreed upon.³⁰⁵ Union leaders as well give constant feedback to their constituents.

5 4 CHANGES TO THE STRIKE LAW

The recent changes within the amended LRA are intended to respond to high and unacceptable levels of unprotected industrial actions as well as unlawful acts associated them, including violence and intimidation.³⁰⁶

5 4 1 SECTION 65

The amendment of section 65 of the LRA is aimed at eliminating the inconsistency existing between disputes that can be adjudicated under the LRA in respect of which industrial action is limited and those under other employment laws in respect of which there is no equivalent restriction.³⁰⁷ It further intends to limit the types of disputes that may be the subject of a protected industrial action or strike or lock-out such as health and safety, breach of contract, discrimination and non-compliance with the Basic

³⁰⁵ LexisNexis 2013 *Beaumont Express* 3.

³⁰⁶ The South African Labour Guide “New amendments on the Labour Relations Act and the Basic Conditions of Employment Act” (22 March 2012) <http://www.labourguide.co.za/most-recent-publications/new-amendements-on-the-labour-relations-act-and-the-basic-conditions-of-employment-act> (accessed on 17 October 2012) ; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

³⁰⁷ Ngcukaitobi 2013 *ILJ* 3 10; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

Conditions of Employment Act³⁰⁸(BCEA)³⁰⁹ can be referred to arbitration or to the Labour Court.³¹⁰

“It is our belief that the regulatory framework governing labour relations in our mines alienates non-unionised workers and those belonging to minority unions from negotiating platforms. Without access to the formal platforms, workers have had to find alternative ways to have their voices heard.”³¹¹

5 4 2 SECTION 26

Section 26 of the LRA allows for closed shop agreements between employers and representative trade unions, which requires all employees covered by the agreement to be members of the trade union and binds them to the agreements reached. A union is considered a representative union when its members comprise the majority of employees. This gives disproportionate power to large unions. It is essentially a “winner-takes-all” system that serves as a mechanism to protect the entrenched interests of large COSATU-affiliated unions.³¹²

Representative unions are also entitled to membership fees from non-union members in the mines in which they operate, making being a representative union a lucrative business. A representative union in the case of Lonmin alone stands to gain, a minimum of R7.9 million per annum from members' fees collected across its three mines. Some commentators condemn COSATU's push for the centralised collective labour bargaining in the platinum sector as this will replicate this structure on a larger scale, at the same time marginalising small unions even further, whilst also denying the level of flexibility allowed by mine-level representation.³¹³

³⁰⁸ No 75 of 1997.

³⁰⁹ Jordaan “Highlights of the LRA Amendment Bill” (27 July 2012) <http://www.labourwise.co.za/labour-articles/lra-amendments> Labour Wise (accessed 2012-10-17) 1.

³¹⁰ Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

³¹¹ Motau, Lorimer and Barnard “How to prevent another Marikana massacre - DA”(23 August 2012) <http://www.politicsweb.co.za/party/how-to-prevent-another-marikana-massacre--da> (accessed 2015-09-10) 1.

³¹² *Ibid.*

³¹³ Motau, Lorimer and Barnard <http://www.politicsweb.co.za/party/how-to-prevent-another-marikana-massacre--da> 1.

According to Van Niekerk the consequences of the amendments for the future of strike law are profound but raise two concerns. Firstly is whether such amendments meet their stated objects of reducing the incidence of strike violence. Secondly is whether they are sufficiently tailor-made to address the underlying socio-economic realities that influence strike violence.³¹⁴ Although the LRA has recently been amended, its framework is still not suited to the existing dynamics. It can be said that a more radical version of the overhauled legislation in this regard is urgently needed.³¹⁵

5 4 3 ENDING VIOLENT STRIKES

Motau and others argue that to put an end to violent protests, a legislative overhaul is urgently needed and it should include:

- replacing closed shop agreements with a mine-level proportional representation model for labour bargaining, with minimum membership thresholds for participation;
- taking immediate steps to include non-NUM or non-COSATU unions with a minimum threshold of membership in mine-level labour bargaining and ministerial talks so that all workers may have a voice;
- introducing a culture of democracy in union activity by adopting the proposed amendments to section 64 of the LRA which would require unionised workers to vote (by secret ballot) to approve a strike before the union can go ahead with the strike;
- repealing section 67 of the LRA that protects unions from court action should they fail to adhere to section 64 of the Act (including the requirement for unions to ballot before striking); and
- supporting the amendment of section 69 (sub-section 1) of the LRA which states that only union members be allowed to join a supporting picket. This will mean that all participants at a strike would be assumed under law to be union

³¹⁴ Ngcukaitobi 2013 *ILJ* 12 ; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

³¹⁵ KAHN "A chance to reassess our system of industrial relations" *Business Day* 2012 1; Van Niekerk <http://www.saslaw.org.za/2012conference/STRUCTURAL%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022> 1.

members - thus making it possible to give effect to the Constitutional Court's latest decision to hold unions liable for damage during strikes, pickets or other gatherings.³¹⁶

The sentiment of overhauling legislation is shared by Ratau as he recommends that:

- Section 21 should be amended to give a CCMA commissioner the power to determine recognition units in a 'workplace' and if necessary amend an existing recognition agreement.
- Code of good practice on organisational rights and trade union representatives should be introduced.
- A special division of CCMA should be established to deal with such disputes.
- There needs to be further research into the mechanics of the grading system in the platinum mines and the extent to which the aspirations of RDOs may have been frustrated as a result of this system.
- There needs to be further research into the operation of a system of full time shop stewards in the mining sector and elsewhere and whether it contributes to the democratisation of the workplace.³¹⁷

While the complexity of the NUM and AMCU rivalry is beyond being solved by merely converting from decentralised to centralised bargaining, most commentators see it as a factor that will help rather than hinder the solution. It is a mechanism to get all parties around the table and engage in a centralised conversation where perhaps more sustainable solutions can be found. Centralised bargaining is favoured as the structure that will help the situation now. The problem with centralised bargaining is how all parties can be accommodated around the same table. Centralized bargaining need to be democratic, balanced and embrace minority unions like Solidarity and UASA that represent important constituencies and not be used to keep out the small players.³¹⁸

³¹⁶ Motau, Lorimer and Barnard <http://www.politicsweb.co.za/party/how-to-prevent-another-marikana-massacre--da> 1.

³¹⁷ Botiveau <http://afraf.oxfordjournals.org/content/113/450/128.full?sid=5e4e90ef-926d-465d-97c6-4b33040af903>; Rapatsa and Matloga 2014 *Blue Ocean Research Journals* 114 123.

³¹⁸ Creamer "Is decentralised bargaining roiling platinum industry" (31 August 2012) <http://www.miningweekly.com> (accessed 15/10/10).

The crisis cannot be averted by changes to labour laws or the findings of commissions of inquiry but the downward spin into violence can be halted only if workers are persuaded that they themselves will lose if it continues and that, in the end, it pays to negotiate without violence. At the end of the day, only unions can play that role as they have emerged as an important vehicle through which workers can articulate their demands like conditions of employment.³¹⁹ Whether they have the will and capacity to do so remains to be seen. While unions like AMCU make threats to bring the economy to its knees, other unions should cease to outsmart them in a bit to attract new members or win defectors back with similar rhetoric, otherwise the workplace will remain a battleground, the rand will become punier, inflation will rise, mines' contribution to the fiscus will decrease, more shafts will be closed ³²⁰ and unemployment raising poverty will be on the cards.

Hopefully these interventions will go a long way to restoring the dignity of mineworkers and improve their lives provided miners are part of this complex puzzle.

5 5 CONCLUSION

The conflict between NUM and AMCU caused instability in labour relations on the mines for some time into the future and has spread to sectors. The system of sole bargaining rights for majority unions at the level of individual enterprises was intended to limit union rivalry but have aggravated tensions; reducing representation to a zero sum game. This was worsened when majority unions forged comfortable relationships with management, losing touch with those they meant to represent. When the union lost credibility with key groups of workers and closed out access to a competing union, a volatile situation ruptured.³²¹ Trade unions in South Africa are in the grip of ambivalence at several levels with special reference to COSATU and its alliance. There has indeed been a crisis in collective bargaining in the mining sector. But after an initial flurry of outbidding it also suggests a return to more considered

³¹⁹ Van Niekerk http://www.saslaw.org.za/2012conference/STRUCTURAL_%20VIOLENCE%20PAPER%207%20DECEMBER%202012.docx?&session-id=988d40c3295dfa540db0e1fc9db79022 1.

³²⁰ LexiNus "Unhealthy competition" 2013 *Employment Law Journal* 1 1.

³²¹ Taylor and Francis "Marikana, turning point in South African history" (17 Dec 2013) <http://www.tandfonline.com/doi/full/10.1080/03056244.2013.860893#abstract> (accessed 2015-09-05) 1.

relations between employers and unions.³²² There is much to attend to, especially in the platinum mines including the design of a workable collective bargaining system with credible and accountable worker representation at the enterprise and sectoral levels as well as re-empowerment of line management and frontline shop stewards.³²³

Marikana is a turning point in the South African history. The massacre was a rupture that led to a sequence of further occurrences, notably a massive wave of strikes, with changing structures that shape people's lives. The country has not yet reached the end of this chain of occurrences,³²⁴ as it is reflected in recent student movement, fees must fall and the scale of the turning point remains uncertain. In common with other events, Marikana has revealed structures unseen in normal times by providing an exceptional vantage point, allowing the space for collective creativity and enabling actors to envisage alternative futures.³²⁵ If Marikana can yield one lesson, it is around the need to foster genuine social partnerships in the mining industry.³²⁶

Naidoo argues that:

“Although the post-Marikana wave of protest holds the potential for a radical reconfiguration of politics in South Africa today, there is also a danger of this moment folding back on old frameworks, theories and models. There is certainly much in the past to learn and draw from but the lessons of Marikana speak to the need for creativity in struggle that moves us beyond familiar political forms. And while there is evidence of new ideas and practices being born and experimented with in the labour movement and various other struggles, there is also a danger that more vanguardist approaches will dominate potential energy, redirecting it within old frames of analysis and modes of political action. Rather than building a

³²² Anstey 2013 *South African Journal of Labour Relations* 139.

³²³ Alexander “Marikana, turning point in South African history” (17 Dec 2013) <http://www.tandfonline.com/doi/full/10.1080/03056244.2013.860893#abstract> (accessed 15/09/05).

³²⁴ Alexander “Marikana, turning point in South African history” (17 Dec 2013) http://www.sahistory.org.za/sites/default/files/marikana_turning_point_in_south_african_history.pdf?&session-id=b82b5b6ca16e32d005a69d0506cda611 ; Taylor and Francis <http://www.tandfonline.com/doi/full/10.1080/03056244.2013.860893#abstract> 1.

³²⁵ Alexander http://www.sahistory.org.za/sites/default/files/marikana_turning_point_in_south_african_history.pdf?&session-id=b82b5b6ca16e32d005a69d0506cda611 1.

³²⁶ SRK Consulting South Africa “South Africa's mining industry: A case for partnerships” 2013 09 *Inside Mining* 94; Michaelpes http://www.smiling-dolphin.com/my_blog/see/163/marley_and_me/page_5?&session-id=12acf0f563230efb458f67ad238ca4dd 1.

conversation between subjects engaged in struggle, here struggles are captured and restrained from autonomous development.”³²⁷

Only a back-to-basics approach can bridge the gulf between union aristocracy and workers and solve the labour crisis,³²⁸ by improving organisations and working life through better employment relations, focusing on a non-adversarial, solution seeking approach to resolving labour conflicts and ensuring statutory protection; access to dispute resolution services. At the centre of this back-to-basics transformation, there is the need to place human dignity at the centre of the mining industry. As such, elevate the management of people and union stakeholder relations to the top of the list of priorities.³²⁹ Establishing, maintaining and building labour-management programs that focus on enhancing employees' understanding the financial situation, business model and creating a competitive environment in which their organisation operates will help to engage them meaningfully in organisational decision-making.

If this fragile matter could be reshaped and strengthened important issues such as housing, job creation and service delivery issues could be resolved. Then surely there will be a chance of protecting collective bargaining and of moving positively into the next decade, reforming our politics and economic systems from the industrial relations arena, bottom up. This process will require of all three parties (the state, capital and labour) to find ways of bridging such value gaps that currently come between them.³³⁰ As with any structural crisis, Marikana events might have contained the seeds of a new and maybe a positive future for the South African mining industry.³³¹

³²⁷ Naidoo *Struggles in Contemporary South Africa* 437.

³²⁸ Hartford <http://preview.mg.co.za/article/2012-10-11-alienation-paucity-and-despair-make-for-toxic-catalysts?&session-id=286ee1bc8de440fe4d7cff7b1a6515c4> 1.

³²⁹ *Ibid.*

³³⁰ Jowell 1989 *Graduate School of Business, University of Cape Town* 79.

³³¹ Jika *et al* *We are going to kill each other today* 165.

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