

# The Management of African Workers' Wages at South African Mines: Law and Policy Before 1948

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## Abstract

The re-enactment of the context and the purposes of past laws obviates the resort to "principled forgetfulness", since South African law is recalled in a manner that is connected to its morality. The discussion of officially recorded policy vis-à-vis Africans at the mines and other relevant spaces reveals that from its formation the Chamber of Mines had a strict policy of keeping African wages particularly low. Sanctioned policy and practices facilitated this outlook in the implementation of labour law. Additionally, unsatisfactory employment conditions routinely short-changed workers of the amounts due. This evaluation demonstrates how the prohibiting of Africans from reaping monetary advancement from the profits of mining was the cornerstone of economic development and attainment of prosperity by white society in South Africa.

The *Industrial Conciliation Act* 11 of 1924 is notable for banishing Africans from recognition as employees who could engage in collective bargaining and served to further impair the already precarious position of African workers. Ironically, though Africans could not bargain, the determinations of industrial councils were permitted to change their employment conditions in order to maintain the privilege of white workers. Under this regime African wages remained extremely low, in line with supposed tribal needs, while the "civilised" community reaped far greater benefits. The effects of this were evident in the heightened economic pressure experienced by African workers and their dependants. By 1944 there had been hardly any increase in the wages of African mineworkers, but the working conditions had become more onerous. Invariably the rationale was that an improvement in the wages of African workers would have the effect of dislocating established economic processes, thereby impeding the welfare of the colony. This was the rationale despite evidence clearly showing that the wages of Africans were so inadequate that they resulted in the widespread hardship and worsening impoverishment of African communities.

This retelling of the historical law, coupled with prevailing attitudes that presented African workers as peripheral in the larger tale of productivity, has the objective and effect of rearranging the narrative somewhat. Undoubtedly the story of Africans is still being told through the colonial blueprint of labour and its management, but by reading the law focussing on Africans, rather than the community it was intended to serve, the noticeable spillage of vexed African presence disturbs the integrity of the law. A shift in consciousness is likely to occur as the counter-narrative, hidden within the hegemony, animates. Joining efforts to decolonise endorsed accounts of the past, this contribution reveals how paid labour stands out as a mechanism of oppression rather than an antidote to the proclaimed backwardness of Africans.

## Keywords

African labour; *Industrial Conciliation Act*; *Wage Act*; Native Grievances Inquiry; African wages; Native Economic Commission; Maximum average wage.

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## 1 Introduction

This contribution undertakes an evaluation of labour regulation in the first half of the twentieth century in a manner that is counter-intuitive to historical cultural hegemony. In this reinscription the outcomes of laws are matched with their stated purposes. These performative<sup>1</sup> aspects of laws are also gleaned from the deliberations of commissioned reports of the time. From a postcolonial ideation, the rationality and specialist process of law making is considered in the light of notable attitudinal representations that are connected to the resultant rules. This contribution hones in on the management of African workers – those who were referred to and defined in the law reviewed as "native", "native labourer", and "any member of the aboriginal races or tribes of Africa".<sup>2</sup> In particular it will chart the development of measures which administered their wages, as well as the experiential effects thereof that are evident in official records. The narrative is geographically located in the Transvaal and mainly assesses the situation of workers at the mines and to a lesser extent those in surrounding environs.

Guha has highlighted the problem of being unable to source records readily that are located in and belong to the subaltern,<sup>3</sup> hence attempts to read the dominant discourse against the grain.<sup>4</sup> The goal is to stimulate "small voices" which have been obfuscated historically in the dominant project,<sup>5</sup> prompting Amkpa to ask: "can alterity be heard?"<sup>6</sup> In the present context, where text

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<sup>1</sup> Law is performative in that it pronounces particular values as credible and then fashions the rules obedient thereto, which assemble particular socio-economic and political relations.

<sup>2</sup> *Native Labour Regulation Act* 15 of 1911; *Industrial Conciliation Act* 11 of 1924 (hereafter *Industrial Conciliation Act* or ICA).

<sup>3</sup> Subaltern (literally meaning someone of inferior rank) refers to the significant portion of the South African population which has remained marginal – excluded from the dominant power structures along with the institutions through which legal rights and protections must be accessed – Roy 2008 *Adel L Rev* 343; Landry and MacLean *Spivak Reader* 302.

<sup>4</sup> This is done by trying to consider what is depicted in a way that questions how subordinated voices are being reflected or transmitted within and through colonial narrative, if at all - Guha *Elementary Aspects of Peasant Insurgency*; likewise Said has proposed contrapuntal re-reading to procure effaced and suppressed parallel stories which have been marginalised by controlling narratives – Said *Culture and Imperialism* 51.

<sup>5</sup> Webber 1997 *Middle East Studies and Subaltern Studies* 12.

<sup>6</sup> Amkpa 1999 *Contemp Theatre Rev* 14; alterity derives from the Latin *alteritas* which means "the state of being other or different". It denotes the condition or situation of being outside of the accepted norm, other than the norm, and therefore regarded as different.

projects a definition on Africans and then confines them to certain predetermined contours, it is especially difficult to discern and perceive what of the African is reflected in or by the law. But, as Spivak has admonished, revealing "pure subalternity" is not the goal here.<sup>7</sup> Indeed the African mine worker of the early twentieth century plays no genuine part in the deliberations at hand. Historically his concerns have been and arguably continue to be filtered through intermediaries, all of them tainted by colonialism.<sup>8</sup>

The postcolonial thinker does not wholly avoid being compliant to western reasoning and the re-reading then draws strength from being aware of the pitfalls of its in-betweenness, its hybridity. The process is fraught because, despite the critical orientation, the project is already somewhat compromised by the cognitive impairment of being positioned in a colonised setting, being folded-in with colonialism and the education it has instilled – the deep aporia of Spivak.<sup>9</sup> Yet, defective as it is, it is an "effort to rethink the past and re-see the present" from a less structured perception which tries to illuminate the unequal binary of relations fully, rather than to prematurely claim to have moved beyond it.<sup>10</sup>

The evaluation of this contribution opens as part 2 shows that the manipulation of wages began in the late nineteenth century and was endorsed by the pre-unification commissioned inquiries. Part 3 considers the repercussions of laws governing mine labour on African workers. A window into the experience of this developing stratification begins with the 1914 Native Grievances Inquiry (NGI).<sup>11</sup> Having contextualised the position of Africans at the mines, part 4

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Alterity yields the position of being "other", or "othered". Being othered from the presumed archetypal standard of a European and colonial disposition. Alterity pertains to the personhood and the culture of the colonised African people that has been othered.

<sup>7</sup> Landry and MacLean *Spivak Reader* 299.

<sup>8</sup> That said, even the African mine worker, were he to be given genuine voice, has been circumscribed by colonialism – he too is to an extent a creature established by this conquest.

<sup>9</sup> Webber maintains that "there is something to be said for a methodology and philosophy that emerges from the Third World, however much in collusion those Third World scholars may be with counterparts in the North" - Webber 1997 *Middle East Studies and Subaltern Studies* 12.

<sup>10</sup> Webber 1997 *Middle East Studies and Subaltern Studies* 13. Prakash explains that the "notion of the subaltern's radical heterogeneity with, though not autonomy from, the dominant remains crucial [since] subalterns and subalternity do not disappear into discourse but appear in its interstices, subordinated by structures over which they exert pressure ... The actual subalterns and subalternity emerge between the folds of the discourse, in its silences and blindness, and in its over determined pronouncements" - Prakash 1994 *AHR* 1482.

<sup>11</sup> Writing in 1969 Diamond noted that the mining conditions of Africans as documented in the Native Grievances Inquiry Report of 1914 were largely unchanged – Diamond *African Labour Problems* 6.

proceeds to the effects of the comprehensive intergration of collective bargaining and the launching of sector-wide wage determinations under the *Industrial Conciliation Act* and the *Wage Act*.<sup>12</sup> Lastly the coordinated modes of maintaining wages minimal for Africans, which were discussed in the 1932 Native Economic Commission and that of Lansdown in 1943, are highlighted.

## 2 Remuneration policy at the mines

The status of African workers in the mining sector was decided in the late 19<sup>th</sup> century. Early on, following the formation of the Chamber of Mines, it was agreed to stunt the wage progression of Africans by placing a ceiling on how high their wages could go.<sup>13</sup> The decision of the Chamber of Mines read as follows:

The solution of the problem of native labour supply has constantly engaged the attention of the Chamber. With a view to the reduction of wages, the Companies entered into an Agreement not to pay above a certain maximum.<sup>14</sup>

A Colonial Office communique of 1901 stated that:

... mineowners were entitled to combine in order to depress the level of wages; while the Government was to ensure, and to enforce, labour contracts resulting from such combination of employers and disorganization of employees.<sup>15</sup>

This measure was implemented to such a degree that it "curtailed the earning power of the African mine worker and inhibited competitiveness within the industry".<sup>16</sup> Certainly, the formation of the Witwatersrand Native Labour Association (WNLA) in 1901, which centralised and monopolised the recruitment and supply of African labour, meant that wages remained consistent because mines did not need to have more attractive wages than their counterparts in order to attract labour.<sup>17</sup> With the transitioning from the Anglo-Boer War,<sup>18</sup> which ended in 1902, came the earmarking of the difficulties

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<sup>12</sup> *Industrial Conciliation Act* 36 of 1937; *Wage Act* 27 of 1925 (hereafter *Wage Act*).

<sup>13</sup> Chamber of Mines *Annual Report 1892* 10, compare para 18 *Transvaal Labour Commission Reports* (Majority Report, 1904) 6.

<sup>14</sup> Chamber of Mines *Annual Report 1892* 10, compare para 18 *Transvaal Labour Commission Reports* (Majority Report, 1904) 6.

<sup>15</sup> Colonial Office Archives, CO 291/30 45779 Milner to Chamberlain, 6<sup>th</sup> December 1901, quoted by Diamond *African Labour Problems* 9.

<sup>16</sup> Native Grievances Inquiry *Report* paras 253-264; Diamond *African Labour Problems* 6.

<sup>17</sup> Moeti 1986 *Phylon* 276-284.

<sup>18</sup> The war was between two Boer republics (the Zuid-Afrikaansche Republiek and the Orange Free State - polities comprised of exclusively white citizenship) and the colonial British Empire. The war was precipitated by the discovery of substantial mineral deposits (gold and diamonds) in the Boer republics and culminated in the annexation thereof by the British.

of "poor whites", which ultimately yielded a "civilised labour" policy.<sup>19</sup> The policy dovetailed with the avarice of the mining industry for large quantities of cheap labour.<sup>20</sup>

Following the Anglo-Boer War, the Transvaal (now a reacquired British colony) had to oversee the rebuilding of the colony as well as to service exorbitant debt. The profitability of gold mines beckoned as a source of required revenue for the state. Moreover, by helping the mines in a way that was favourable to white workers the state could shore up support from its electorate – white people.<sup>21</sup> The post-war scarcity of labour at the mines had prompted a rise in wages for Whites as well as Africans and the racialised wage inequality appeared to be diminishing.<sup>22</sup> Funneling Africans to mines for remuneration at lowered rates would guarantee profits and appease white sentiments.

The Transvaal Labour Commission (TLC) and the South African Native Affairs Commission (SANAC) were largely in agreement on appropriate policy regarding African labour.<sup>23</sup> The TLC concluded that the longstanding labour problem was caused by

... the fact that the African native tribes are, for the most part, primitive pastoral or agricultural communities ... whose standard of economic needs is extremely low.<sup>24</sup>

Thus bestowing high wages on Africans was determined likely to be counter-productive to the overall aim of increasing their numerical labour supply.<sup>25</sup> Instead, it was suggested that for maximal effect, in compelling Africans to need wages, the restrictions of access to land should apply systematically to South Africa as a whole.<sup>26</sup> It is in the context of this environment that the grievances of African mine workers took shape.

The next part considers the repercussions of laws governing mine labour on African workers. What follows is an exposition of the way the differential and

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<sup>19</sup> Hertzog's governing "civilised labour" policy of 1924 sought to assimilate white people in a general system of privilege in workplaces generally - Jones 1953 *International Affairs* 44.

<sup>20</sup> Yudelman *Emergence of Modern South Africa* 38-39.

<sup>21</sup> Yudelman *Emergence of Modern South Africa* 38-39.

<sup>22</sup> The "ratio of White to non-White labour contracted from 1: 8 in July 1899 to 1: 5.98 in April 1904" - Richardson 1977 *JAH* 85, 87.

<sup>23</sup> Transvaal Labour Commission *Reports* (hereafter TLC); South African Native Affairs Commission *Report* (hereafter SANAC).

<sup>24</sup> TLC para 69; the report surmised that "[t]he only pressing needs of a savage are those of food and sex, and the conditions of native life in Africa are such that these are as a rule easily supplied" – para 70; SANAC paras 374-375.

<sup>25</sup> TLC para 80; SANAC para 372.

<sup>26</sup> TLC paras 70, 92 and 100; SANAC para 383.

sub-par working conditions that were developed for Africans at the mines linked to the remuneration they received. The unsatisfactory situation was brought to the fore early in the twentieth century by a revolt of African mine workers. Although the rebellion was summarily quelled, it led to the convening of the NGI. The findings of the NGI illustrate the lived reality of the laws in force throughout most of the century for African mine workers.

### **3 Working conditions at the mines: The Native Grievance Commission of 1914**

The established workplace legal framework and working grading structure at mines enforced a colour bar. The *Mines and Works Act* 12 of 1911 regulations ensured that Africans could occupy only the lowest-order occupations, while establishing white workers as overseers. The *Native Labour Regulation Act* 15 of 1911 established strict controls on the recruitment of African workers and provided for the standardised contracts which were administered through WNLA by the Chamber of Mines. The first decades of the twentieth century saw poor working conditions for African mine workers, described in part as follows:

They worked twelve hours a day on the surface or eleven hours underground without food, were often kept waiting in wet clothes for as much as three hours while the skips were being used to transport rock, and walked back to the compounds in a state of exhaustion, their bodies covered with stale sweat and grime. The regulations of 1906 compelled owners to provide change houses for white and Coloured miners, but not for Africans, many of whom contracted pneumonia and chest complaints' as a result of the working conditions.<sup>27</sup>

In 1913 more than a thousand African mine workers in four compounds refused to work unless they got a wage increase, and the response was that troops were called in to dismantle this strike.<sup>28</sup> The industrial action of African mine workers was preceded by that of white workers, who had, as a result, gained assurances from mine owners of the continuation of the effective colour bar.<sup>29</sup> Following the disturbance, a commission of inquiry was convened, the NGI,

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<sup>27</sup> Chamber of Mines Annual Report 1907 17, 85; Chamber of Mines *Annual Report* 1907 70; Native Grievances Inquiry Report 16, compare Simons and Simons *Class and Colour* 84-85.

<sup>28</sup> Moodie 2013 <https://www.uj.ac.za/wp-content/uploads/2021/10/moodie-2013-profit-respect-challenge-2.pdf>.

<sup>29</sup> In the middle of 1913 18 000 white mine workers went on strike and this affected 63 mines – Simons and Simons *Class and Colour* 156; Wiehahn *Complete Wiehahn Report* xx, 678.

manned by a magistrate appointed as a sole commissioner to consider problems and complaints.<sup>30</sup>

Working conditions were considered in chapter one of the NGI report. The report revealed that, contrary to the seemingly tightly controlled health and safe regulations, accidental injury was commonplace due to derelictions of oversight and non-compliance by assigned white workers.<sup>31</sup> *Mines and Works Act* 12 of 1911 regulations requiring safety inspections by supervisory white workers prior to permitting African workers to commence the underground manual labour were routinely unheeded.<sup>32</sup> The report recommended *inter alia* that for failure to take adequate care that resulted in accidents "there ought not to be ... [the] universal option of a fine".<sup>33</sup> African workers complained of being routinely beaten while underground by their white task masters. Though physical chastisement was deemed "inevitable" by the report in the light of the "unhealthy and unnatural" environment, more restraint was recommended.<sup>34</sup>

Hammerboys, those operating jackhammer drills, were repeatedly compelled to do the additional work of clearing off shattered rock fragments following blasting. This task, which was called "lashing", had to be done before they embarked on the work they were contracted to perform, which was drilling holes for blasting. This occurred even though they were paid only at casual or "piece-work" labour rates "for every inch drilled".<sup>35</sup> Moreover, Hammerboys were required to drill a certain number of holes per shift, failing which they would not be paid for that shift. They did not receive pro-rata payments for holes drilled and the "lashing" process at times took hours to complete.<sup>36</sup> Such forcibly forfeited shifts could result in the extension of the length of a contract of service.<sup>37</sup> The requirement to do "lashing" was not stipulated in any of the labour contracts, which is why a circular of the Native Recruiting Corporation of November 1913 explained that:

[i]t has always been considered inadvisable to insert a clause in the native contract having reference to the shovelling work required of natives employed on hand drilling, as it is feared that it may needlessly alarm them as to what they may be called upon to perform, and so adversely affect our recruiting operations.<sup>38</sup>

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<sup>30</sup> Native Grievances Inquiry *Report* (hereafter NGI).

<sup>31</sup> NGI paras 17-32.

<sup>32</sup> NGI paras 25-28.

<sup>33</sup> NGI paras 18, 19 and 23.

<sup>34</sup> NGI paras 33 and 34.

<sup>35</sup> NGI paras 65, 80, 81 and 82.

<sup>36</sup> NGI paras 65, 80, 81 and 82; *Diamond African Labour Problems* 27.

<sup>37</sup> NGI paras 65, 80, 81 and 82.

<sup>38</sup> NGI para 75.

For the purposes of monitoring the housing compound, a compound manager had a contingent of African mine worker assistants called compound police, the leader of whom was the *induna*.<sup>39</sup> A number of complaints of abuse of power and ill-treatment at the hands of the compound police "boys" (who carried sjamboks), which the magistrate was inclined to believe, were received by the commission.<sup>40</sup> Though the compound managers argued that compound police members were not allowed to beat African miners, the report stated that

... when you put an offensive weapon into the hands of a savage, I doubt whether it is easy to convince him that he carries it for ornamental purposes.<sup>41</sup>

The report likened the compound police and, as becomes clear in its ensuing discussion and recommendations, all the African mine workers to savages. Wallerstein emphasises that racism is "the ideological justification for the hierarchization of the work-force and its highly unequal distributions of reward".<sup>42</sup> A "world-wide fault line" allocating positioning on the totem pole decreed white people highest.<sup>43</sup> Wynter described the peculiar vilification of the sub-Saharan African, who came to represent the most inferior incarnation of humanity in western thought, as colonial racial hierarchies were assembled.<sup>44</sup> These mores routinely belittled the ways of life of Africans, such as the hunting and foraging, "depicting them as merely inhabiting the land, much as animals do, rather than making productive use of it".<sup>45</sup> By contrast, the white colonisers were depicted as intrepid "pioneers" fixed on cultivating more advanced systems in the face of backwardness.<sup>46</sup>

Therefore, having been alerted to the possibilities of widespread uprising, the report set about instructing on measures to contain it through a more methodical regime of confinement. On the matter of controlling African workers and the potential for revolt, it described the position as follows:

There are ... about 200, 000 native mine labourers on the Reef. They are all male, practically all adults and the large majority in the prime of life. They are scattered over 50 miles of country in blocks of from 1, 000 to 5, 000 in each compound. They can mobilise themselves in a few minutes, armed with such weapons as

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<sup>39</sup> The *induna*, under the authority of the compound manager, was given charge of the thousands of African miners inhabiting the compound – NGI paras 143 and 144.

<sup>40</sup> NGI para 146.

<sup>41</sup> NGI para 146.

<sup>42</sup> Wallerstein *Historical Capitalism* 78-80.

<sup>43</sup> Wallerstein *Historical Capitalism* 78-80.

<sup>44</sup> Wynter 2003 *New Centennial Review* 257-337; Goldberg 2004 *Postcolonial Studies* 211-213.

<sup>45</sup> Select Committee on Aboriginal Tribes *Report* 32; Penn 2013 *Journal of Genocide Research* 186; Parada-Samper 2012 *Historia* 172-187.

<sup>46</sup> Select Committee on Aboriginal Tribes *Report* 32; Penn 2013 *Journal of Genocide Research* 186; Parada-Samper 2012 *Historia* 172-187.



assegais, jumpers, axes, etc. A good many of them consider ... that they have grievances against the Europeans, and most of them are savages, whose only idea of reform is violence.<sup>47</sup>

The report suggested more militaristic control of compounds, characterised by vigorous intelligence gathering, the erection of more secure access barriers at compounds, and the development of emergency forces at mines to respond to any tumult.<sup>48</sup>

Concerning medical care, the report noted that, since there was no proper medical reporting and record keeping, it was not possible to assess the level of care that Africans were receiving nor how many patients were being attended to at a given time.<sup>49</sup> Medical officers attached to their care often performed various other duties, including private practice. The ratio of medical professionals to African mine workers was particularly high.<sup>50</sup>

The matter of wages was also problematic in that wages payed to African mine workers were particularly low. According to the received evidence, when "taking surface and underground work together, [wages] were lower [at the time of compilation of the NGI report] than they had been in 1896".<sup>51</sup> In a cumulative span of seventeen years, wages had not merely stagnated – they had decreased. The evidence revealed that when the Chamber of Mines in May 1897 agreed on a standardised wages schedule, the agreed schedule lowered the salaries of African mine workers to one third of what they had been in the preceding year of 1896.<sup>52</sup> The report compared the wage schedule pertaining to African miner workers of 1912 with the most recent one of 1913, which was operational in the significant mines that employed 80 per cent of the total African mine labour population.<sup>53</sup> The pay schedules which were attached to the NGI report, marked Annexure 12 and 13, revealed "a slight decrease of the previous rates paid to the natives as a whole, the average per shift for 1912 being 1s. 11-58d., and for 1913 1s 11-075d".<sup>54</sup> The agreed upon wage caps on African wages were holding fast.

The NGI report also charged the colour bar at length as the major grievance.<sup>55</sup> Even where Africans performed the same work as their white counterparts they

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<sup>47</sup> NGI para 474.

<sup>48</sup> NGI paras 492, 501-504 and 507.

<sup>49</sup> NGI paras 203-205.

<sup>50</sup> NGI paras 222, 225 and 227.

<sup>51</sup> NGI paras 254-255.

<sup>52</sup> NGI paras 250-254.

<sup>53</sup> NGI para 255 NGI.

<sup>54</sup> NGI para 255 NGI.

<sup>55</sup> Despite becoming proficient in their work, African mine workers had no possibility of access to promotions. Furthermore, the report explained that "[a] good many boys

had no hope of similar reward.<sup>56</sup> For some Africans the NGI report identified an

... absence of opportunity to do the work for which their education ... fitted them, and thereby to earn sufficient to maintain them in the state of civilisation which they ... [had] attained.<sup>57</sup>

The NGI report continued to detail

... that [s]ome of these natives were extremely sensible, well-mannered and well-reasoning people; and they complained bitterly that they were, for all practical purposes, classified by everyone with raw savages.<sup>58</sup>

Even the applicable workplace compensation scheme was queried,<sup>59</sup> and complaints were determined by the report to be, on the whole, well founded.<sup>60</sup> The report raised suspicion that Africans afflicted with silicosis were not being diagnosed and advised that they be tested for the disorder prior to being sent home.<sup>61</sup> Additionally, Africans were often not aware of their rights to pursue the limited compensation that was available to them.<sup>62</sup>

Were any changes to policy and practice made consequent on the NGI report? In general, no, or at least not immediately.<sup>63</sup> There was further strike action in 1920, which involved up to 71 000 African mine workers, "37% of the total African labour force employed on the Witwatersrand gold mines".<sup>64</sup> The strike, which yielded no tangible concessions on the part of the government or the mine owners, centred on dwindling wages, high prices in mine shops and the

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complained that, every time they returned to a mine, they had to begin at bottom rates, even though they had worked there, on and off, for years and had been getting top pay before they went on their [compulsory] holiday" - NGI paras 274-280 and 281.

<sup>56</sup> NGI paras 274-280 and 281.

<sup>57</sup> NGI paras 282 and 283.

<sup>58</sup> NGI paras 282 and 283.

<sup>59</sup> NGI paras 361, 362 and 363.

<sup>60</sup> NGI para 384. Section 22 of the *Native Labour Regulation Act* 15 of 1911 awarded compensation for workplace injury or death as follows: between £1 and £20 for partial permanent disability, between £30 and £60 for total incapacity and £10 for accidental death to African mineworkers. By comparison the *Workmen's Compensation Act* 25 of 1914 awarded compensation to white miner workers of approximately £375 for partial impairment and £750 for total permanent disability.

<sup>61</sup> NGI para 389.

<sup>62</sup> NGI para 400.

<sup>63</sup> Toward the end of the first decade, beginning with the retail boycotts in 1918, there was some widespread industrial action by African workers on the Rand. The complaint was that money had depreciated in value and goods were too expensive at the shops situated at the mines. 1919 saw concerted demands for the eradication of pass laws and demands for better pay - Hiron 1993 *Searchlight South Africa* 67-70; Diamond *African Labour Problems* 45-47.

<sup>64</sup> Diamond *African Labour Problems* 47.

continuance of the established colour bar.<sup>65</sup> During the period "[b]etween 1914 and 1920 [the wages of African mine workers] rose by only 10% compared with a rise in retail prices of 55% over the same period".<sup>66</sup> Katzen explains that

[t]he stability of African wages is the most important single factor causing the rigidity of mining costs with respect to changes in the level of activity and the general price level in South Africa. This stability and the lowness of African miners' wages ... [was] due to the numerous legal and other restrictions which ... [governed] the employment of Africans, the operation of the migratory labour system and the monopsonistic position of the Transvaal Chamber of Mines with regard to the recruitment of African Labour. This mines ... [did] not compete with one another for the available labour. ... The migratory labour system [was] also effective in keeping African wages low and stable.<sup>67</sup>

The above account of past policies and practices regarding African mine workers incorporates an interrogation of the morals justifying them. It has revealed some specifics of the values and principles that the law and policy proclaimed credible during this time. This averts a reliance on notions of neutrality in the fashioning of rules, which is tantamount to a curated "forgetfulness".<sup>68</sup> After all, Nandy has cautioned that "the West has not merely produced modern colonialism, it informs most interpretations of colonialism" – tainting "interpretation of interpretation".<sup>69</sup> The narration also gives credence to post-colonial assertions which dispute the notion that colonialism was or is

... a philanthropic enterprise, ... a desire to push back the frontiers of ignorance, disease, and tyranny, ... an attempt to extend the rule of law.<sup>70</sup>

From the above discussion, the NGI reveals that in reality the position of Africans in the mining workplace was even more precarious than a cursory look at legislation might reveal. The depression of African wages which began in the late 1800s was continuing during the first decade of the Union. The working conditions were also disagreeable, given that workers such as Hammerboys were routinely forced to work beyond their signed contractual terms. Unpaid work that prolonged the duration of their labour contracts was permitted. Despite the maltreatment and viewpoint of African inferiority reflected by the report, irreconcilable deficiencies have been pointed out. Africans deemed to have developed beyond the stage of "raw savages" received substandard remuneration, accommodation, medical care and still could not receive promotions at work. A postcolonial perspective challenges

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<sup>65</sup> The only notable response was the normalising of prices at shops open for African mine workers to lowered prices – *Diamond African Labour Problems* 49, 53.

<sup>66</sup> Katzen *Gold and the South African Economy* 23.

<sup>67</sup> Katzen *Gold and the South African Economy* 23.

<sup>68</sup> Nandy 1995 *History and Theory* 44, 47.

<sup>69</sup> Nandy *Intimate Enemy* 12.

<sup>70</sup> Cesaire *Discourse on Colonialism* 32.

the validity of such a "collusive" sense of fairness, which has been established through a process of diminishing the status of colonised people.<sup>71</sup> Instead of focussing on the legitimated racial hierarchy, the occluded subjectivity of Africans should preoccupy the reading of the NGI and thereby "confound" the logic of its reasoning. The aim is to think beyond and "traumatise" the "arbitrary" closures accepted in the manuscript.<sup>72</sup>

Notably, despite the already strict surveillance, the report revealed a fear of revolt against the status quo by Africans and so advocated tighter control of them in compounds, with additional forces at the ready to fiercely quell any unrest. Thus, Prakash has correctly observed that the colonised are "subordinated by structures over which they exert pressure".<sup>73</sup> The colonisers become "enslaved master[s]" due to an ever-present fear of rebellion by those they subjugated.<sup>74</sup> The situation creates a state of hyper-vigilance in the dominant culture, an awareness of the precarity of the control. The severe curtailment of African advancement informed the collective bargaining laws to follow.

#### **4 Collective bargaining and wage regulation 1920-1948**

##### **4.1 Industrial Conciliation Act 11 of 1924**

The *Industrial Conciliation Act* (ICA) stands out in labour and industrial relations discourse for having decidedly stunted the capability of the vast majority of the workforce to participate in sanctioned collective bargaining. Although the ICA in its various forms appears largely to ignore Africans, in many respects this law together with the subsequent *Wage Act* shaped the lopsided management of labour in the first half of the twentieth century. The ICA functioned in close contact and cooperation with the apparent race neutrality of the *Wage Act*. Thus some attention is drawn to the manner in which these two laws partnered in presiding over African labour conditions.

The ICA repealed the *Industrial Disputes Prevention Act* 20 of 1909 (Transvaal).<sup>75</sup> It aimed to provide

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<sup>71</sup> Bhabha *Location of Culture* 173.

<sup>72</sup> Bhabha *Location of Culture* 179.

<sup>73</sup> Prakash 1994 *AHR* 1475, 1482.

<sup>74</sup> Bhabha *Location of Culture* 131.

<sup>75</sup> Section 25 of the ICA.

... for the prevention and settlement of disputes between employers and employees by conciliation; for the registration and regulation of trade unions ...  
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as well as other related matters. Section 1 stated that the ICA applied to

... every industrial and public utility undertaking, to every industry, trade and occupation, and to every employer and employee ...

except in the agricultural sector. Section 2 permitted the establishment of an Industrial Council by employers and registered trade unions as a mechanism to resolve industrial disputes.<sup>77</sup> Section 9(1) of the ICA stated that an agreement of an industrial council in a particular sector could, on application by the parties, be extended by the Minister to other employers and employees in that trade, or industry or occupation through publication in the Government Gazette. The Minister could also extend the application of an arbitration award in a similar manner.<sup>78</sup> Later, section 7 of the *Industrial Conciliation (Amendment) Act 24* of 1930 provided for the extension of an Industrial Council agreement to cover servants who were not employees in terms of the definition of the Act.<sup>79</sup> In addition, section 9(4) of the *Industrial Conciliation (Amendment) Act* allowed the Minister to publish a minimum rate of wages and hours, as recommended to him by the industrial council.<sup>80</sup> Section 12 of this Act prohibited that the opposing parties resort either to strike or to lock-out until a matter had been "submitted to, considered and reported on" by the established industrial council.<sup>81</sup> Where there was no council, the dispute first had to be sent to the conciliation board if it was a matter that could be dealt with by the board.<sup>82</sup>

Significantly, section 24 of the the *Industrial Conciliation (Amendment) Act* provided that an "employee" was a

... person engaged by an employer to perform ... in any undertaking, industry trade or occupation to which ...

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<sup>76</sup> Long title of the ICA.

<sup>77</sup> The main purpose of the industrial council was to resolve any "matters of mutual interest". The Minister would approve the council once he had satisfied himself that the constitution and rules of the council and agreements between the parties were in order – ss 2(2), (3) and (4) of the ICA.

<sup>78</sup> Section 9(2) of the ICA.

<sup>79</sup> Section 7(h) of the ICA.

<sup>80</sup> Section 48(4) of the *Industrial Conciliation Act 36* of 1937 also made similar provision for the extension of an Industrial Council agreement to cover servants who were not employees in terms of the definition of the Act.

<sup>81</sup> Section 12(1)(a) of the ICA.

<sup>82</sup> Section 12(1)(b) of the ICA.

the ICA applied. But people hired in a manner regulated by the *Native Labour Regulation Act* (the principal mining recruitment law) and those whose employment was subject *inter alia* to "any Native Pass Laws" were not "employee[s]" for the purposes of the ICA.<sup>83</sup> This covered every African worker who was engaged to work in the industries or occupations to which the ICA applied. In *Sweet Workers' Union v Orkin and Minister of Labour*,<sup>84</sup> the Sweet Workers' Union (SWU) was a registered trade union. The court labelled Africans who were not employees in terms of the Act "excluded natives".<sup>85</sup> The SWU had admitted some "excluded natives" to its membership.<sup>86</sup> The SWU's application for registration of an Industrial council which had to be registered in terms of the ICA was refused because Africans were found to be members of the SWU.<sup>87</sup> The court held that an industrial council under the ICA could only be registered if it included trade unions as contemplated by the ICA. A trade union had to have employees as defined by the ICA.<sup>88</sup> Having "excluded natives" was a fatal flaw. The ICA was a boon to the state, white workers and the mining sector in South Africa, predicated on its non-application to African workers. It was complementary to labour and other controls already in force. With no legal capacity to bargain as employees, African mine workers had to continue to accept the standardised contracts emanating from the Chamber of Mines as regulated by law.

#### **4.2 Wage Act 27 of 1925**

The *Wage Act* did not define an employee with the same restrictions as the ICA, which had plainly excluded Africans.<sup>89</sup> The purpose of the *Wage Act* included to facilitate the creation of a wage board to investigate working conditions and wages in order to recommend appropriate minimum wage determinations.<sup>90</sup> Section 1(2)(a) of the *Wage Act* stated that the wage determinations of the Act would not apply to "parties covered by any award or agreement" made under the ICA which was not lower than the minimum wage

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<sup>83</sup> Section 24 of the ICA.

<sup>84</sup> *Sweet Workers' Union v Orkin and the Minister of Labour* 1946 CPD 303 (hereafter *Sweet Workers' Union v Orkin*).

<sup>85</sup> *Sweet Workers' Union v Orkin* 307.

<sup>86</sup> *Sweet Workers' Union v Orkin* 306-309.

<sup>87</sup> *Sweet Workers' Union v Orkin* 308-310.

<sup>88</sup> *Sweet Workers' Union v Orkin* 310-311.

<sup>89</sup> An employee was defined as "any person whatsoever employed by or working for or with any employer, and receiving, or entitled under the terms of his employment to receive, any wage or other remuneration in money or in kind" – s 18 of the *Wage Act*.

<sup>90</sup> Sections 3(1) and (2) of the *Wage Act*.

set by the *Wage Act*.<sup>91</sup> Section 2 of the *Wage Act* established a wage board. In terms of section 3(3), if the board was unable to

... recommend in respect of the employees in any trade or section thereof a wage upon which such employees may be able to support themselves in accordance with civilised habits of life ...

it was to make no recommendation. Instead the board was to report to the Minister about the working environment of the trade in issue and provide a justificatory explanation for its assessment.

Section 7(1) of the *Wage Act* provided that on considering a recommendation or a report of the wage board the Minister could

... by notice in the Gazette, and as from a date ... specified ... determine in accordance with any report or recommendation ... (a) the minimum wage or rate 'to be paid [or] ... (g) any other matter whatsoever affecting the remuneration or the conditions of employment of any employees.'

The *Wage Act* conferred comprehensive powers to determine the minimum wage benchmarks for all workers to the wage board. Nonetheless, the *Wage Act* deliberately preserved the right of industrial councils to set standards commensurate with "civilised habits of life" for the white employees it served. In so doing the councils were also given licence to determine the lesser wages and working conditions of their (non-employee) African counterparts. Thus for Africans the *Wage Act*, which seemed to incorporate them, cannot be viewed separately from the ICA. A number of cases speak to the experience of these workers following the implementation of the *Industrial Conciliation Act* and the *Wage Act*.

#### **4.3 Cases highlighting the operational effect of the Industrial Council and Wage Board on Africans**

In *Rex v Barone*<sup>92</sup> the court considered the correct application of section 1(2)(a) of the *Wage Act* in the light of Africans being excluded as employees under the ICA.<sup>93</sup> An employer had failed to pay African employees in line with

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<sup>91</sup> In *Manoim v Veneered Furniture Manufacturers* 1934 AD 237, where a worker had agreed to a wage which was below that published in the Gazette, the employer was convicted for contravening s 8 of the Act. The agreement to pay a wage less than a determination under either the *Wage Act* or the *Industrial Conciliation Act* was held to be void.

<sup>92</sup> *Rex v Barone* 1927 TPD 478

<sup>93</sup> Section 1(2)(a) of the *Wage Act* stated that a wage determination would not apply to parties who were covered by an industrial council agreement or award. Ss 7 and 9 of the ICA stated that provided agreements were not below the wage determinations under the *Wage Act*, the *Wage Act* would not be binding if there was an agreement or award in place.

the published rate under the *Wage Act*, claiming that the existence of an industrial council agreement in respect of White workers created wholesale exemption in respect of all workers. The issue was whether an industrial council agreement (in relation to the wages of White employees) had the effect of also exempting the employer from adhering to *Wage Act* benchmarks in respect of its African employees.<sup>94</sup> The court reasoned that

... an employer may be covered ... by such an agreement in relation to some of his employees and not covered in relation to another section of his employees.<sup>95</sup>

Thus the exemption operated in respect of those covered by an agreement under the ICA. Those who had not been so covered would be dealt with under the determination in terms of the *Wage Act*.<sup>96</sup> The court side-stepped the fact that Africans were not employees under the ICA. They were adjunct "native labourers" who could be awarded only regimented contracts of service. Even the determinations under the *Wage Act* entailed the imposition of set terms by the Minister, rather than agreement based on some measure of exchange. Their situation was circumscribed by "an assumed givenness ... in the ascription of superiority and inferiority"<sup>97</sup> that worked to embed the economic and other advantages of White workers, while minimising the degradation required to achieve it.

In *Rex v Meltzer* the minister published a minimum rate of wages and a maximum rate of wages for Africans in terms of section 9(4) of the ICA at £4 10s per week.<sup>98</sup> The appellant was claiming to pay his African workers the prescribed effective £4 10s, but he was deducting £3 10s per week for accommodation, which was in fact valued at 7s. 6d. per week.<sup>99</sup> The appellant was convicted of not adhering to the wages in the Gazetted notice.<sup>100</sup> The industrial council agreement in question referred to White employees only, but the section 9(4) used by the Minister in publishing and extending wage determinations allowed the industrial council to recommend the extension to

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<sup>94</sup> *Rex v Barone* 1927 TPD 478 479.

<sup>95</sup> *Rex v Barone* 1927 TPD 478 480.

<sup>96</sup> In *Rex v Esrock and Esrock* 1940 TPD 293 two African workers were "employees" under the *Wage Act* but not so under the ICA. The question was whether the employer (though bound by an industrial council agreement in relation to White workers) was exempted from the wage determination in respect of African employees who did not fall under the agreement. S 2(3) of the *Wage Act* 44 of 1937 stated that a wage determination would not apply to people who were bound by an agreement or award under the *Industrial Conciliation Act* 36 of 1937. The court held that s 2(3) must be read as not changing the position created by the *Barone* decision.

<sup>97</sup> Goldberg 2004 *Postcolonial Studies* 211, 212.

<sup>98</sup> *Rex v Meltzer* 1933 TPD 416.

<sup>99</sup> *Rex v Meltzer* 1933 TPD 416 419.

<sup>100</sup> *Rex v Meltzer* 1933 TPD 416 418-419.



"persons excluded from the definition of 'employee' in section 24" on the grounds that the purpose of the agreement would be defeated if this did not occur.<sup>101</sup> The Minister had heeded this recommendation and specified that the prescribed wages and working hours applied to Africans in the industry.<sup>102</sup> The Gazetted minimum wage was upheld and the challenged labour contracts were found to be *in fraudem legis*.<sup>103</sup>

In *Parisian Bakery v Ben* the respondent was an African, "a pass-bearing native" who by operation of the ICA was not an "employee".<sup>104</sup> Following the publication of minimum wages he continued to be paid less than was prescribed and the employer was charged and convicted. Section 9(5) of the ICA stated that where an employer was convicted of paying lower wages than the applicable industrial council agreement or award published in the Gazette, the court could order that the difference between the wages received and those which should have been paid be paid to employees.<sup>105</sup> The issue was whether the unpaid portion of the prescribed wages would be recovered when applied to the African "servant" who was not an employee in terms of the ICA. The court reasoned as follows:

... it is clear from sec. 9(4) that the provisions in regard to persons excluded from the definition of employee were inserted not in their interest but to prevent the defeat of the objects of an agreement which was not entered into for their protection ... The magistrate came to the conclusion that it cannot be said that 'it was the manifest intention of the Legislature to apply to cases of underpayment of wages to persons such as the present plaintiff who do not fall within the terms of the definition of employee in the Act the remedial provisions of the latter portion of sec. 9(5).' I agree with this.<sup>106</sup>

The court affirmed that allowing industrial councils to determine the wages of Africans, was not intended to incrementally improve African working conditions. Instead the aim was to secure the maximal benefit for ICA employees – White workers. Thus, the unfairness of underpayment (pertaining to the African plaintiff) could not find protection under the ICA. Implicit in this determination was the court's unwillingness to recognise as minimally just an

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<sup>101</sup> "If an industrial council or conciliation board reports to the Minister that in its opinion, any object of an agreement ... is being or would probably be defeated by the employment, in the undertaking, industry, trade or occupation to which such application refers, at rates of wages, or for hours of work other than those specified in the agreement, of persons excluded from the definition of 'employee' in sec. 24 of this Act", it could recommend a suitable wage or revised working hours for those not deemed employees under the Act to the Minister for publication in the Gazette – s 9(4) of the ICA.

<sup>102</sup> *Rex v Meltzer* 1933 TPD 416 418-419.

<sup>103</sup> *Rex v Meltzer* 1933 TPD 416 422.

<sup>104</sup> *Parisian Bakery v Ben* 1934 TPD 245.

<sup>105</sup> *Parisian Bakery v Ben* 1934 TPD 245.

<sup>106</sup> *Parisian Bakery v Ben* 1934 TPD 245 249.

imperative to mitigate the harm suffered by the plaintiff through ordering the payment of all the wages due. Connected as it is to notions of legal objectivity, this performance of adjudication should prompt re-evaluation of the concept itself.<sup>107</sup> Since Africans were deleted from consideration, the knowledge assembled at this juncture becomes "interested" and not unbiased.<sup>108</sup>

In *Rex v Campbell*<sup>109</sup> an industrial council agreement regulated the wages and hours of work of unskilled labourers.<sup>110</sup> The applicant, who paid African and coloured unskilled labourers less than the amount prescribed in the agreement and applied working hours contrary to the agreement was convicted for contravening the agreement.<sup>111</sup> The court held that the part of the industrial council agreement relating to Africans was nonetheless *intra vires*. The court stated "non-membership of unskilled labourers in the trade unions" did not disqualify the regulation of their wages by an industrial council as a matter of mutual interest.<sup>112</sup> The court reasoned that some of the unskilled workers in question, such as coloureds, did qualify for membership of at least one of the trade unions that comprised the industrial council at hand.<sup>113</sup> Furthermore, the court declared that it was

... a matter of interest to the artisans, the skilled employees, that proper provision should be made for the protection of unskilled labourers [so as to secure a] continuous supply of such labour.<sup>114</sup>

Therefore, regulating the wages of African workers was acceptable when done as a matter of mutual interest between the employer and (White) employees. Though marginalised, Africans were always integral to the objective of furthering the interests of the recognised bargaining entities. So there was no actual separation or separateness because the composition of white advantage was interlocked with the devaluing of Africans.

In *Rex v Central Mattress*<sup>115</sup> the wage board had reported that its understanding of a normative income threshold accorded with the requirements of a White man. His wages had to properly maintain the man, his spouse and their family "with a reasonable degree of comfort according to

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<sup>107</sup> Said contends that "[t]he contributions of empire to the arts of observation, description, [and] disciplinary form [should not be] ... ignored" – Said *Culture and Imperialism* 304.

<sup>108</sup> Spivak 1985 *History and Theory* 247, 256.

<sup>109</sup> *Rex v Campbell* 1936 TPD 84.

<sup>110</sup> *Rex v Campbell* 1936 TPD 84.

<sup>111</sup> *Rex v Campbell* 1936 TPD 84.

<sup>112</sup> *Rex v Campbell* 1936 TPD 84 87.

<sup>113</sup> *Rex v Campbell* 1936 TPD 84 87.

<sup>114</sup> *Rex v Campbell* 1936 TPD 84 87.

<sup>115</sup> *Rex v Central Mattress* 1930 TPD 226.

European standards".<sup>116</sup> The existing agreement of the industrial council had fixed the wages for semi-skilled work well below this norm and had not accounted for the earnings of unskilled workers. Since Africans and "non-natives" often performed the same tasks alongside each other, the board opined that "employees cannot be classified as native or non-natives, although they may rightly be classified as skilled or unskilled".<sup>117</sup> The court agreed that employees could be classified only as skilled and unskilled, stating that

[t]he fact that the Legislature has set up as a criterion a civilised standard of living, negatives the view that the Board can concern itself with the question whether the employee is a native or a European.<sup>118</sup>

In effect, the court endorsed the position of the board that the standard set up did not permit it to distinguish between employees on the grounds of race in making wage determinations. This decision did not improve the position of the African workers, who continued to be barred from accessing skilled and semi-skilled work by the deliberate racial hierarchy present in most other labour regulations. Indeed, the next part clarifies the official policy that was enforced regarding the applicability of wage determinations of the *Wage Act* to African workers.<sup>119</sup>

## 5 The rationale for retarding African wages

According to Fanon, when confronted with systemic power African identity often withers into its assigned space, thus negating self-directed conception and understanding.<sup>120</sup> It is vital therefore to pursue an alternate recount of past events in an effort to magnify the realities engendered and endured. This contribution advances that it would be simplistic to emphasise the omission of Africans from certain occupations and labour protections, such as trade union membership and the collective bargaining regime it installed, as the misdeeds of labour relations management in South Africa. It considers whether the established and evolving cultural environment was such that exclusion was probably inevitable. Hence a comprehensive disclosure of the premise from which labour was conceived and configured is necessary. Therefore, the ensuing discussion engages with the official justifications in South Africa policy for systematically downgrading Africans and their wages.

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<sup>116</sup> *Rex v Central Mattress* 1930 TPD 226 227.

<sup>117</sup> *Rex v Central Mattress* 1930 TPD 226 228.

<sup>118</sup> *Rex v Central Mattress* 1930 TPD 226 229.

<sup>119</sup> *Mines and Works Act* 12 of 1911; *Native Labour Regulation Act* 15 of 1911; the ICA.

<sup>120</sup> Fanon writes "when I had to meet the white man's eye ... [a]n unfamiliar weight burdened me. The real world challenged my claims [to full humanity]" – Fanon *Black Skin White Mask* 110.

### 5.1 *Native Economic Commission of 1932*

A Native Economic Commission (NEC) was convened in 1932. Among its aims, the commission had to consider the socio-economic circumstances of Africans in urban areas, laws which managed their earnings, their terms of employment, how to deal with industrial disputes, and whether there was a need to amend the law.<sup>121</sup>

Three possible paths were put forward to resolve the "Native question", namely: (1) a "*repressionist*" one – "tying down the Native or driving him back to barbarism"; (2) an "*assimilationist*" one – "trying to make him a black European"; and lastly (3) an "*adaptionist*" one – "taking out of the Bantu past what is good, and even what is merely neutral, and together with what is good of European culture for Abantu, building up a Bantu future".<sup>122</sup> The NEC report endorsed the adaptionist approach unequivocally.<sup>123</sup>

The report advised against "the introduction of wage regulation for Natives" believing that it would disrupt the "economic structure" around which work soundly progressed in South Africa.<sup>124</sup> The thinking was that it would disrupt the casual labour systems<sup>125</sup> and, more significantly, it was argued that wage regulations were undesirable because they would result in the reduction of the valuable "elasticity of the economic system and the power of the community to adjust itself to changing circumstances".<sup>126</sup> The manner in which the fluctuation of commodity prices affected economic development was deemed to be of pivotal importance, and it was concluded that the further pressure that African wage regulations would generate would be untenable.<sup>127</sup> The report also asserted that wage regulations would exacerbate the growing problem of African urbanisation and hamper the development of their assigned reserves, which had already been identified as the most viable method of resolving the "Native economic problem".<sup>128</sup> Though wage regulations would not apply directly to the mining sector, it was reasoned that "the margin of productive enterprise" would be based largely on this sector, which would cause any minimum wage determinations for Africans to be inflated, in turn driving

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<sup>121</sup> Native Economic Commission *Report* para 1 (hereafter NEC).

<sup>122</sup> NEC para 200.

<sup>123</sup> An assimilationist position discounted the possibility of the simultaneous existence of two cultures in the South African milieu, thus opting for a purely European engulfment of African culture – NEC paras 200 and 201.

<sup>124</sup> NEC para 994.

<sup>125</sup> NEC para 996.

<sup>126</sup> NEC para 997.

<sup>127</sup> NEC paras 998-999.

<sup>128</sup> NEC para 1001.

production costs higher.<sup>129</sup> Thus the report recommended that wage regulations remain applicable primarily to White workers.

The dissenting view of a minority of the commissioners was also presented in the report. This dissent argued that since African wages had consistently been modest, historically there had been a pervasive reluctance to improve "the efficiency of native labour" incrementally, causing the introduction of mechanisation to be slower than it otherwise might have been.<sup>130</sup> Despite the fact that the labour-intensive mining sector had in fact benefited from this supply of cheaper labour, it was proposed that inserting Africans into the operation of the *Wage Act* would allow the incremental improvement of their wages.<sup>131</sup> The minority opinion observed the significant gap between the wages of Africans *vis-à-vis* those given to White workers. This was considered to be premised on the notion of differential standards of living.<sup>132</sup> The minority view argued that the wages of Africans were fixed according to what were presumed to be the needs they would have in their "tribal" settings, rather than people living in "civilised community".<sup>133</sup> The view was that the wage was "unreasonably low".<sup>134</sup>

Soon thereafter the Van Reenen Commission of Inquiry was convened.<sup>135</sup> The Van Reenen Commission investigated the interchange between the ICA and the *Wage Act* with regard to gaps in wage scales for skilled as opposed to unskilled workers as well as male to female ratios and other matters.<sup>136</sup> In line with the recommendation of the NEC, African workers continued to be excluded from these minimum wage arrangements. Though the position of Africans was not among its terms of reference, the report did comment on the necessity "to fix a minimum rate for an occupation or craft so high that no Native would be likely to be employed".<sup>137</sup>

Throughout the first half of the twentieth century the remuneration of African workers remained stagnant due to law and policy that deliberately inhibited its growth. This was acutely apparent at the mines and led to outbreaks of discontent from workers in the 1940s, as conditions deteriorated.

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<sup>129</sup> NEC para 1005.

<sup>130</sup> NEC para 1010.

<sup>131</sup> NEC para 1012.

<sup>132</sup> NEC para 1013.

<sup>133</sup> NEC para 1014.

<sup>134</sup> NEC para 1035.

<sup>135</sup> Van Reenen *Commission Report*.

<sup>136</sup> Van Reenen *Commission Report*; De Kock 1980 *ILJ* 26-31.

<sup>137</sup> Van Reenen *Commission Report* para 154, compare De Kock 1980 *ILJ* 26.

## **5.2 Witwatersrand Mine Natives' Wages Commission of 1943 (Lansdown Commission)**

Underground working conditions deteriorated in the 1940s. Since the manufacturing sector offered an alternative, some African labour moved away from the gold mines.<sup>138</sup> Yet the mines remained the major employer and producer of wealth. During the Second World War, while some White miners were conscripted, African miners were given more responsibilities without corresponding wage increases.<sup>139</sup> Instead, mines made cuts on efficiency-enabling mechanisms, which made working conditions even worse.<sup>140</sup> The African Mine Workers' Union, an African trade union, was formed in 1941 by the Transvaal Chapter of the African National Congress. Efforts at first to ignore and then to quell the militancy of the union's activities ultimately led to the convening of the Lansdown Commission to investigate the wages of Africans.<sup>141</sup> The commission was appointed in the wake of a looming threatened strike.<sup>142</sup>

The Lansdown Commission report stated that by 1945, soon after its release, the worker population on the Rand would consist of 38 000 White workers and 335 000 African workers.<sup>143</sup> The report acknowledged the marked dependence of the mining sector on African labour as a tool for normalised heightened productivity.<sup>144</sup> The report was in agreement with the policy of adhering to the established cheaper labour sourcing of African labour as being compliant with the overall "Native policy" of the Union.<sup>145</sup> The Chamber of Mines did not equivocate on compliance with its historical resolve to engage low-wage African labour, which included steps in the late 1800s to reduce African wages.<sup>146</sup> The report referred to the late nineteenth century decision of the

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<sup>138</sup> Badenhorst and Mather 1997 *JSAS* 473, 480.

<sup>139</sup> James 1987 *African Economic History* 1, 9.

<sup>140</sup> By the end of 1942 Africans were having to work "double, even treble shifts" for which they received no additional pay - James 1987 *African Economic History* 1, 9.

<sup>141</sup> The attitude was that "the mines cannot submit to the rag, tag and bobtail of the urban trades unions ... we shall call out the police and arrest some of the ring leaders and all we shall tell the Natives is that their grievances will be discussed with the Native Affairs Department with their indunas" – NTS 2224, 442/280, GPC to Minister of Mines 26/1/44, referred to by Moodie 1988 *IJAHS* 21, 30; Badenhort and Mather 1997 *JSAS* 473, 480.

<sup>142</sup> Striking was imminent at the Victoria Falls and Transvaal Power Company and the Robinson Deep mines, which would have caused most other mines on the Rand to also halt operations. Rather than make concessions, police were deployed to arrest at least 500 mine workers - Moodie 1988 *IJAHS* 21, 30-32.

<sup>143</sup> Witwatersrand Mine Natives' Wages Commission *Report* (hereafter Lansdown Commission) 2; Anon 1945 *Int'l Lab Rev* 57, 58.

<sup>144</sup> Lansdown Commission para 41.

<sup>145</sup> According to the report the "policy was a sound one" - Lansdown Commission para 72.

<sup>146</sup> Lansdown Commission para 67.

newly formed Chamber of Mines to install "the maximum average" for African workers at its affiliated mines.<sup>147</sup> Apart from preventing mines from competing for African labour, the maximum allowable wage indefinitely depressed the earning capacity of Africans. In the light of increasingly limited means and economic pressure, which were compelling Africans to seek employment in large numbers at the mines, the question at issue was whether the remuneration policies of the Chamber of Mines "or Government acquiescing in it" were still appropriate.<sup>148</sup>

It was notable, as argued before the Commission, that despite the profitability of the mines there had been no significant wage increase for African mine workers since 1914.<sup>149</sup> There was no mechanism for the periodic review of wages with a view to making incremental adjustments. A number of deductions were being made to wages.<sup>150</sup> The underground work was particularly strenuous and hazardous. Overtime pay rates remained equivalent to normal pay rates. There was no provision for pay during leave.<sup>151</sup> African workers were paid less than other unskilled workers of different races on the mines.<sup>152</sup> Moreover, there was nothing to alleviate "[t]he increased cost of living and consequent additional expenditure both by the worker on the Witwatersrand and by him and his family in the Reserve".<sup>153</sup>

The Chamber of Mines argued that it spent considerable sums of money on the upkeep of African workers, since the mines provided them with food, housed them in compounds and responded to their medical needs.<sup>154</sup> Furthermore, it was argued that because the workers were migratory they continued to have other means at their assigned Reserves.<sup>155</sup> It was also argued that the sector would not be able to meet the additional expense of

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<sup>147</sup> Lansdown Commission para 80; unjustifiable non-adherence to the fixed daily rate of pay for Africans by associated mines incurred some sanction from the Chamber - Anon 1945 *Int'l Lab Rev* 56, 58.

<sup>148</sup> The report surmised that "formerly the Native in the Reserves, either on account of higher productivity of his lands or because of his simpler tastes, was reluctant to leave his home, today he is forced by economic pressure to seek employment which will enable him to support his wife and family, and this pressure is so great that the gold mining industry is able ... to recruit native labour for underground work at a cash wage of 2s. per shift" – Lansdown Commission paras 73 and 74 see Anon 1945 *Int'l Lab Rev* 56, 59.

<sup>149</sup> Lansdown Commission paras 83-91 and 98; Anon 1945 *Int'l Lab Rev* 56, 60.

<sup>150</sup> Anon 1945 *Int'l Lab Rev* 60.

<sup>151</sup> Anon 1945 *Int'l Lab Rev* 60.

<sup>152</sup> Anon 1945 *Int'l Lab Rev* 60.

<sup>153</sup> Anon 1945 *Int'l Lab Rev* 60.

<sup>154</sup> Anon 1945 *Int'l Lab Rev* 60.

<sup>155</sup> According to the Chamber of Mines African workers generally spent an average of 14 months on the Rand and then on completion of their contracts spent about 12 months with their families at their assigned reserve - Lansdown Commission para 99.

paying higher wages and that this would be detrimental to the economy of the country as a whole.<sup>156</sup> Could the African mine worker accumulate sufficient funds to care for his family, as alleged? The Commission investigated the actual family wage realities of African mine workers to determine whether the economic position at the rural reserves was sufficient to offset the paltry mine wages.<sup>157</sup> The Commission found that the argument that Africans did not need higher salaries, based on perceived circumstances on reserves, was misplaced.<sup>158</sup>

On the matter of compensation for workplace injury or death, Diamond<sup>159</sup> offers dubious speculation for the disparate payment rates between Africans and Whites, which was set by law, thus:

[a] possible argument for these disproportionate rates of compensation for total incapacitation and death paid to Africans may have been that the kinship system and the social obligations it defined differed from that of the urbanised European. In time of incapacity or old age, the African was more fortunate than the European in that he and his family were ensured collective support through tribal custom, while the European generally would have to fend for himself.

Diamond's statement<sup>160</sup> was lean on detailed investigative accounts of the type of utopian care clusters described. It did not take into account the available evidence of the inability of communities in African reserves to meet their basic needs, let alone the needs thrust upon them by the repatriation of ailing men. The report of the 1932 NEC as well as that of the Lansdown commission clearly sets out the subsistence shortfalls experienced by African workers and their families on reserves. Instead, the supposedly observed communal values of Africans were weaponised in official discourse to justify withholding adequate payment.

Dispite the increased hardship caused by the migrant system, the Lansdown report then proclaimed that:

[i]t is clear to the Commission, however, that, having regard to the circumstances of the Witwatersrand gold mining industry, the migratory system of peasant labour must continue. Any other policy would bring about a catastrophic dislocation of the industry and consequent prejudice to the whole economic structure of the Union.<sup>161</sup>

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<sup>156</sup> Lansdown Commission para 99.

<sup>157</sup> Lansdown Commission paras 103-183.

<sup>158</sup> At Lansdown Commission para 200 the report stated that it was "satisfied that the allegation as to the unsatisfactory state of malnutrition in the Reserves generally is no 'parrot cry', but, on the contrary, that the conditions give cause for grave concern".

<sup>159</sup> Diamond *African Labour Problems* 86.

<sup>160</sup> Diamond *African Labour Problems* 86.

<sup>161</sup> Lansdown Commission para 211.



To ameliorate the position of Africans, it advised wage increases so as "to improve the condition of families in the Reserves".<sup>162</sup> The commission recommended pay increases for Africans and some provision for overtime pay. The proposed increase was that wages moved "from 1s. 9d. to 2s. 2d. per shift for surface workers and from 2s. to 2s. 5d. per shift for underground workers".<sup>163</sup> Subsequent earning scales introduced following the receipt of the report were less than those proposed by the Commission.<sup>164</sup>

On the query about whether it was advisable to permit Africans to form trade unions and engage legally in activities connected thereto, the Commission opined that Africans were not at a "stage of development which would allow them safely and usefully to employ trade unionism as a means of promoting their advancement".<sup>165</sup> Instead the Commission proposed that procedures be devised to allow African workers to notify the mine authorities of any generalised complaints from their midst, beginning with assigned officials and ultimately leading to the formation of "council[s] of workers".<sup>166</sup>

During the first half of the twentieth century African workers periodically collectively voiced their dissatisfaction at the worsening circumstances caused by the paltry wages and substandard working conditions. Though narrow-minded, the investigative commissions that were convened to examine such matters routinely highlighted the validity of the complaints raised. Yet the welfare of African workers was consistently sacrificed on the grounds that doing so was best for the economy and the country as a whole. With each decade the inferior wages of Africans were concretised as acceptable. The continuous violence of colonial subjugation was inflicted on Africans as laws erected the normative pattern. Therefore the above narration, a recount through the figure of the "native labourer", signals a concurrent narrative to moderate the validity of the meta-narrative. The incessant presence of the hemmed in African haunts the scheme and so impairs its cogency.

## 6 Conclusion

By linking the official discourse to the diktats of law, this contribution has illuminated some perilous conditions under which Africans carried out mine work during the early to mid-twentieth century. There was centralisation of the

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<sup>162</sup> Lansdown Commission, compare Diamond *African Labour Problems* 125.

<sup>163</sup> Lansdown Commission, compare Diamond *African Labour Problems* 125.

<sup>164</sup> Christie *Electricity Industry and Class* 39-142.

<sup>165</sup> The Commission took the view that "public interests would definitely negative the delegation of such power to" African worker associations at the mines - Lansdown Commission para 467.

<sup>166</sup> Lansdown Commission para 470; Anon 1945 *Int'l Lab Rev* 65.

comprehensive suppression of African wages, which enhanced the profitability of the industrialised mining enterprise. Although the law permitting and administering trade union membership and collective bargaining denied Africans participatory recognition, the advantages it bestowed on White workers were dependent on the purposeful suppression of African workers.<sup>167</sup> This was aided by the racialised workplace hierarchy, the repression of African wages and the neglect of African wellbeing.

The muffled "small voices" of the Africans themselves can scarcely be discerned from the depictions of Africans as "natives" and "native labourers". What is salient in the matters discussed are the consistent efforts to discount the material circumstances of Africans through a dogged "law pure and simple" adherence to the justificatory edifice of colonialism.<sup>168</sup> This procedural "black letter law" approach concerns itself with applying set legal principles to given facts in accordance with a ratified method, which is presumed to be neutral.<sup>169</sup> The reports and cases discussed have also shown that the ubiquitous attendance of Africans was moderated by interpretations that accepted their denuded subjectivity as a rational given.<sup>170</sup> African presence has appeared in muted and disposable form or deliberate silence in the text discussed; a tangential incorporation inducted by the manufacture of lesser beings in regulatory thought and practice. Focal re-enactment of this narrative tends to subvert the resort to "principled forgetfulness" because past law has not been recalled in a manner detached from its morality.<sup>171</sup>

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<sup>167</sup> *Parisian Bakery v Ben* 1934 TPD 245; *Rex v Campbell* 1936 TPD 84; ICA; *Wage Act*.

<sup>168</sup> Chaplin explains that usually "[l]aw is identified with logos as the ideal of reason that 'guarantees the truth of a ... symbolic order' ... Law-as-Logos functions as the ground zero of the symbolic order". The notion is fictional since all law is based on "founding supposition[s]", such as African inferiority - Chaplin 2005 *Law and Literature* 47, 50-51; *Rex v Barone* 1927 TPD 478, NEC; Lansdown Commission.

<sup>169</sup> Miles 2008 *CLJ* 17-20; *Rex v Hodos and Jaghbay* 1927 TPD 101; *Parisian Bakery v Ben* 1934 TPD 245.

<sup>170</sup> *Hashe v Cape Town Municipality* 1927 AD 380; *Rex v Mohamed* 1930 TPD 726; *Molife v Municipality of Potchefstroom* 1930 TPD 197.

<sup>171</sup> Nandy 1995 *History and Theory* 44, 47.

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## List of Abbreviations

Adel L Rev	Adelaide Law Review
AHR	American Historical Review
CLJ	Cambridge Law Journal
Contemp Theatre Rev	Contemporary Theatre Review
ICA	Industrial Conciliation Act 11 of 1924
IJAHS	International Journal of African Historical Studies
ILJ	Industrial Law Journal
Int'l Lab Rev	International Labour Review
JAH	Journal of African History
JSAS	Journal of Southern African Studies
NEC	Native Economic Commission
NGI	Native Grievances Inquiry
SANAC	South African Native Affairs Commission
SWU	Sweet Workers' Union
TLC	Transvaal Labour Commission
WNLA	Witwatersrand Native Labour Association