

Editorial



One section in *Labour Bulletin* is called 'In the Union'. But whereas in the 1980s this created an instant notion of a national industrial union, the ideas 'national', 'industrial' and 'union' are now contested.

This edition of *SALB* makes this abundantly clear. The National Union of Metalworkers of South Africa (Numsa) is now misnamed. Chere Monaisa tells how Numsa made the strategic decision to expand along value chains and into new sectors. It now organises and recruits in its traditional areas of auto and metal engineering but also has large membership in mining, transport, road freight, catering, cleaning and construction.

Numsa has turned debates on general versus industrial unionism and how best to build power from the 1970s, on its head. Its new organising strategy has increased membership and its ability to ward off employer attacks.

Vanessa Pillay is not talking of unions at all although she is definitely talking about workers' organisation. Rather, she tells of waste picker negotiation forums, associations and alliances. In informal settlements where most pickers live many forms of organisation exist which allow them to organise and mobilise for action.

The South African Waste Pickers Association is recognised at a national policy level. But it is in local municipalities that reclaimers are fighting for bargaining forums to win better facilities, such as secure spaces to operate from including ventilation, lighting, water and sanitation, garbage removal and access to markets, and to be integrated into cities' waste management systems.

Jenny Grice shows how these 'new' workers in South Africa raise different

bargaining concerns. Although visible to urban dwellers, reclaimers have no suitable workplaces or housing. This often pits them against other city dwellers as they occupy parks and river banks.

In a review of *Crossing the Divide* Francie Lund tells how the authors locate vulnerable work, formal or informal, in invisible workplaces such as streets, workers' homes, homes of others, beachfronts and landfills and this affects organisational forms they adopt.

The authors address questions of how precarious workers organise, their sources of power, and relationships with civil society organisations. They organise in cooperatives, associations, and in some cases they cross the divide and join unions. However, informal workers keep their distance from unions because of class differences and organisational procedures, while unions are not always open to new ways of organising.

But it's possible. An article on the Ugandan Amalgamated Transport & General Workers' Union (ATGWU), describes how it made the decision to incorporate informal workers by changing its constitution and adapting its structures.

The union had been decimated by World Bank structural adjustment programmes, new forms of employment and privatisation. But from 2004 onwards it began to incorporate informal associations of transport workers.

ATGWU's decision has had a dramatic impact on informal sector drivers including a reduction in police harassment, big gains in collective bargaining, reduced conflict within associations, and improved visibility of women workers. Today with 60,000 members, it leads the drive to secure

decent work for its formal and informal members.

Informal workers often organise to represent themselves to the authorities through credit and savings cooperatives, informal self-help groups, community organisations, and associations. Trade unions can assist in bringing together these smaller organisations, and thereby augment their power in negotiations.

A summary of a panel discussion at the 30th Annual Labour Law Conference notes that globally unions are in decline. The panel correctly pointed to solutions: unions must update, develop technology, and find new organising methods to bring in young membership; improve training, good governance, and preparation for negotiations; upgrade leadership and servicing, focus on equity issues, strengthen compensation institutions, and so on.

The panel did raise questions of how to manage mass unemployment, and connect with new forms of employment. However, it did not engage with how traditional unions need to adapt to the informalisation of work as a response to unemployment. It discussed how to strengthen unions without the broader perspective of how organising informal and precarious workers can grow unions and win better wages and conditions for all.

Finally, two articles speak to new initiatives to seriously organise workers. Carin Runciman and Eddie Webster point to how the law can be successfully used to mobilise casualised workers, while a group of worker and student negotiators record in fascinating detail the anatomy of negotiations to insource University of the Witwatersrand maintenance workers. ¹⁸

Kally Forrest, Guest Editor

The South African Labour

Bulletin's mission is to:

- provide information and stimulate critical analysis and debate on issues and challenges that confront workers, their organisations and their communities; and
- communicate this in an accessible and engaging manner.

In so doing the SALB hopes to advance progressive politics, promote social justice and the interests of the working-class.

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Amplifying voice, visibility and validity

Waste pickers in Jo'burg city

We see reclaimers heaving waste on the the streets but Jo'burg city has not acknowledged their contribution. **Vanessa Pillay** tells of a waste integration project to assist in organising reclaimers and of an historic protest march to change their conditions and raise their visibility.

Waste pickers, reclaimers or abagerezi are workers whose livelihood depends on going through discarded waste to retrieve recyclable material. Their contribution places South Africa among the highest in the world at a 57% rate of collection of recyclables, according to Packaging SA statistics.

Waste pickers deliver almost all their pickings into the recycling chain. Yet they remain the most vulnerable actors at the bottom of the recycling value chain within a highly profitable industry, estimated at R15-billion in revenue for South Africa.

In the city of Johannesburg (Jo'burg) where Pikitup provides waste management services the company noted that in one area the amount of waste not going to the landfill was double that of what Pikitup was collecting. This suggests that informal waste pickers are very effective retrievers of recyclables.

There is a need to recognise and compensate waste pickers for their contribution to saving the environment. But here lies a contradiction. Waste pickers who divert waste material away from landfills, impact negatively on other pickers whose livelihood depends on retrieving recyclables at the landfill.

The majority of these workers remain outside the recycling system as the working poor. Just a few are part of the 25 cooperatives that the city has contracted over the past 12 years to collect waste in particular areas, and a few have been included in Extended Public Works Programmes. In general the Johannesburg municipality has not made them part of their waste strategy.

We see waste pickers pulling makeshift trolleys on the streets and rummaging through bins. We also find them on municipal and private landfill sites in the city risking life and limb to make a living.

WASTE INTEGRATION PROJECT

Women in Informal Employment Globalising and Organising (Wiego) in consultation with the South African Waste Pickers Association (Sawpa) and the environmental justice organisation groundWork started the Waste Integration in South Africa (Wisa) project. They aim to strengthen the organisation of waste pickers in the Jo'burg, Tshwane and Sasolburg municipalities.

Through strengthened organisation on the ground waste pickers can take part in decision-making and policy discussions that affect their role in municipal waste management. During the three-year project (2016–2019) lessons learned

will be applied to other cities.

The Wisa project coincides with the National Department of Environmental Affairs' process to develop guidelines for municipalities and industry on 'measures to improve the working conditions of waste pickers'. These nationally developed guidelines are critical to creating a regulatory framework for the recognition and inclusion of waste pickers in every municipality.

However, implementation and enforcement of guidelines cannot be left to chance and must include waste picker organisations on the ground.

Sawpa formed in 2009 is recognised at the national policy development level. But, recognition of waste picker representation at city level has not been achieved.

Sawpa's presence has been more prominent among waste pickers on landfill sites than among waste pickers on the streets so waste picker organisation in cities has been fragmented. This makes them vulnerable to exploitation by buyers because the price of recyclables is unregulated.

Waste pickers are also harassed by the law because they are largely excluded from city bylaws. The authorities fail to recognise or engage with all reclaimers who are after all the founders of the informal system of collection, sorting and selling of recyclables.

Without structured forums for negotiation, the city has developed projects and programmes that endanger waste pickers' livelihoods. City officials claim that they cannot consult them because they are not organised. However, the Wisa project found that pickers are indeed organised, mainly around their means of survival and less so on improving their livelihoods and working conditions.

The Wisa project's main objective is to reverse this situation and achieve democratic waste picker representation and organisation in every city.

PROBLEM OF JO'BURG'S PRIVATISATION MODEL

While the national waste management strategy aims to improve reclaimers' working conditions, Jo'burg city's privatisation of waste management services threatens to displace waste pickers. The city is striving to achieve waste minimisation targets of 40% waste to energy, 33% composting and recycling, 20% waste reduction at source by industry and through consumer education, and 7% to landfills.

The city's policies on waste tend towards a private sector model. However, there are more socially responsible and environmentally-friendly models that are successful in developing countries like Argentina, Brazil, Colombia and India.

The South African context of rising unemployment forces more and more people into informal work. So waste picking provides a source of income, easy entry and the flexibility to return to it at any time between 'piece jobs'.

The collection, sorting and separation of waste is labour intensive and provides an opportunity for job creation. With decent working conditions and skills development there is the possibility of progression into areas such as treatment, recovery,



Reclaimers meet to discuss Jo'burg city's privatisation of waste management services which has been disastrous for wastepickers.

W Maitla

manufacturing and packaging in the recycling economy.

SEPARATION@SOURCE: STREET PICKERS

To achieve its waste minimisation targets by 2040 the city started a Separation@Source programme in 2009.

It began educating households on separating their waste into recyclable materials for collection by contractors. Contractors then sell the recyclables at a profit and the city also pays them to provide this waste management service.

Yet waste pickers have done the same collection, separation and sorting of recyclables for generations except they remain the 'nameless' trolley pushers on the streets. In this way they have given an environmental and public service at no cost to the city.

In August 2016 the city extended its Separation@Source programme and issued a tender to contract private companies to provide waste management services. This service was in middle and high income areas serviced by Pikitup's Randburg, Roodepoort, Midrand, Selby, Norwood and Avalon depots. The impact of this on waste pickers' livelihoods was catastrophic.

Collection from high income areas means that reclaimers get better value recyclables providing

a higher income. Pickers whose collection routes included the northern suburbs reported losses of more than half of what they used to make before residents put their recyclables into provided bags for contractors to pick up. Residents no longer put waste on the kerb-side where pickers can access it.

Of greater concern is that industry is recommending that government introduce a national separation at source programme. Industry has also recommended the continuation of labour intensive collection and separation in order to maximise job opportunities. But the city of Jo'burg has opted for the more expensive contractor model which is also less socially responsible.

SEPARATION@SOURCE: LANDFILL PICKERS

The city has developed targeted waste reduction strategies to divert as much waste as possible away from landfills. This is to save landfill air space and prevent harmful environmental effects. But this has harshly impacted on waste pickers on landfill sites.

When recyclables are separated and collected directly from source (residents, business and industry) it reduces the volume that pickers on the landfill depend on for their livelihood.



The decline in recyclables creates competition among reclaimers for waste and this often leads to violent disputes. This is especially true at the Goudkoppies landfill where about 3,000 waste pickers and unemployed residents from the surrounding informal settlements gather daily to collect recyclable material.

With growing unemployment the waste sector with no entry barriers, and relative autonomy, provides a source of income for locals and migrants alike. It is therefore unlikely that the situation will change in the near future.

ORGANISING FOR A VOICE

From 2016 the Wisa project has organised across the city's seven regions and at three of the four Pikitup landfill sites. At all landfills there were existing committees that represented workers mainly in casual engagements with the authorities. This was mainly around access to landfills and keeping harmony among reclaimers, security, and Pikitup at the landfill.

The informal settlements where the majority of pickers live serve as sites for shelter but are also strategically placed to connect reclaimers to picking and sorting points including buy-back centres where they sell material.

In these communities there are many different forms of organisation where pickers come together to organise and mobilise for action.

As a result of organising, reclaimers elected the Interim Jo'burg Reclaimers Committee to represent workers to the authorities.

The committee supported by Wiego approached the city to discuss the challenge of its Separation@Source programme. It told how the city threatens to displace trolley pushers dependent on working in the targeted areas.

Yet despite appeals to Pikitup and the city to discuss the private contracts and its impact especially on street pickers, the city announced that contracts would go ahead in July 2017. The pickers were left with no choice but to fight back to protect their livelihoods. They organised a protest march on 13 July 2017 and took legal advice from the Socio-Economic Rights Institute (SERI) on how to challenge the impact of the latest private contractor model on their livelihood.

HISTORIC RECLAIMER PROTEST

Hundreds of reclaimers took to the streets in an historic protest by waste pickers in the city. Street and landfill pickers united to fight for their livelihood. What had been a private struggle for the authorities to hear them, now drew public attention to their plight.

Key demands were for recognition as environmental agents and to be treated with respect to break the stigma that 'people think we are dirty because we work with trash'.

Waste pickers are also concerned about their health because of the exposure to hazardous conditions where they work and live. Therefore, recognition and improved working conditions is central to their livelihood struggle.

STRUGGLING FOR VISIBILITY

Ongoing organisation and the protest march, is for waste pickers a struggle for visibility as workers and entrepreneurs in the city. They want people to recognise their environmental and economic contribution and to be properly compensated instead of middlemen, who buy waste material from them before selling it to industry, exploiting them.

Their efforts paid off as the newly appointed Pikitup managing director, Lungile Dhlamini, who received the protest memorandum engaged with the pickers after the march. He acknowledged that reclaimers were principle stakeholders in the city's waste economy and deserved recognition and engagement on their livelihoods.

Since then a task team of the Interim Jo'burg Reclaimers Committee, Pikitup and the City of Jo'burg's Environment and Infrastructure Services Department has been set up to develop a framework for waste picker integration into the city's waste economy.

The main negotiation demand for waste pickers is that they should be recognised for the work they have always done and that new programmes and projects on waste management must not destroy their livelihoods.

They point out that waste pickers can save municipal spending. By diverting recyclables from landfills, they save municipalities landfill air space at no cost. Street collectors contribute further to saving municipal waste collection, transport and disposal costs. Jo'burg city's privatisation decision will cost more than working with reclaimers. The savings could be used to pay them for the public and environmental service that they provide.

Waste pickers want transparency and equal opportunity in current and future waste management projects and programmes. This can be achieved through a centralised registration system of all reclaimers.

Finally, the reclaimers' struggle is for recognition and the right to decent working conditions and social protection like other workers, and to retain their autonomy as pioneers of the informal waste management system. ^{LB}

Vanessa Pillay is a Wiego organisation and representation programme officer for Africa and project manager of the Wisa project.

Forgotten yet visible

Reclaimers need a home in the city

How do we keep our green leisure spaces free from people living illegally in them?

Jenny Grice examines the problem that many informal workers have of finding a work and living space and in so doing exposes the underbelly of Johannesburg and one of its major problems.

Ask Rudzani Tshikuvhe, of Johannesburg Metro's Displaced Persons Unit (DPU), where people are living illegally in Johannesburg's green spaces and he rattles off, 'Regions B, C and E [Randburg, Roodepoort, Sandton] where displaced persons live by the stream. Region F [Johannesburg inner city] is where you find trolley pushers, *nyaope* drug users, and women prostitutes. Region G [Lenasia] has young boys, school dropouts, who beg, hustle, drink alcohol, stab and harass people.'

Tshikuvhe and the Unit's task is to visit hot spots like these three times a week. He goes with JMPD (Johannesburg Metropolitan Police Department) and the SAPS (South African Police Services), to move the 'displaced persons' out of the green spaces and other areas. Not during the day, but mostly at night when people return to their spots to sleep.

According to Tshikuvhe, the hot spots are 'mushrooming every day'.

GOVERNMENT SHELTERS

Tshikuvhe's team encourages people to go to the government-run shelter. It tries to 'find out where they come from, who are their family members, put them in touch with their families again,' he says.

Those that choose to stay in the shelter must pay a minimal amount per night and for that they get a hygiene pack, a locker, a bed with blankets/duvet, supper and breakfast.

Does moving them to the shelter solve the problem? 'We move 60-70 into the shelter [in a night], 20-25 stay. The others go back to the streets. If 10% are left, then it is a success,' Rudzani says.

In 2015, JMPD spokesperson, Chief Superintendent Wayne Minnaar told a newspaper, *The Randburg Sun*, 'homeless people' were able to make a better living operating from areas where they lived illegally. 'At the shelters you don't get money. [From the illegal area] they can beg and collect waste. They make good money like that.'

Rudzani says they link undocumented migrants with their embassies and encourage them to go home. 'Nobody wants to go home,' he says. 'They want jobs, houses. They tell us, "This is Africa, this is for us, we want to stay here."'

STAYING WHERE THE WORK IS

Just below Emmarentia Dam, where electricity pylons march down the hill and the green space is unfenced, you find people sleeping on the banks of the Braamfontein Spruit and its other tributaries, up to Albert's Farm.

During the day they are not often there, but signs of their habitation are. Rubbish left over from sorting recyclables from general rubbish, a bit of plastic stretched over a branch to provide rudimentary shelter, the stench of someone who has to use the veld as a toilet, a bulging Checkers' bag tied to the tree above the remains of an open fire on a cleared patch of ground.

During 2017, SAPS, JMPD and a local security company raided this area a number of times. Robberies and cable theft had spiked and the community was putting pressure on SAPS to act.

In one of the raids early in 2017, of the 48 people that they apprehended, 33 were working locally. Many were working on building sites, and some as gardeners or other piece jobs. Not all of them were homeless and many were South Africans, not illegal immigrants.

Those working on building sites were earning R600 every fortnight or R60 per day. When they were paid, they returned home for the weekend. Home for one person was Meadowlands, for others it was townships far from the suburbs where the taxi fare to go and return to work cost them more than a day's wage.

Ayanda Roji, general manager of research and knowledge management at City Parks and Zoo, says she is aware of the problem of homeless people's encroachment into parks and open spaces. Often people cut down trees in parks to make fires and erect illegal structures which jeopardises public health. This is particularly true of reclaimers who sort and discard unusable rubbish in these spaces.

The problem is 'complex', says Roji. 'Eviction is not a sustainable solution because it does not respond to the complex and structural issue of homelessness.' City Parks is committed to finding solutions by speaking to other state and non-state institutions involved in homeless issues. It also wants 'through its Public Dialogues, to have a conversation with non-state actors - universities, NGOs and even those who are homeless,' to find a more humane and permanent solution.

TEMPORARY SOLUTIONS

Just five minutes from Melrose Arch is the James and Ethel Gray Park. A few years ago it was in a terrible state. Human waste and rubbish lay everywhere and local residents feared walking there.

Lisa Lowenthal, a resident whose property shares a border with the park, had had enough. She started to engage with those living in

the park, to find out who they were, why they were there and to find a solution that would work for residents and unofficial park dwellers.

She found two main groupings: reclaimers and construction workers. The reclaimers were mostly Zimbabweans. They relied on scratching through the waste bins of the wealthy to pick out waste to sell to recyclers. Their hard work earned them about R1,250 per month. Most had been 'living' there for more than 15 years.

The construction workers were mostly from Lesotho. They earned a similar amount to the recyclers and were also long time 'residents'. Both groups had come to Johannesburg to earn money to send to their families back home.

Working with JMPD, SAPS and the local security company, Lisa made a deal with the reclaimers and construction workers in the park. They could 'live' there illegally provided they erected no structures, kept the park clean and acted as the eyes and ears of the neighbourhood. The local security company issued them with panic buttons linked to the company's control room should they pick up a security threat.

In return, the authorities cordoned off a section of the park so that the recyclers can sort and separate their pickings while the residents put out their recyclables each Monday.

Lowenthal also helps the waste pickers to secure better prices for their recyclables and gets the recycling truck to fetch their big bags once they are full. Similar arrangements exist in other green spaces across the northern suburbs.

She is also trying to find a permanent place for them to stay that is more secure and habitable. However, with a backlog of 300,000 accommodation units in Johannesburg, a lack of rental accommodation for very low-income earners, especially undocumented foreigners, and an estimated 3,000 new people moving to Gauteng each month, mostly to Johannesburg, it is not an easy task.

The few government-subsidised low income rental units in the city are over-subscribed and only available to those with South African identity documents.

The table below, highlights this problem in Johannesburg's inner city. Between the years 2001 and 2011, the number of very low income households that could afford to pay a rent of between R0 and R1,000 per month grew by 65%. Almost a third of the households in the inner city in 2011 had zero income and could therefore afford no rental at all. It is likely that these numbers have increased further since then.

MONTHLY HOUSEHOLD INCOME AND RENTAL AFFORDABILITY IN INNER CITY JOHANNESBURG

Monthly household income	Monthly rental affordability (30% of income spent on housing)	Number of households in Region F (inner city)		Increase or decrease in the number of households	Percentage (%) change
		2001	2011		
None	R0	6 919	13 778	6 859	99%
R1 - R400	R0 - R120	826	1 099	273	33%
R401 - R800	R121 - R240	2 635	1 786	- 849	32%
R801 - R1 600	R241 - R480	5 040	4 721	- 319	6%
R1 601 - R3 200	R481 - R960	5 095	12 474	7 379	44%
TOTAL		20 515	33 858	13 343	65%

Minding the Gap: An analysis of the supply of and demand for low-income rental accommodation in inner city Johannesburg, SERI, 2013.



A reclaimer cleaning the canal that runs through the James and Ethel Grey park in Melrose at the beginning of an innovative project.

DO CORRIDORS OF FREEDOM HELP?

During apartheid, townships were built on the edges of white cities. After 1994, because of the high cost of land close to the city, the state built RDP houses for the poor in areas far from economic activity. The post-apartheid city threatened to continue the inequality of the apartheid city.

Johannesburg's corridors of freedom, the rallying cry of the previous African National Congress (ANC) administration, were meant to address this. Transport corridors, with dedicated bus lanes, would link residents from old townships to the city. The city would relax town planning regulations along these corridors allowing for higher density dwellings with green parks for those living in small flats or rooms to relax.

In addition the municipality would redevelop the inner city to provide more affordable rental housing. It would encourage developers to build low income housing since the city did not have sufficient funds.

But this is proving difficult. As SERI's executive director, Stuart Wilson, told the SABC in October 2017, it's all about money, 'The

private sector cannot afford to provide housing for poor people and at the same time make a profit.'

The cheapest bachelor flats in areas like Orange Grove, and the inner city are rented from R1,500 to R2,000 - about the same or more than the monthly income of many people inhabiting the open spaces.

So the chances of the low income, green-space dwellers finding affordable accommodation is slim. And what is the likelihood of them increasing their earnings?

'Not good for recyclers,' believes Eli Kodisang, organiser for Women in Informal Employment: Globalising and Organising (Wiego). As jobs evaporate in the formal economy, and with unemployment at an all-time high of 27.7%, more and more people, particularly retrenchees from the mining sector, are becoming reclaimers. Start-up costs for waste pickers are nil and new people can work whenever and wherever they want.

There is more severe competition than ever before and Kodisang worries that *zama zamas* (illegal miners) 'are muscling in' as well. As conditions get more desperate, theft of reclaimers' full trolleys is climbing. The sale of a trolley's contents can reward the thief with between R400 and R700.

Kodisang believes that Pikitup has put a further squeeze on the city's reclaimers. In many of the city's richer northern suburbs, Pikitup has set up 'separation at source' projects. It calls these projects, cooperatives.

Wiego calls them instead BEE (Black Economic Empowerment) companies that are leeching off the state. The cost of their vehicles, maintenance and diesel is covered by Pikitup. Wiego favours a cooperative model where the income would flow more equally to co-op waste pickers.

If anything, the green spaces in the northern suburbs could see a rise in the number of inhabitants in the coming years, rather than a decline.

CONCLUSION

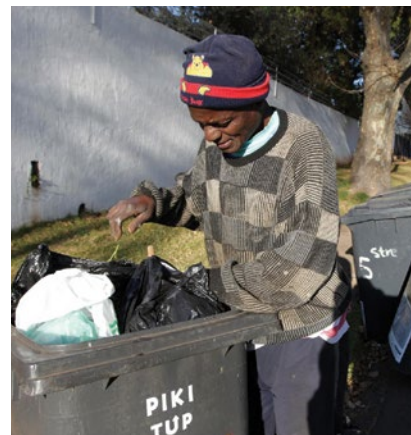
Even the R20 per hour national minimum wage due to come into effect in May 2018 is unlikely to help the green-space dwellers. Those that aren't reclaimers are employed in piece jobs or on construction sites, which are very difficult to monitor and inspect.

Moreover, according to a survey of labour inspectors done by UCT's Development Policy Research Unit, the higher the unemployment rate, the bigger the chance that employers are breaking legal wage rates and other minimum conditions. And then there is the challenge that labour inspectors are not 'too stringent on employers as this may result in companies laying off workers,' according to Brian Murahwa (SALB 41.2).

On top of this, the majority of these workers are foreigners who face difficulties in asserting their rights. Workers are more likely to be arrested for being in the country illegally than their employers are for breaking labour laws (SALB 41.2).

The only possibility is for local and foreign workers to join hands and organise themselves to ensure safe and decent transport and housing near whatever work they do. **LB**

Jenny Grice is a former National Union of Metalworkers of South Africa (Numsa) official, now retired.



Bettertourism Africa

Poorly trained, ignored and used by mines

Mine health & safety representatives

Health and safety on South African mines is much improved since the end of apartheid. Yet problems persist. **Nancy Coulson** looks at the role and practice of health and safety reps since the introduction of the Mine Health and Safety Act in 1996.

In 1996 when the Mine Health and Safety Act (MHSA) was introduced the apartheid legacy of discrimination and racism in South African mining still lingered. It was the underlying reason for the astonishingly high numbers of mine fatalities, injuries and cases of occupational disease.

IMPROVEMENTS & CHALLENGES

Twenty years later, in 2016 the mining industry recorded the lowest ever number of mine fatalities – 73 deaths in one year. However, although this was an 84% decrease in deaths from 1996 to 2016 it is far off the mining sector goal of ‘zero harm’.

Mines struggle to sustain these positive gains and by the end of October 2017, the National Union of Mineworkers (NUM) issued a press statement about ‘sky rocketing’ fatalities on mines. Soon after another mineworker died in a Gauteng gold mine. Already by the close of October 2017, the total mine fatalities of 2016 had been matched.

Improvement in occupational disease after the introduction of the MHSA has been slow, but is now

happening. However, there are still new cases of silicosis (incurable lung disease caused by inhaling silica dust especially on gold mines) as well as noise induced hearing loss.

The new health and safety legislation also coincided with the escalation of the HIV epidemic in South Africa during the 1990s. Until today the mining sector carries a heavy burden of communicable diseases especially HIV and tuberculosis (TB). The Department of Mineral Resources estimates that there are 39,000 mineworkers on ARV drugs for HIV and 4,000 on treatment for TB.

Non-communicable diseases such as diabetes and hypertension are also escalating and more and more mineworkers are unable to work for these reasons.

However, these continuing challenges should not mask the enormous progress mines have made towards improved health and safety in the last 20 years. There are several possible explanations for this progress.

One explanation is that the gold sector has shrunk. Gold mining has the highest number of fatalities so

a smaller sector means reduced fatalities. The Chamber of Mines points to industry leadership and their commitment to health and safety. It also points to the success of the introduction of its flagship programme, MOSH (Mining Industry Occupational Safety & Health).

Mining, through the Mine Health and Safety Council, has from 2003 set sector wide health and safety milestones to drive improvements. However, gains in health and safety have historically been made on the back of labour struggles.

Another possible reason for dramatic improvements in the last 20 years is that worker selected health and safety representatives (reps), as stipulated in the Mine Health and Safety Act, are working.

TYPES OF WORKER HEALTH & SAFETY REPS

The MHSA is aligned with the ILO (International Labour Organisation) convention 176 ‘Safety and Health in Mines’. It is shaped by tripartism (business, labour, government) and makes the employer responsible for health and safety and for ensuring a programme of risk management to identify and control hazards.

The Act also provides for worker consultation on health and safety. Workers must select worker representatives whose primary role is to represent workers on all matters related to health and safety. They also support the identification hazards programme in the workplace and have the right to withdraw workers from a workplace they believe is dangerous.

Research shows that in highly industrialised countries workplaces with worker representation in health and safety are more likely to be healthier and safer places.

A presidential audit in 2008 of South African mines reported that two-thirds of mines complied with the mandatory requirement for worker representation. Arrangements for worker representatives on South African mines are generous in comparison with those found in other mining countries.

In South African mines there are two types of health and safety representatives. The first is a full-time health and safety representative appointed for three years who works across the total mine site. The second is a workplace health and safety representative who acts for no more than 100 workers in a particular workplace and continues to hold the same job.

There are usually between two to four full-time health and safety representatives per shaft on large underground mines. There can be several hundred workplace health and safety reps on a large mine.

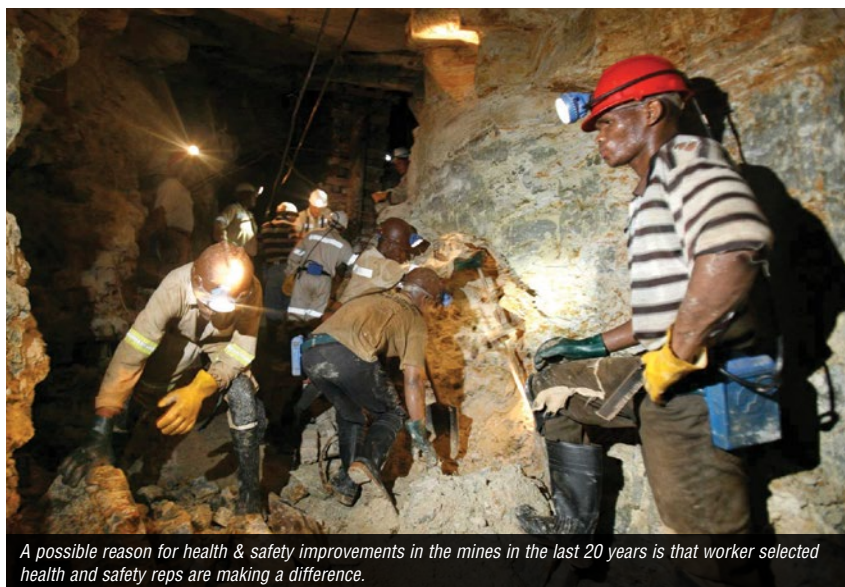
Management consults with the recognised union on these arrangements which are agreed to in the mine health and safety collective agreement. Both the employer and employee representatives sit on the bipartite mine health and safety committee, which is compulsory under the Act.

However, on a large mine there is a third type of health and safety representative. These representatives are closely associated with trade

unions. They sit on the union health and safety structure, as a sub-committee of the local union branch. They may be union shop stewards appointed under the LRA (Labour Relations Act). They do not have the powers and rights of health and safety reps appointed under the MHSA, but they are appointed to work in a full-time capacity as a shop steward on health and safety related matters.

One study found that 56% of workers reported that a health and safety representative had asked them to withdraw from a dangerous workplace.

However, being a health and safety rep was fraught with difficulties. They described being personally accountable for health and safety violations committed by co-workers. They also felt it was their role, rather than that of the



A possible reason for health & safety improvements in the mines in the last 20 years is that worker selected health and safety reps are making a difference.

Financial Times

WHAT DO HEALTH & SAFETY REPS DO?

Case study research at the Centre for Sustainability in Mining and Industry (CSMI) explored the day-to-day activities of health and safety reps on large underground mines. It found that health and safety representatives are poorly prepared for their role and don't reference the correct section of the MHSA which describes their rights and powers.

Despite this serious omission, health and safety reps described their health and safety activities. They assist with risk assessment to make sure the workplace is safe at the start of the shift, check that workers are neither too sick, or emotionally upset to work, and educate and reinforce safety rules and compliance with personal protective equipment (PPE).

supervisor, to remind workers to respect safety rules and to wear their PPE.

Representatives said that supervisors and management did not listen to them and they were unable to escalate workers' health and safety complaints. They were often in conflict with others - pushed aside by supervisors in the interests of meeting production targets or ignored by workers intent on getting a production bonus.

Workers reported that while it was good to talk to the health and safety representative, the rep lacked the power to confront supervisors and/or make sure a workplace was made safe.

All of this meant that representatives described their role as 'risky' and that mineworkers did not want to be health and safety



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Training programmes are often inadequate and unreliably delivered. Safety reps are not properly informed about their role and rights and are prey to management interests.

representatives. Increasingly there are demands by workplace health and safety reps and trade unions for incentive payments to take on the role.

WHO DO REPS WORK FOR?

Section 30 of the MHS Act grants representatives the right to speak for employees on matters related to health and safety. Yet despite the direct influence of organised labour, on large mines the full-time health and safety reps report to the office of the chief safety officer, who is often the most senior health and safety practitioner on site. Most often health and safety representatives take instructions from a safety officer who is part of the management team.

Safety management take advantage of this arrangement. They use health and safety reps as a source of information, so they become the 'eyes and ears' and 'voice to the lower level'. Safety management use this channel to find out about excesses of production pressure and bonus chasing. Safety management described production supervisors as 'tricky', 'bullying' and disrespectful of health and safety reps and it was forced to intervene in some cases.

Safety management did not encourage full-time health and safety reps to report to the union branch structure. Where reps reported to the union, safety management tolerated it as long as it did not

interfere with the safety rep's main job – acting as management's communication channel.

Management drew a distinction between union shop stewards and safety representatives appointed under the MHS Act by emphasizing that health and safety knowledge of full-time and workplace reps. Safety management considered union reps as involved in politics and mainly concerned with employee relations.

Union health and safety shop stewards work largely on the surface and engage in employment disputes around such things as an incapacitated worker or the claiming of compensation. However, it is these union reps who management consult in the event of an accident or a significant event related to health and safety.

In contrast, safety management believed that full-time and workplace reps should act on their own and not be aligned with organised labour or the employer.

BRIDGING GAP BETWEEN SAFETY REPS AND UNIONS

The research highlights that worker representation is fragmented and many health and safety reps are isolated from organised labour. Studies worldwide show that management dominance of the arrangements for worker representation is on the rise.

Neo-liberalism strengthens the hand of the employer. In many workplaces worldwide, and in

South Africa, union membership is in decline and contracted and other forms of precarious labour is on the increase. This contracted labour is often not union organised.

However, the permanent mining workforce in South Africa is well unionised and there is an opportunity to strengthen the effectiveness of worker selected health and safety reps. Internationally it is accepted that there are several critical factors that ensure their efficiency. Two of these are union involvement with reps and access to training and information.

In 2010 when the Mining Qualifications Authority revised a sector wide training programme for health and safety reps, it estimated that 40,000 people needed training.

Training centres on large mines or private service providers are accredited to deliver a 15-day training programme. But this training programme is often inadequate and unreliably delivered. Full-time and workplace health and safety reps are not properly informed about their role and rights and so they are prey to management interests.

To bridge the gap between organised labour and health and safety reps unions need resources to train their own representatives. Management are wrong to see health and safety reps as not aligned to either unions or the employer. All stakeholders in the sector should be subject to guidelines or a code of practice which underpins the important relationship that health and safety reps can have with organised labour. ^{LB}

Nancy Coulson is a researcher at the CSMI at the University of the Witwatersrand. She is researching health and safety in South African mines including conducting case studies at large underground mines in Gauteng and North West provinces.

Labour law 30 years on

A reflection and the future

Over the last 30 years labour law has been in continuous flux as it responds to changes in the labour market. **Paul Benjamin** outlines the main shifts and indicates where important changes still need to happen.

The rise of strong black trade unions in the 1980s under apartheid established important new labour rights. This meant that with the election of South Africa's first democratic government in 1994 a progressive labour law framework with substantial rights was put into place. But the lack of economic transformation and rising unemployment and inequality has meant ongoing contestation and amendments to legislation with some laws still needing revision.

POST-APARTHEID LABOUR LAWS

In the first five years of democracy between 1995 and 1998 significant legislation was passed. This included the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA), the Employment Equity Act (EEA) and the Skills Development Act.

These laws were intended to transform a labour market marked by high levels of inequality and unemployment, and low levels of skill and productivity. They established core worker rights and facilitated South Africa's integration into the world economy. The International Labour Organisation (ILO) described the process of social dialogue to develop these laws as constructive and effective.

In this period industrial councils, which had served as structures for industry-wide negotiations since 1924, were transformed into bargaining councils with new powers and responsibilities. Their mandate now included the conciliation and arbitration of disputes of right within their sector.

In 2001 a modernised Unemployment Insurance Act was passed which despite much promise has never played a more central role in the labour market (see article titled 'Social security in South Africa: Urgent refocus needed').

In 2004 following a strike of some 4,000 labour broker workers at the East Rand Propriety Mine the Department of Labour (DoL) commissioned a report on the rights of temporary labour. It concluded that companies used labour broking to reduce labour costs and avoid labour laws. Brokered workers had no job security and were paid much less than workers employed directly by firms. The report identified the regulation of brokers as a priority for legislative reform.

This triggered a decade of intense discussion and failed Bills on how to regulate brokered and temporary work. This culminated in 2014, in Amendments to the

LRA classified employees placed by labour brokers for more than three months as employees of clients. The Labour Appeal Court has confirmed these protections.

An escalation in strike violence including in the public sector and in the security, transport, and mining sectors (most notably the Marikana killings by police of 34 workers in 2012) created a high degree of instability in the labour market. This resulted in a joint government/labour/business summit adopting the Ekurhuleni Declaration in November 2014. It chiefly addressed labour market instability and wage inequality.

Subsequently, the Nedlac (National Economic Development & Labour Council) parties adopted an Accord on Collective Bargaining and Industrial Action which addressed strike violence, intimidation and the harm caused by prolonged strikes while recognising the constitutional right to strike and the right of employers to lock out. The Accord records commitments by business and organised labour as well as key role-players such as the CCMA (Commission of Conciliation Mediation & Arbitration), bargaining councils, the SA Police Services, the Private Security Regulator and Setas (Sector Education & Training Authority).

A subsequent negotiation process led to the adoption of a draft Code of Good Practice on Picketing, Collective Bargaining and Strikes. A draft LRA Amendment Bill on these issues has been debated at Nedlac and should be tabled in parliament in late 2017.

An ever widening gap between high and low paid marked this period with an increase in retrenchments, unemployment, poverty and inequality. This fed the growing informalisation of the labour market and an increase in brokered labour.

As a result the Code of Good Practice on picketing and strikes

to manage labour grievances and disputes in the private sector. Its aim was to provide access to justice without the expense of using a lawyer.

From the beginning it was actively used by workers of all kinds and dealt with an unanticipated number of cases. From its first full year of operation the CCMA dealt with more than 100,000 cases per year. The CCMA now deals with from 200 to 300,000 cases a year.

In the early 1990s South Africa's labour market experienced a rash of strikes but initially the creation of the CCMA ushered

the number of black artisans in skilled trades or growing numbers of women employees in male dominated occupations has been overlooked.

The Labour Court (LC) was established in 1995 as a specialist court with the same status as the High Court. Cases referred to the Labour Appeal Court can proceed if necessary directly to the Constitutional Court.

The LC has the power to review arbitration awards by the CCMA and bargaining councils. Applications to review CCMA decisions make up most of its caseload as it is not possible to appeal an arbitration award. In 2003 there was a move to scrap the court but this was resisted through negotiations at Nedlac and its place is now secured. However, it remains understaffed and there are long backlogs.

A weakness of the LC has been that large amounts of time are spent preparing records causing needless delays in hearings. The review process on affidavits is largely unnecessary as a judge could make a reasonable ruling without reference to them. As it stands reviews are often used as a delaying tactic.

The rules of the LC have also not been revised since 2001 and accordingly do not reflect the changes introduced by the 2002 and 2014 LRA amendments. This contributes to case delays.

The Essential Services Committee (ESC) is a key institution in the public sector but it has struggled to establish itself. The LRA prohibits strikes in essential services which the ILO defines as 'services whose interruption would endanger the life, personal safety or health of the whole or part of the population'.

A service can be declared essential and prohibited from strike action by the ESC after a public hearing. Disputes are



A Department of Labour report on the rights of temporary workers concluded that companies used labour broking to reduce labour costs and avoid labour laws. It identified the regulation of brokers as a priority for legal reform.

pininterest

was followed by an intense debate at Nedlac on the setting of a national minimum wage. This culminated in government announcing a national minimum wage of R20 per hour to be implemented on 1 April 2018.

In 2009, the rearrangement of national government departments led to the transfer and responsibility for the administration of skills development, including the Setas, to the Department of Higher Education and Training.

ASSESSMENT OF LABOUR INSTITUTIONS

The CCMA was the central institution created post-apartheid

in a period of stability in labour relations. Its commissioners, some of whom have moved on to other institutions, have used their skills to stabilise labour relations by sharing their knowledge.

The CCMA's jurisdiction has been extended to a wider range of labour related cases including discrimination cases under the EEA.

The EEA includes employer targets for employment equity and skills development with an emphasis on hiring and training black personnel. Its weakness is, however, that the majority of points are allocated for the employment of black staff in managerial positions. Increasing



Daily Maverick

thus settled through compulsory arbitration. But few minimum service agreements have been concluded and compulsory arbitration is uncommon.

Growing numbers of prohibited strikes in the public sector, particularly in municipal and health services became an issue. Public sector trade unions criticised employers for refusing to negotiate minimum service agreements, while employers argued that the unions encouraged illegal strikes in essential services. As a result the system became largely dysfunctional.

This situation led government to introduce amendments to the Act to improve the process of deciding which services should be prevented from striking. The 2014 LRA amendments tried to ensure a greater involvement of public sector employers and trade unions in the ESC's decision-making. Hearings are now conducted by specialist panels who have knowledge of particular public service sectors.

From 2008 onwards there has been a decline in the negotiating capacity of both business and trade unions. Training is thus important and there is a demand for Setas to make money available for training in negotiation skills. The Ekhuruleni Declaration attempts to make labour law

relevant in the present day and as the accord involves other stakeholders such as the police and private security, relevant training is necessary.

The new democratic state inherited a bankrupt Unemployment Insurance Fund (UIF). However, post-apartheid by 2001 it had accumulated a R130-billion surplus. Workers, however, struggle to access their payouts and the surplus has not been used to benefit contributors.

The surplus could be used for example in the spirit of the Act through the creation of employment schemes, extending benefits beyond the current eight month cut off point, or to retrain redundant workers. Legislation

enacted in 2016 allows workers to receive 20% of their benefits for four more months if they are unemployed for more than eight months. This change has not yet come into effect.

Most labour laws have undergone changes since the dawn of democracy except for the Compensation for Occupational Injuries and Diseases Act (COIDA) and the Occupational Health & Safety Act (OHSA). However, they too need amending under OHSA, health and safety committees are unconstitutionally appointed by employers. COIDA retains many features of the original 1941 Act. Compensation for injury is still determined by the meat chart which results in lower compensation pay out.

CONCLUSION

Labour law has improved greatly in the post-apartheid era but more changes are needed to remove outdated provisions. In 2018 we will also see major changes as the national minimum wage comes into effect. **LE**

Paul Benjamin is senior director at Cheadle Thompson & Haysom; is a former professor at the University of Cape Town and has served as an acting judge in the Labour Court.



Dummes workers

Unlocking labour laws

This issue of **Unlocking labour laws** looks at the findings in a sexual harassment case and a disability discrimination case both involving the Employment Equity Act.

SEXUAL HARASSMENT

Mr S employed by Campbell Scientific Africa was working on a project in Botswana. On one trip he stayed at a lodge with a women consultant, Ms M, from another company. On the last night Mr S told her he felt lonely and made advances asking her to go for a walk with him or go to his room. The invitation was repeated a number of times.

Ms M felt uncomfortable and when he asked if she had a boyfriend replied that she was in a serious relationship. Mr S then invited her to phone him in the middle of the night if she changed her mind.

Ms M felt threatened and said that his advances 'were not welcome at all' and 'she felt quite insulted' 'shocked' and upset that it was 'just before we went to bed and the sleeping arrangements were that Mr S's room was quite close to mine.'

Following the incident she said she would not work with Mr S again.

At arbitration the commissioner found that although occurring after hours Mr S's conduct constituted sexual harassment. The verbal sexual advances were unwelcome and related to a workplace environment.

Although Ms M did not tell him to stop she made it clear that his advances were unacceptable and she refused his invitation. It thus ruled that Mr S's dismissal was substantively and procedurally fair.

Mr S took the arbitrator's decision on review to the Labour Court (LC). It overturned the arbitrator's award and found the dismissal was substantively unfair. The LC retrospectively re-instated Mr S subject to a final written warning valid for 12 months.

The LC found that although Mr S's conduct was inappropriate it 'did not cross the line from a single incident of an unreciprocated sexual advance to sexual harassment.' The LC felt 'he was trying his luck' and so it was not a dismissible offence.

The LC also stated that there was no workplace power difference between the two of them in that they worked for different employers, and the incident took place after work.

The LC accepted that a single incident of unwelcome sexual conduct can constitute sexual harassment, but said such an incident must be serious. 'Serious' almost always involves an infringement on the body such as touching, groping or other forms of sexual assault which had not happened in this case. It could have become sexual harassment if Mr S had persisted or if it was a serious single assault.

The matter went to the Labour Appeal Court (*Campbell Scientific Africa v Simmers & Others*) which took issue with the LC's findings. It applied both the 1998

Sexual Harassment Code of Good Practice issued by Nedlac (National Economic Development and Labour Council) under the Labour Relations Act (LRA) and the 2005 Amended Code on Handling Sexual Harassment Cases in the Workplace falling under the Employment Equity Act (EEA) to make its decision.

The LAC concluded that Mr S's conduct 'was unwanted and unwelcome; it was offensive; it intruded upon Ms M's dignity and integrity; and it caused her to feel both insulted and concerned for her personal safety.'

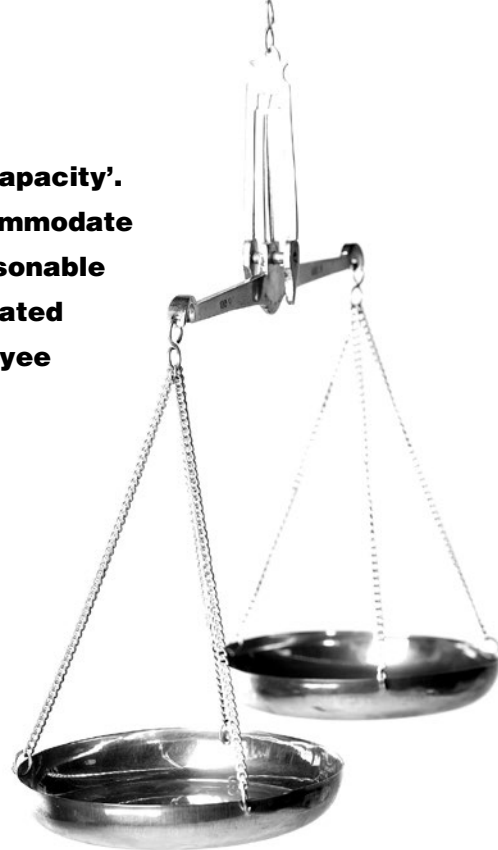
The LAC overturned the LC decision and found that the arbitrator's award was justifiable and it should be upheld.

DISABILITY

The employee was as a general manager in a company in June 2005 at its head office in Pretoria. He was a valued, well respected senior employee with good working relationships with other employees, and he reported directly to the CEO.

He attempted suicide in September 2013, by shooting himself in the mouth. This left him severely injured and his face disfigured. He was granted leave, some of which was unpaid, and the company gave him a loan of R80,000, to assist him. The employee was assured that as soon as he recovered, he could return to work.

The Court ruled that ‘disability is not synonymous with incapacity’. An employee is incapacitated if the employer cannot accommodate him/her or if the disabled employee refuses an offer of reasonable accommodation. Dismissing an employee who is incapacitated under these circumstances is fair but dismissing an employee who is disabled but not incapacitated is unfair.



After four months, the employee was ready to return to work in February 2014. The employee's psychiatrist provided a report to the company, confirming that his speech had improved to the extent that he could make himself understood. It also confirmed that he was mentally and intellectually stable and intact, and that it was unlikely that he would harm himself again.

The employer responded that although he had physically recovered and was mentally able to work, he was 'not facially acceptable', and his presence would remind employees of the unfortunate event. The employer suggested he pursue a disability claim and that they revisit his returning to work in March 2014.

After various meetings and correspondence between them, the company by April 2014 made it clear that it did not want the employee to return to work because he was 'cosmetically unacceptable' and you could only understand 70 to 80% of what he was saying. This meant he was not capable of performing his duties in full.

The employee, however, confirmed that he was fit and ready to work. This was supported by a second doctor's report. The employer also wanted to recover the loan from the employee.

The employee got legal advice and offered his services. When he received no response, he began unfair labour practice proceedings on the basis of unfair suspension, as he had never been formally dismissed. Proceedings continued to the Labour Court (*Smith v Kit*

Kat Group) based on disability being one of the listed grounds for discrimination under s 6(1) of the EEA.

The LC accepted that the attempted suicide resulted in the disfigurement of his face and a speech impediment. It accepted that these were permanent disabilities that were visible to everyone.

It also accepted that these were disabilities in terms of the Code of Good Practice on the Employment of Persons with Disabilities. It found that the employer did nothing to comply with its obligation under the Code to explore how the employee's disability could be managed in the workplace. This was essential if the employer was to be excused from discrimination and unfair behaviour.

The court ruled that 'disability is not synonymous with incapacity.' An employee is incapacitated if the employer cannot accommodate him/her or if the disabled employee refuses an offer of reasonable accommodation. Dismissing an employee who is incapacitated under these circumstances is fair but dismissing an employee who is disabled but not incapacitated is unfair.

The court showed its strong displeasure at the employer's conduct. It found that the employer's description of the employee's face as 'cosmetically unacceptable' appalling.

The court also found that accommodating the employee would not have been a hardship for the employer. If the employee had started working and the employer found at a later stage that

he was unable to fulfil his duties, the employer could then begin incapacity proceedings under the LRA.

The LC awarded both damages and compensation. The court recognised it was difficult to quantify in financial terms the hurt, humiliation and discrimination suffered. However, it felt awards should be sufficiently high to stop other companies from similar behaviour in future.

It awarded the employee damages of 24 months' salary. This can be compared with the maximum compensation for an automatic unfair dismissal in terms of s 194(3) of the LRA. In addition, it awarded six months' compensation salary for the hurt and humiliation the employee suffered.

This employee was thus awarded over R1,5-million in damages and compensation and the employer had to pay the cost of court proceedings.

After the judgment, the employer sought leave to appeal but its application was unsuccessful. ^{LB}

Cases from the 30th Annual Labour Law Conference 2017.

Insourcing maintenance workers at Wits

Democratic victory tainted with disappointment

The University of the Witwatersrand student Fees Must Fall movement allied with outsourced workers and won the insourcing of cleaners, security and gardeners. However, maintenance workers were excluded. A negotiating collective tells the story of hard work and struggle that allowed the majority of these workers to become permanent.

On 6 November 2015 the Insourcing Task Team (ITT) was set up at the University of the Witwatersrand (Wits). It had representatives from students, academics, Wits management, Wits council and, most importantly outsourced workers. However, the only workers represented were service providers (cleaning, ground staff, catering, security and bus drivers). Retail workers who work at shops on Wits campus and maintenance workers (plumbing, electricians, builders and movers) were not included.

This continued until late 2016 and in November 2016 a Maintenance Workers Forum was established to negotiate the insourcing of these workers. The process has been filled with difficulties and is not yet complete but some valuable lessons have been learnt.

Moving chronologically through the past year and a half, three main moments stick out to us as important.

The first was the exclusion of maintenance workers and how we overcame this. The second was Wits management hiring consultants and the technical negotiations over the number of workers to be insourced during a lull in political activity on campus. These negotiations eventually ended when 95 jobs were won for 185 eligible workers.

The third point was making the best of this terrible situation through the democratic drafting of selection criteria and how the CCMA (Commission of Conciliation Mediation & Arbitration) used the labour laws to override the democratic decision.

BECOMING MAINTENANCE WORKERS

At the beginning of the ITT process, maintenance workers were defined by Wits as Vendor List workers. To management this meant people working for a company at Wits on a project by project basis.

For example there are six plumbing companies. Wits puts out an advert and perhaps five of them apply for the contract with only one company getting the job. Hence from Wits' perspective Vendor List workers do not work full days, let alone full months, at Wits and therefore don't deserve insourcing.

However, most Vendor List workers were working eight hours per day, five days a week from January until December. It was through struggles led by Richard Ndebele, an electrical artisan, on the ITT and in mass worker meetings to redefine Vendor List workers as maintenance workers that workers forged an equivalence between maintenance and other general workers. In essence to

define maintenance as a routine service at the university.

Once workers won the battle, the ITT agreed to extend its mandate to cover maintenance workers. However, it was quickly realised that Wits had no idea about how many maintenance workers laboured on campus. Due to the effects of 15 years of outsourcing, four campuses (worksites), multiple different trades, over 20 full-time companies and another 60 specialised and part-time companies existed. And therefore most workers did not even know each other either.

The category of 'maintenance worker' had been created in theory but we needed to create a community and sense of solidarity with that. Workers spent between November 2016 and January 2017 getting to know each other.

Student assistants, who had the time and access to computers and printers, walked all over the campuses identifying maintenance workers, filling in a survey on their work conditions, and inviting everyone to mass meetings held every second week. Through mass meetings and word of mouth a sense of common identity was built with roughly 150 full-time outsourced workers both permanent and casuals (without contracts).



M Hunter

Mass meetings to consult with maintenance workers were key in formulating demands and responses.

DREDGED IN TECHNICAL NEGOTIATIONS

Despite Wits agreeing that maintenance was a routine service it claimed that most workers were not routinely working. Their first proposal was to insource three workers. Absurd! Eighteen workers. Also absurd! Once they realised that we would not allow them to get away with daylight robbery they contracted a consulting company to determine, based on analysis, how many workers to insource.

We wasted a good four months with these consultants who wanted to judge how often people came to Wits using ICAM (Wits access cards) data. They claimed that by analysing how often workers used the registered ICAM cards, only 40 maintenance workers routinely work at Wits.

We knew otherwise. Through the mass meetings, surveys and worker knowledge we knew that 150 workers were on campus every day. We also knew that not everyone was given an ICAM card by their employers and some people with

cards weren't showing up. Most workers would come onto campus on the back of a bakkie instead of tapping in every day.

Wits management and the consultants were so patronising and detached from the realities of maintenance workers that they insisted their systems worked as intended. We collapsed the forum meeting just before the next ITT and they realised we were not going to budge on this.

Wits then hired new consultants, and involved us in the hiring process. Through this we modified the terms of reference to say that the consultants must be accessible to workers and based on campus. This ensured we could directly contact the consultants, not only through management, and keep them more accountable to us. These consultants were more precise and did in-depth budget, demand and survey analyses.

Their analysis of the budget proposed insourcing 46 to 51 workers. Workers rejected this not only for its low number but also

because the principle of insourcing has always been on the basis of decreasing exploitation and increasing dignity and never about cost-efficiency.

Their initial demand analysis proposed between 65 and 94 workers averaging out at 78. We (worker reps and two student assistants), and our negotiators on the ITT were still using all our political power to push for at least 150 positions being created. However, student activism was at a low in the middle of the year as many students were still traumatised from the police brutality of 2016.

We also had not managed to make strong links with other newly insourced workers which meant we could not share strategies or information, nor could we ask for a solidarity strike.

As maintenance workers we were also unable to go on strike. We had gone on a three-day unprotected strike two months earlier and we were just concluding two months of hard negotiations to reverse all the cases of victimisation that

arose. When most workers do not have formal contracts and get paid in brown envelopes, it's too easy for bosses to simply release or reallocate workers.

One of the prime concerns of the mass meetings was that we prevent delays as much as possible. Hence, taking a reality check of the balance of power, we decided that the best way forward was to beat them at their own game – technicalities.

We kept everyone involved by reporting to mass meetings or through representative structures what the consultants were arguing and our responses. We got suggestions from the people who knew their own trades the best. For example, we ensured that in their calculations the eight-hour day included lunch, toilet breaks and travel time and that their calculations consider the different team sizes and wages per trade which pushed their demand analysis up a few workers at a time until their final proposal to the ITT was for 95 workers.

At the ITT, our negotiators pushed for 150, management for 64 and eventually the Wits Council (highest decision-making body) agreed with 95. This was the first of a few victories. For the first time, we knew for certain that there would actually be insourcing though we knew some would be excluded.

LAWS COUNTER WORKER DEMOCRACY

We thus entered the worst part of this story.

Knowing that Wits would only insource 95 workers and that some workers would be left out was painful. But we did not want Wits management or the consultants to make the decision on who got positions. It may have been easier but no one trusted them to insource the workers who most deserved it. It also would have given them too much power to find some reason to exclude the most politically active workers.

So, armed with our ideas of fairness and the data we had independently collected, we drew up some ideas and hashed them out at a series of mass meetings. The consultants assisted us with turning our principles into 'rules' that a computer could run to keep our personal biases at bay.

In the end we agreed on a three-phase system.

First, those who were not eligible (who did not work in an insourced trade or who started at Wits after 2015) were dropped from the list. Second, a mass meeting decided all women would get positions. Maintenance is dominated by men and from 180 workers only seven were women. In a field so dominated by men, it was felt that no woman should be excluded. The middle class does not have the monopoly on feminism! This is also shown by the fact that two of the six elected negotiators are women.

The third phase would be a point system within each trade. The remaining workers would get points based on how long they had worked at Wits, how many mass meetings they had attended, and for being a representative or negotiator. They would then be ranked by the number of points and assigned to the new positions in order.

Besides those who were upset with being excluded because they started in 2016, everyone believed this was the fairest result. Those who were most part of the Wits community, who had shown most interest in being insourced, and who put most effort into making it happen should be the ones to benefit most.

While workers held meetings, or workers had struck in their many years at Wits, others were going across the road to gamble. No one felt it would be fair that they should be insourced before a worker who had put their precarious employment on line to make insourcing happen.

However, when Wits had to sign off on the contract, they disagreed with the last two points. They were worried about the legality and that an excluded worker may take Wits to the CCMA. A CCMA commissioner was brought in to evaluate the criteria we had jointly and democratically developed. He quoted the Labour Relations Act (LRA) chapter 2 section 5: 'No person may do, or threaten to ... prejudice an employee or a person seeking employment because of past, present or anticipated ... membership of a ... work-place forum.' Based on Wits removed the points allocated to meeting attendance and for being a representative.

This angered a lot of people in our next mass meeting and a strike was discussed. The demand was going to be either insource everyone or let workers define the criteria for determining who got in. However, we were informed that even if every worker signed off on the criteria, it would still be unlawful as no one may sign away their rights.

Despite all the challenges and bittersweet victories, the first week of November saw 95 people signing contracts with Wits. This signals not the end of the struggle but a new beginning. We now have to ensure that those outside get protection, that maintenance workers integrate with the other Wits workers, show solidarity with retail workers and students fighting for free university education, and fight to improve wages and benefits. ■

This article was written collectively by Mitchel Hunter, Linneth Masango, Bafana Sibanda, Gaian Aukema, Khanyisile Ntlengetwa, Johannes Musekgwa, Frederick Maluleke and Richard Ndebele – six elected worker negotiators and two student assistants.

Worker organisation and the law

Then and now

Can the law assist workers in their struggles? **Carin Runciman** and **Edward Webster** draw lessons from workers' struggles in the past, and argue that the law can, under pressure, create opportunities for workers to further their struggles but this requires different forms of workplace organisation, and new strategies and allies.

A lively debate was triggered in the pages of the *South African Labour Bulletin* (SALB) when it published 38 years ago a memorandum by the then Western Province General Workers' Union (WPGWU). In this memo the WPGWU made public their decision not to register under the recently amended Labour Relations Act of 1979. The Act gave recognition to black trade unions for the first time in South African history.

A robust debate continued in the *Bulletin* for the next three years, led by those unions who decided to register. They rejected those who argued for registration labelling them, 'boycotters'.

There was agreement that the proposed system of registration should be rejected insofar as the Act was designed to control and interfere in the internal affairs of unions. But registration was ultimately accepted by the new unions subject to a change in the registration rules allowing for non-racialism and migrant workers.

But the significance of the debate today is that it raises questions on the relationship between the workers' struggle and law in a capitalist society.

REGISTRATION DEBATE AND LEGALITY

Simply put, on the one hand some saw the law as no more than an instrument of the capitalist class and rejected registration as an attempt at state control.

On the other hand, there were those who argued that the Act was an attempt by the state to resolve contradictions which faced employers, but which simultaneously opened up a new set of contradictions to confront. These contradictions, argued the pro-registration group, opened up spaces to pursue the long-term goals of ending apartheid and creating a socialist economy.

Reforms were not regarded as ends in themselves but rather as dynamic phases in a progressive struggle to advance the workers' movement. With the strong backing of their members, shop stewards had the power, it was believed, to push for concessions from management. This created space for further advances and could also win concrete improvements in workers' conditions, thereby reassuring them of the effectiveness of direct action.

Throughout the early eighties, workers and trade unions used their increased strength and legal

rights on the shopfloor to fight and negotiate for better wages and working conditions including issues such as leave, hours of work, safety, and pensions. Workers were becoming a formidable force on the shopfloor, and they were beginning to engage in centralised bargaining in the industrial councils, (now bargaining councils), established under the Labour Relations Act (LRA).

In its emphasis on political independence, tactical flexibility, and compromise with employers and the state, this strategy of legality stood in contrast to the political and military struggle being waged by the ANC and its internal allies. This political strategy aimed at the state's overthrow through a national democratic revolution and a sudden shift in the balance of power in which the old ruling class would be destroyed.

This strategy of revolutionary rupture stressed abstention from involvement in the apartheid state and all its institutions, including the registration of trade unions, on the assumption that the leadership of the unions would be co-opted and the status quo would remain.

By contrast, the legality strategy involved engaging rather than



Rosstone

boycotting the state from an independent and disciplined power base resting on strong factory structures, held together through democratic accountability.

In the event, neither revolutionary rupture nor cooptation took place. Instead unions grew rapidly in the eighties. They went on to play an important role in the transition to democracy in the nineties, winning significant worker rights in the new labour regime in post-apartheid South Africa.

TODAY'S PRECARIOUS WORK STRUGGLES

In considering the strengths and the limitations of using the law in the mobilisation and defence of workers today, we are faced with a different set of circumstances.

The registration debate was a debate about the use of the law but also one about the relationship to an illegitimate state. The question today is, are there any lessons to learn from the past on how workers should deal with the recent amendments to the LRA? What tactics and strategies are best in the current institutional framework in an era of precarious labour?

The rise in labour broking coincided with the democratic era as employers took advantage of a critical gap in the 1995 LRA. The Act was based on an assumption that employment is a binary

relationship between employer and employee. Labour broking, however, creates a triangular employment relationship, where the worker remains the employee of the labour broker but works under the supervision of the client.

The absence of liability of both the labour broker and client company meant that unfair dismissal became almost impossible to challenge through the legal framework. Furthermore, the externalisation of the employment relationship meant that workers could no longer make demands in their workplace as the client company was not their employer.

The LRA also assumed that the strong and vibrant trade union movement that made democracy possible would be a constant. Today the democratic accountability, which characterised the trade union movement of the eighties, is significantly weaker and only a quarter of the workforce are unionised.

Of those that are unionised most are permanent workers, many of whom are in skilled or in supervisory positions. The casual, outsourced and contract workers who now make up a fifth of the labour force are largely unorganised. The weakness of organised labour has emboldened employers to flout even the most basic legal provisions such as denying paid sick leave and annual leave.

WORKERS WIN SIGNIFICANT NEW RIGHTS

Under pressure from workers, and recognising the exploitative practices of labour brokers, the 2015 amendments to s 198 of the LRA tried to address these inequities by restricting labour broking to work of a genuinely temporary nature.

The amendments offered significant new rights and protections for labour broker workers. Under s 198A of the LRA brokered workers, if not

temporary, must be permanently employed after three months and enjoy similar wages and benefits as other permanent workers. While this is not an outright ban of labour broking, the amendment is a significant step forward for the rights of precarious workers.

For the Casual Workers Advice Office (CWAO) (see SALB 41.3) the opportunities opened up by the law were clear.

Following the amendments, CWAO, a non-profit organisation based in Germiston, Gauteng, undertook the only nationwide campaign to popularise and educate workers about the new amendments to the LRA. CWAO opened in 2011 to provide free advice and support to workers, particularly casual, contract and labour broker workers, and it was founded in direct response to the failure of the labour movement to organise such workers.

CWAO has assisted workers to access their new rights through bringing cases to the CCMA (Commission of Conciliation Mediation & Arbitration) and bargaining councils.

In 2016, CWAO had been responsible for referring over 80% of the s 198 cases heard at the CCMA within Gauteng alone, accounting for nearly half of all cases nationally. To date, through these cases, 5,000 workers have become permanent.

However, many workers are not receiving equal pay and equal conditions with permanents. In referring cases, CWAO has encouraged, as far as possible, that workers, with the support of CWAO, take up their own cases. Making the law a powerful tool in the hands of workers themselves supports self-organisation.

Through the campaign, the Simunye Workers Forum emerged. SWF holds fortnightly meetings and attracts an average attendance of 170 workers from a range of different sectors. The purpose of

the SWF is to provide solidarity and education in worker rights.

In some workplaces, workplace councils and worker committees have also emerged as an alternative form of organisation. This has, in some cases, resulted in workers negotiating directly with management in order to have their pay and conditions equalised or even to embark on protected strike action.

However, victories won in the law can only be enforced through strong organisation. But, the current legislative framework places limits on the extent to which this can be done independently of registered trade unions. The LRA only affords organisational rights to registered unions and therefore discriminates against alternative forms of organising that labour broker workers have engaged in.

Furthermore, until recently, the CCMA's rules of representation also excluded other forms of representation outside that of a lawyer or an office bearer, official or member of a registered trade union. These restrictions conflict with the constitutional rights to freedom of association.

The absence of organisational rights makes brokered workers even more reliant on institutions such as the Department of Labour and the CCMA to enforce victories and it is struggling to cope. While not without its limitations, the s 198 campaign demonstrates the potential of the law as a tool of mobilisation when in the hands of workers.

LESSONS FROM THE EIGHTIES

The lesson we draw from the eighties is that employers, faced by strong shopfloor organisation, were forced to make concessions by recognising independent trade unions. This opened up space for legal struggles. However, employer attempts to co-opt these unions through registration failed because of strong workplace organisation.

Similarly, today, resistance to labour broking led to an amendment to the LRA. However, the overall weakness of organised labour today and the fragility of new forms of organising, such as SWE, mean that employers have found loop-holes in the law and are redefining workers as independent contractors.

Some argue, such as Cosatu (Congress of South African Trade Unions) general secretary, Bheki Ntshalintshali, that these loopholes mean the amendment is ineffective and suggest other avenues are needed. In our research we found that where precarious workers

continues to make the building of associational power, based on the collective strength of workers, difficult. Workers must now overcome divisions between permanent and casualised workers as well as divisions amongst casualised workers themselves. These difficulties are made worse by the lack of institutional recognition for alternative forms of organising that workers have embarked on.

In the current context, in which organised labour is weak, the opportunities that the law gives, as the experience of CWAO demonstrates, provided significant



The Casual Workers Advice Office used LRA amendments to enable 5,000 temporary workers to become permanent. Worker committees have emerged which negotiate with management to equalise pay and work conditions with permanents.

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are well organised they have successfully resisted this strategy of employers. Labour broker workers are often located at the centre of production. This provides them with structural power, the capacity to disrupt the economy, which other precarious workers often lack.

For instance, a strike by labour broker workers at the Pepkor Logistics distribution centre in March 2017 was able to disrupt distribution to all of the stores in the Steinhoff International Group, including Pep Stores, Ackermans and Shoe City amongst others. The strike was quickly resolved in favour of the workers' demands.

However, the prevalence of non-standard employment relationships

gains to workers. However, these can only be maintained through the revitalisation of worker organisations in whatever form, new allies, and strategies. Above all, it means re-establishing the culture of democratic accountability and strong shopfloor structures that characterised the eighties. ^{LB}

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Mixing it up and growing power

Metal union fights globalisation

South Africa's largest union, the National Union of Metalworkers of South Africa (Numsa), is tackling the threat of globalisation to workers' bargaining power. **Chere Monaisa** describes how its strategy of organising across value chains has increased its membership and its ability to ward off employer attacks.

South Africa's workers are seeing their rights threatened by globalisation. As supply chains spread across the world and capital flows more easily across borders, employers have more opportunities to outmanoeuvre industrial action, undermining the bargaining power of unions.

South Africa's largest trade union is rising to meet the challenge.

After political turmoil, metalworkers' union Numsa has made the strategic decision to expand along value chains and into new sectors. The move has caused tensions with established unions, but Numsa feels it is essential to arm the workers' struggle with the resources to preserve their rights in the 21st century.

Expanding the union's membership along and across value chains 'will give us both bargaining power and political power,' said Hlokoza Motau, head of organising, campaigns and collective bargaining. 'When we strike it means we can almost bring the country to a standstill.'

VALUE CHAINS: LOOPHOLES TO CLOSE

The effectiveness of industrial action, or the threat of it, depends

on its ability to block the flow of capital and create unacceptable cost for the employer. If the employer can reroute production, through for example non-union staff, outsourced services, or overseas facilities, then the bargaining power of organised labour is weakened.

Historically, unions organised by sector and geography. Workers' solidarity across, for example, all the car manufacturing plants in a given country was enough to bring corporations to the negotiating table. But globalisation has increased opportunities to avoid such bargaining pressures, if the employer 'hives off activities, for instance by outsourcing or privatisation,' said a Numsa official.

How can a union possibly negotiate wages for factory workers, if the employer can respond by taking its work away and giving it instead to a supplier whose workers are not represented in those negotiations?

To close this loophole and preserve its bargaining power, Numsa has changed its membership structure and is expanding across sectors and up and down value chains.

EXPERIENCE OF CONSOLIDATION

Numsa has experience of successfully expanding to adapt to changing needs.

Launched in 1987 out of the merger of four unions, two in the metal/engineering and two in automotive production. In 1989, it forged negotiating rights at a National Bargaining Forum, covering seven of the eight major employers in the motor assembly sector.

By 2014, it was able to mobilise 220,000 workers in strikes that made global headlines. As of January 2015, it was the largest union in the history of the continent, with more than 360,000 members.

GROWING MEMBERSHIP ACROSS VALUE CHAINS

But the union has long been aware that the weight of numbers, a key element of its associational power (power from workers' collective organisation), is not enough to keep pace with threats to its bargaining power. At a special congress in 2013 it considered its options, and decided to break with the industrial boundaries of unions and expand across value chains.

Numsa's new constitution and its break with Cosatu put the union in a strong position to go it alone and best defend its members' interests against the shifting context of globalised capital and production.

Anyone objecting to this new order 'can go to hell', said Irvin Jim, Numsa's general secretary, aware that this decision would be rejected by other unions. 'We will recruit workers that come to us and want to belong to the organisation.'

In the case of an auto plant, for example, this would mean welcoming new members from other sections of the factory, such as canteen or security workers. It may also recruit members in suppliers' production, for example tyre manufacturers, and even those employed downstream, in auto dealerships or car wash stations.

This expansion drive, approved by a 2013 resolution, led to the recruitment of 27,760 new members from related sectors by 2016, including air and rail transport, road freight, and industries such as catering, cleaning and construction.

'It is important that, in order to build our power, we exist in these sectors,' Motau said. 'Part of Numsa's strategy is to have the same bargaining periods,' allowing the union to threaten what would effectively amount to a general strike.

The boost in membership numbers is evidence of the success of the new strategy. And when it translates into improvements in Numsa's bargaining power, that should in turn further increase the union's appeal to potential new members.

BREAKING THE UNION MOULD

Numsa's new direction put it on a collision course with the country's labour and political institutions. In particular, the expansion violated the 'one industry, one union' policy of

the Congress of South African Trade Unions (Cosatu), which expelled Numsa from its ranks in November 2015.

However, the union had obtained approval of its new constitution from the Department of Labour in January of that year, freeing it of many recruitment restrictions. Some of those had been imposed by employers, such as the distinction between core and non-core workers in a facility. But other restrictions were laid down by the unions to avoid conflicts that could undermine the effectiveness of collective action. Numsa's new recruitment drive violated these, and drew hostility from its former allies.

Jim defended the new membership strategy against such criticism. 'If people want to take that as poaching, well, workers are not rhinos but human beings,' he said in 2013. Even before the new recruitment approach, workers from all sectors had been approaching Numsa to request membership, which according to Jim, was in recognition of Numsa's activism and collective bargaining gains in its traditional sectors.

He also said that a level of cross-sectoral activity was unavoidable and already widespread. 'Public sector unions are recruiting among themselves,' and Numsa's own membership base had started to include drivers and other service providers even before 2013.

Furthermore, Cosatu itself recognised as early as 2003, at its 8th National Congress, that any demarcation of membership should respect the need for solidarity with other parts of the supply chain. Numsa argues that its expansion is in the spirit of this requirement.

Politically, its expulsion from Cosatu also ousted Numsa from South Africa's tripartite alliance, which unites Cosatu, the South African Communist Party (SACP) and the ruling African National Congress party (ANC).

Political disagreements probably contributed more to the rift than the new recruitment practices. The union had formally called on Cosatu to break its alliance with the ANC, and had withheld payment of affiliation fees to the group as well as its contributions to the SACP levy in protest. These actions were cited in the Cosatu resolution to terminate Numsa's membership.

MAKING GAINS IN GLOBALISED WORLD

Numsa's new constitution and its break with Cosatu put the union in a strong position to go it alone and best defend its members' interests against the shifting context of globalised capital and production.

The recent boost to its membership, in spite of the split with Cosatu unions, is a validation of the path it has taken. But these new members are not just to make up numbers. Numsa must secure fair wage increases and members must feel the benefits, as officials noted at the 2016 National Bargaining Conference.

Only if the improved associational power translates into workplace bargaining power will the union remain appealing to the new recruits and retain its ability to strike the best deal for them. ^{LB}

Chere Monaisa was a researcher at the National Labour & Economic Development Institute (Naledi) when he wrote this article.

Do trade unions have a future in South Africa?

Are unions a thing of the past? Should civil society take over from them? Is Cosatu too close to government and its past role lost? What role should unions play in a country of massive unemployment? Are unions part of the problem and not the solution? These were some of the questions that panellists at the 30th Annual Labour Law Conference discussed.

Gideon du Plessis: Between 1994 and 2004 a labour regime emerged covered by laws and worker rights. Industrial relations institutions were created some of which are actively used by trade unions. Many unionists, however, in this period moved into industrial relations departments and institutions and became bureaucrats.

Unions are now characterised by a shop steward and union bureaucracy which has replaced organisers accountable to their mass membership. Precarious temporary work has grown creating a messy labour market. Unions are often weak and embroiled in infighting, splits and corruption.

South Africa is not exceptional in this - unions all over the world have been in decline.

Unions used to be a vehicle for politics and they are finding it difficult to shift from this mode. Members now want to be treated like citizens.

Nerine Kahn: Unions must update. They must develop modern technology and organising methods like flash mobs and use other forms of industrial action like go slows that bring in new and younger membership.

To modernise a new leadership must be elected by unions with an appreciation for good governance, training and thorough preparation for bargaining rounds. Unionists need to have a comprehensive vision of the whole labour market, not just dispute and bargaining institutions. They should, for example, focus on equity issues and on updating institutions which compensate workers. Unions also need to look at productivity and new forms of work.

We should think about setting up workplace forums where employees and management can work together with more dialogue. Then we will get less cases going to the CCMA.

Union members shouldn't elect the same people over and over again. To keep people honest you must have a change in leadership.

Khomotso Makapane: If you keep on doing the same thing, don't expect a different result. Unions have not taken on board new entrants into the labour market with new needs. This is the microwave generation where everything must pop up quickly so if you don't develop new ways of doing you will fail. There is a disjuncture between potential membership and the form and operations of current trade unions.

Unions don't inform themselves enough. They just take in what's in the media. But now people ask questions about unions like, 'What's in it for me? What have they done for me?' Unions can't answer these questions.

What should unions be doing? Well I'm a lawyer. I'm a creature of instruction. I must listen and work out how to service my client. Union officials are in the same position. They must do what they are supposed to do well - that's all. We are seeing a decline in membership, unhappiness and violence so we need to do things differently.

We must never allow ourselves to be victims. We must inform ourselves. It won't come from outside. We deserve what we get - what we elect. We must make informed decisions.

The employee you represent has much more going on. Don't ignore this. People are burdened. They are over indebted. You must understand the needs of members or else how can you represent them? Unionists must reflect people's concerns and not their own needs.

Training is important. Training in negotiating - management and union officials need training so that they can communicate effectively.



30th Annual Labour Law Conference 2017

L-R: Members of the panel were Judge Dennis Davis (chair), Gideon du Plessis from Solidarity, Nerine Kahn of Employment Relations Exchange and Khomotso Makapane, a partner at Bowman Gilfillan.

Du Plessis: There is a lot of conflict and tensions in our environment. Tensions between unions in the same sector. Amcu [Association of Mineworkers & Construction Union] and NUM [National Union of Mineworkers] and Saftu [South African Federation of Trade Unions] and Cosatu [Congress of South African Trade Unions]. There are also tensions between employers.

There is poor leadership. Tribalism raises its head in unions, and financial problems, and self-interest. There is a gravy train in union elections. One day you are working underground the next you are a shop steward on the surface with a phone, car and better salary. This must be addressed.

The Fees Must Fall movement showed that that students don't need unions. They succeeded in insourcing university workers and they don't need unions to speak for them.

The new generation don't focus on a pension and other benefits like the older generation. They want opportunities to increase their skills. They can triple their salaries by raising their skills. They don't want a 10% increase.

Workers are turning to workers' committees rather than trade

unions with representation through shop stewards. On top of this is massive retrenchments and no new jobs.

The collapse of Cosatu was bad. It led a strong campaign against e-tolls on major roads in 2012. Cosatu lifted the profile of trade unions. Now government employees don't consult unions on everything so the profile of unions has dropped.

Judge Davis: The university Fallists succeeded in challenging management in the way unions could not. Will unions become anachronisms and civil society take over from what they can't do?

Du Plessis: Saftu wants to go the route of linking up with workers' communities using a UDF [United Democratic Front] model where workers and the community are one.

Solidarity, my union, has a different model. We offer a cradle to grave service. We will assist our members with school, university, technical college and other financial support with other projects. Unions must go into the community because of the failure of government in this area.

Collective bargaining is just one of the things we offer. Other unions are more focused on bargaining.

About 25% of our membership is black and skilled. Coloured workers were alienated from Cosatu especially in terms of language so they joined us.

Kahn: There is a disconnect between what membership needs and what they are given. Unions need to professionalise. Trade unions have forgotten how the workplace and the community once came together. It's important to do this again especially in working with the unemployment problem.

Judge Davis: Cosatu was formed in 1985 and it fought for increased wages, collective bargaining and for change and was crucial in the attainment of democracy. Is it now too close to government and this past role lost?

Kahn: Cosatu's leadership is too close to government. Trade unions should not be aligned to the governing party in this day and age. Cosatu was independent and powerful, it argued for example against VAT on basic foods. Other organisations then took up the issue and won.

Cosatu used to understand what was expected of them in servicing the society. But now it places a greater emphasis on aligning with government and it is more focused

on power struggles. I don't think it's necessarily wrong to align with government as long as you keep focus.

Judge Davis: The LRA [Labour Relations Act] was born with the idea of entering the global economy. It was viewed as a countervailing power. Is it still valid? A different time yet the issues remain the same. Cosatu fought for a broader conception of a better society. Every day we hear of violations but who shouts the odds now? Why don't unions do this? Or do we lack a citizens movement so that unions don't have to play a role in the broader society?

Makapane: The LRA has been amended to become more relevant but most unionists are not in touch. People can see this and employers have delegated management tasks to trade unions. This is the environment in the workplace.

Du Plessis: Nedlac [National Economic Development & Labour Council] has lost its ability to negotiate. And there are breakaways everywhere. The EFF [Economic Freedom Front] is a breakaway from the ANC; Saftu a breakaway from Cosatu. We see the conduct in parliament and then a mirror image in the unions and in the workplace. Political stability is important but all we see is economic and political instability.

Everything goes back to politics and poor leadership.

Judge Davis: Unions only care about the employed and not the unemployed. They ignore this broader tragedy. Are unions part of the problem and not the solution? Do we view the world in an adversarial manner rather than in a cooperative way? Are we too rights orientated rather than focusing on building a community?

Kahn: Unions are missing the community aspect. It's hard for unions to garner strike

solidarity because of the threat of unemployment. And there are no programmes for the unemployed.

Nedlac talks about the community but it is not the community where the vast majority of unemployed live. Unions have ignored the unemployed.

Judge Davis: A huge part of the population have nothing. So what role should unions be playing in the face of massive unemployment?

Makapane: Unions must remodel themselves. The political language in unions must end. They must now address the broader community. They must ask people, 'How are things before we talk about the workplace?'

Unionists must stop behaving like management and workers are in the same team. Employers have no loyalty to employees so they look to unions. It's time employers stopped treating their workers as commodities.

Unions and employers must come to the table and say there is a better way to resolve issues. Unions must focus on problem solving and not be driven by ideology.

Judge Davis: This means a massive company mind shift.

Du Plessis: Trade unions can be destructive around job losses. Look at Amcu's five-month strike on the Rustenburg platinum belt. Just before the strike Lonmin wanted to open a new mine but the strike wiped out any extra cash and Lonmin also reduced the workforce. So 14,000 jobs overall gone. Unions and workers need to really discuss before they go on strike. We can't strike ourselves out of jobs.

Kahn: Lonmin was involved in transfer pricing and could have afforded to pay their workers what they demanded. How do we deal with the terrible inequality in our country?


Du Plessis: I can't defend Lonmin. Your information is correct. But my message is: what is in the best interest of members? We must remember that members come from a home and family and we must show them respect. Communicate, consult, consensus and then you won't have to use the CCMA!

We share information in meetings. In Anglo our health and safety discussions work well. The trouble is that workplace forums are used for discussion on retrenchments so unions stay away from them. The problem is employers' huge salaries.

Kahn: Government failed us with Lonmin. We need a social wage with proper services – transport, housing, roads and so on.

Judge Davis: Fruitless expenditure. Billions have been taken by companies and nobody can quantify how much. Why are the unemployed not shouting from the rooftops? This could be theirs.

Kahn: We've changed our focus from the poor and needy. Everyone stands up for the Minister of Labour when he arrives with his security and blue lights. When I worked for the Department of Labour this was not the case.

Judge Davis: We are so divided. We know there must be growth but we have not succeeded in building a common vision so we can't codetermine. 

This is a summary of a discussion on 'The Future of Trade Unions' at the 30th Annual Labour Conference. It was facilitated by Judge Dennis Davis from the High Court in Cape Town and participants were Nerine Kahn – CEO of Employment Relations Exchange, Gideon du Plessis – General Secretary of Solidarity, Khomotso Makapane – partner at Bowman Gilfillan in the dispute resolution department.

Protest in Freedom Park

Women making their voices heard

Gauteng is the leading province for service delivery protest. **Thembelihle Maseko** examines Abahlali baseFreedom Park, a community organisation in Johannesburg, which makes demands through protest. But what is not generally acknowledged by the media is that women play a central role in organising this Freedom Park community.

The Abahlali baseFreedom Park (AbFP) social movement organisation (SMO) was formed in 2014 by members of the community of Freedom Park, near Eldorado Park, in Johannesburg. These community members felt they were excluded from the decision-making process of their community on issues of development, housing, electricity and water. The members of the movement have organised themselves into block and street committees where they discuss various issues affecting their community.

The community embarked on its first major protest on 19 July 2014 with hopes of getting the attention of local councillors. When this did not happen, those members involved in the protest organised themselves into block and street committees to discuss the needs and experiences of the community. As a community member said in 2015, 'We are fighting to be at the centre, we should be part of the decision-making. Decisions are being made by other people and imposed on us.'

SAME ORGANISATION, DIFFERENT SPACES

There are three 'invented spaces' of participation in Freedom Park.

The AbFP leadership structure and its meetings, the street committee, and the AbFP women's organisation. Invented spaces are spaces of collective action of the poor that directly confront the authorities and challenge the status quo. These spaces of participation differ in the way they are structured but they work together.

The AbFP consists of both men and women who belong to the community. However, it is dominated by men who are the public face of the organisation and dominate the leadership committee. This is in contrast to the street committees which are dominated by women. These street committee meetings take place in the private homes of people where most of the grassroots organising takes place. The women's only organisation was created by the few women in the leadership of AbFP SMO so that they could reflect adequately on their everyday struggles.

Women are vocal in the street committee meetings. They talk about their daily struggles in the household such as sharing mobile toilets, living in a shack, and the need for clean running water from taps instead of going out to fetch it from JoJo tanks. They also talk about finding ways to fight corruption in the community.

These discussions are then reported back to the SMO and then the SMO reports back at community meetings on Sundays. The SMO gives feedback from the leadership meetings and asks for contributions from the members of the community around strategies to fight corruption, obtaining houses and any other of their needs.

In these meetings, even though they are led by men, the women are most vocal. Women are supportive of each other in these meetings and they are not shy to address private issues. In one of the meetings a woman street committee member spoke lengthily about the challenges of housing in Freedom Park. The man who chaired the meeting asked her to please stop talking so that he could continue with the agenda. She refused and other women in the meeting supported her.

WOMEN CENTRAL BUT NOT RECOGNISED

The role that women play in social movement organisations is not fully recognised. Even though researchers and people who write about women's experiences within such movements note that women dominate, the way



T Maseko

In Abahlali baseFreedom Park men are the public face and dominate the leadership committee while women who do most of the organising dominate the street committees.

they write about them tends to exclude women's narratives. There are many reasons for this side-lining of women in movements and politics even though researchers note that women play a defining role in shaping power relations, and even though gender inequality still remains an obstacle.

One common way in which women's narratives get excluded in literature or news reports concerns leadership because even though more women are more present than men in such movements, men dominate the leadership.

For instance, in a study done with the Mandela Park Anti Eviction Campaign the researchers highlighted that there was no representation of women within the movement. This was also the case with AbFP where there were only three women on the leadership committee at the time of research (2015/2016). This trend is common within many movements in South Africa, and scholars and reporters tend to interview those in the leadership and it is in this process that women's voices get marginalised.

It is important to consider how difficult or easy it is to gain access to women participants in these protests and organising spaces, and how researchers and the media can uncover their lives.

Issues of patriarchy are not addressed in-depth in literature

on social movements even though it often acknowledges women's role. In AbFP leadership meetings because there are more male representatives, women feel as though issues that affect them directly are not addressed adequately within the organisation.

In AbFP leadership meetings men tend to speak more than women. The few women present tend to shy away from speaking whereas in the community and street committee meetings they are more vocal than men. In the latter committees community struggles and possible solutions are discussed, although gender issues are not mentioned.

IMPORTANCE OF WOMEN-ONLY SPACE

In an interview when I asked Nhlanhla from Freedom Park about the role of women in the community she stated, 'We are not feminists. We don't believe that men are closing doors for us.' She also said, 'The challenges that we are facing, we are facing them as people not as women.' Nhlanhla's understanding of feminism explains the role that women have adopted over the years. Instead of challenging gender issues within the movement or the community they have decided to work together with men as well as independently of them.

Female activists like Nhlanhla, even though they claim not

to be feminists (a feminist is a woman who advocates social, political and economic rights for women), at times adopt a feminist approach such as when the women refused to stop talking in the community meeting, or when they formed their own organisation that values women's contributions and their need to be heard.

When women form an organisation within and outside an organisation, which is independent of a male dominated leadership, this could be an indication that women are adopting alternative ways of challenging patriarchy but in a subtle way. Feminism says academic Shireen Hassim, 'has a direct political dimension, being not only aware of women's oppression, but prepared actively to confront patriarchal power in all its manifestations.'

We might conclude that these women deny being feminists because it is a 'bad word' amongst certain groups of men in our society which they want to work with.

The purpose of the women's organisation within the SMO is to allow women to talk about issues that affect them directly. Issues such as unemployment, the inability to provide for their children, and not having a place to stay affect women directly. For instance Nhlanhla and another woman said they see it as their direct responsibility to make sure that nobody in the family goes to bed on an empty stomach. There is always a sense that men can afford to take their minds off these things by going out to take a drink with friends.

Women, on the other, hand, cannot afford to do this. It seems as if every single moment of their waking life is spent worrying about the next meal, bar of soap, bucket of water, the coming winter, floods, school

The women's only structure is an alternative space to think and discuss within the organisation. It allows for women to be ... visible in their community roles.

fees, demolitions, and so on. These struggles, they argue, cannot be understood in the same way by men. This women's structure within the AbFP is the most direct proof of the dismantling of the artificial barrier between private and public realities.

The women's only organisation is an alternative space to think and discuss within the SMO. It allows for women to be both dominant and visible in their community roles. It allows their voices to be fully heard, as to a certain extent they feel excluded in other structures of the AbFP.

This women's organisation has different rules and norms from the core of the SMO. The AbFP leadership structure is primarily active in the public domain. The street committee where women meet is the heart and pulse of community organising which is hidden from the media. Here the main local concerns emerge and are dealt with.

In Freedom Park, women do most of the organising in street committees, in people's yards, and report back to the AbFP leadership. Block committee members meet before community meetings to discuss and set the agenda, brief each other about issues in various sections, and give each other tasks to be done. In the Lindelani section they meet weekly to discuss their struggles.

So writing about women's struggles only within the main social movement structure, and neglecting street and block committees and private homes where most grassroots work is done, overlooks the relationship between private and public spaces.



CONCLUSION

A vast literature on black South African women has demonstrated that they have suffered the triple load of being female, black and poor. This means black women have a unique view on domestic responsibilities. This is not to suggest that men cannot have such a domestic view or that men do not support women. In fact women rely on men to work in tandem with them. The purpose of highlighting women's responsibilities is to show how protest unfolds in places such as Freedom Park.

Protest begins with the women in the home. Protests unfold largely due to the small fluctuations, disappointments and frustrations that women face daily in the home. These protests would be highly unlikely in the absence of the frustrations and ordeals experienced by women in the home on a daily basis.

Women organising separately from men has served to highlight their increasingly visible role. They no longer merely pull the strings in the background. Women's organisation within an organisation is a 'safe space' for women to discuss things they

would not ordinarily say in the presence of men. This safe space allows them to share solutions for their households. This is a serious undertaking.

Many families rely heavily on social grants and there are many homes headed by women in Freedom Park and other communities. These women are also the 'men' of the house, so to speak. Nhlanhla and other women told how they felt the need to organise women independently because they are aware of the inequalities and pain that mothers go through when they are unable to provide for their families.

After multiple protests women in the leadership felt the need to organise other women independently, partly to help in the struggle but also to formally recognise and respect the important role that women play as Freedom Park's heartbeat. ^{LB}

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Libcom

South Africa protest capital of the world

Case study of North West's Mothutlung

Apartheid spatial planning continues to haunt South African residential areas. **Eunice Khumalo** focuses on the case of Mothutlung near Brits where residents were relocated under apartheid and still struggle to get their voices heard – leading to a major, violent and prolonged protest in 2014.

Natural freshwater is not only precious but is a significant source of living as well. Without it there is no life. However, people are overexploiting this resource disregarding the likelihood of its scarcity in the very near future.

In the years post-apartheid, the government has tried to manage water resources properly passing new laws and policies to ensure its protection and effective use. Of importance is the Bill of Rights (1994) which calls for the protection of water and stresses that every South African citizen has the right to access clean drinking water.

Government has policy where every citizen is entitled to 6 kl of free water a month which ideally all households should get. However, the scenario is different for villages that fall within the Madibeng Local Municipality (place of water) particularly Mothutlung where four people died while fighting for their right to access clean drinking water.

LACK OF SERVICES IN MOTHUTLUNG

Mothutlung lies 10 kms north east of the North West province

town of Brits. It was established in April 1970 as a result of the government relocating people from Oukasie and Mmakau during the apartheid era because the Nationalist government believed they were too close to the town of Brits. Many went voluntarily as they thought they would get better services.

It is difficult to tell whether Mothutlung is a township or a village as it has a mixture of characteristics. Its setting has the appearance of a village and in some parts its level of poor service delivery characterises that of a village.

For instance, there are shacks, RDP (Reconstruction & Development Programme) government houses, much unused grass covered space and no parks or recreational centre. It consists of two wards, 20 and 21, the former being very small with only 1,900 of the total 160,000 households in Madibeng municipality. Each ward has its own ward councillor.

The majority of the people are unemployed and for those who are

working, most earn below R3,500. The report of the Brits Town Precinct Plan classifies Mothutlung as a 'low income residential area'.

According to some residents, Mothutlung is a peaceful small community which values education. Residents stated that although Mothutlung is over 40 years old, it is not showing any signs of development.

Some areas such as Damonsville, closer to Brits, established as a coloured residential area after Mothutlung has more facilities. Situated a few kilometres away from Mothutlung, Damonsville is a multiracial suburb home to over three thousand inhabitants. Residents complained that Damonsville has pavements, a recreational centre and improved water and sanitation, unlike Mothutlung which still uses old infrastructure. (A crossing outside Damonsville was the site of shootings where people lost their lives in the 2014 protests.)

My research confirmed that Mothutlung is a peaceful township where people felt the need to fight



Free State Times

Mothutlung residents collect water in containers as the water supply is frequently disrupted – sometimes for up to a week.

for what they believe is rightfully theirs. Although it has been reported that progress has been made in service delivery, residents are still faced with the reality of no proper water supplies or sanitation and poor roads.

There is no infrastructure like tarred roads, no drainage systems, no street lights, road humps are not marked, and the water is intermittent and sometimes contaminated.

Mothutlung has different kinds of housing such as RDPs, shacks, *Dombuisies* built by Chief Lucas Mangope (Mothutlung was formerly part of the Bophutatswana homeland of which Magope was head) and formal housing. The name *Dombuisies* derives from the way the houses were built and positioned. They are small and placed randomly in yards. Residents indicated, however, that corruption occurs in the allocation of houses and house stands.

Education is highly regarded in Mothutlung and a large proportion of people have some form of education but only a few are employed and the unemployment rate is on the rise.

COLLAPSE OF WATER & SANITATION

Residents have borne the brunt of poor service delivery particularly

in the water sector and lack of drainage is a particular problem in the rainy seasons. In an interview with one old woman resident, she indicated that not only has this situation ruined her house and furniture but her health has been affected as well. She was an active sports woman but can no longer participate because of her deteriorating health due to poor sanitation facilities. She has lung problems owing to the fumes from waste which flows downhill and floods her house during storms.

Mothutlung lacks proper sanitation facilities to trap the waste flowing into the houses at the bottom of a slope. Culverts that were inserted during Mangope's time to channel waste have been left open after a recent tender to build drainage basins was not properly executed. The old woman had tried to address this issue through the media and with the municipality, including approaching all previous councillors who had promised to assist her but her pleas have fallen on deaf ears.

In addition, Mothutlung residents had been complaining about water interruptions since 2010 when they often went without water for five or six days. When this happened residents had to fetch water from the local vanadium

mine, Vametco, buy bottled water, use local bore-holes, or travel to areas as far as Ga-Rankuwa to fetch water from friends and family. However, many lived far from these water sources and could not afford to buy water.

In order to engage the municipality, residents told how they attended community meetings, drafted memoranda of grievances, and approached the municipality directly but their situation remained the same. In response, the municipality installed a tankering system to ensure that the community had water during shortages.

There is much contention around the tankering system with residents alleging corruption. They contend that this was mainly a scheme used by municipal officials to extract money from the municipality by tendering for the provision of water. The municipality, however, denies this and claims they are only trying to ensure people have a water supply.

FRUSTRATION TRIGGERS WATER PROTESTS

A build up of anger and frustration following residents' futile attempts to engage with the municipality, particularly around water and sanitation problems, and coupled with suspected corruption, triggered strong and violent protest over six days in 2014. In this protest, four prominent citizen protestors lost their lives at the hands of the police. Thereafter 14 policemen were suspended for their actions in the protest. However, only one was charged with murder and sentenced to 20 years imprisonment after it was proven that he used SSG ammunition (12-gauge rounds which contain pellets), discontinued by the South African Police Service in 2006, and banned under the apartheid government.

Importantly, a few days after this protest, water was restored

Although the Mothutlung protests illustrate that people are aware of their rights and are willing to risk their lives to fight for them, it must be asked why residents have to resort to such extremes to be heard in the first place by councillors who are paid to serve their needs.



Herman Verwey

Anger and frustration following residents' futile attempts to engage with the municipality over water and sanitation problems triggered violent protest over six days in 2014 when four people lost their lives.

in Mothutlung but other neighbouring townships, including Mmakau, still lack water and depend on water tanker provision. However, although residents indicated that the municipality now listens to their grievances, their water quality remains unimproved.

Although the Mothutlung protests illustrate that people are aware of their rights and are willing to risk their lives to fight for them, it must be asked why residents have to resort to such extremes to be heard in the first place by councillors who are paid to serve their needs.

Residents, however, were able to choose a new leadership in the 2016 local government elections.

CONCLUSION

The challenges experienced by Mothutlung residents were inherited from the past including the way it was previously governed. Alexander Pfaffe in 2013 argued that protests are rooted in

the apartheid regime due to the structural planning of townships that removed people from close proximity to their place of work. This is precisely what happened with Mothutlung residents who had previously lived in close proximity to Brits where many worked.

Sonwabile Mswana in 2011 argued that Bophuthatswana was 'a dustbin of history' because it left an imprint which could not be easily swept away by the dawning of the new democratic South Africa in 1994. Drawing from these arguments, it is clear that the current Mothutlung township continues to reflect the disastrous separate development, homeland policy of the Nationalist government - in this case the Bophuthatswana Bantustan. These historical legacies continue to haunt Mothutlung with people's grievances intensifying and exploding into the 2014 protests.

Similar protests have been happening all over South Africa

causing it to be branded as 'the protest capital of the world' with the highest rate of public protests since 1994 which continue to rise significantly.

Despite the fact that water by its nature is a scarce resource, human agency in some measure has contributed to this water crisis.

Furthermore, communities have lost faith in engaging their municipalities in invited spaces and are creating their own spaces by rebelling through service delivery protests. The build-up of anger and frustration over false promises and being routinely ignored has led communities to take to the streets to demonstrate their grievances, although not necessarily to challenge the state, but to change the status quo at a local level.¹⁸

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Resisting and embracing blackness

Racialised inequality among poor Whites

Whites have written extensively on black poverty. Now **Nonkululeko Mabaso** turns the tables and examines White poverty in Munsieville, Krugersdorp. She observes how squatters realign their whiteness with their black neighbours and that they also experience poverty differently from their Black counterparts.

It remains that in South Africa Black people bear the brunt of poverty which few have left behind since the end of apartheid. However, there is a group of poor people who are hardly spoken of and that is 'poor White' people. This article neither puts White poverty at the centre nor negates the plight of Black people. Instead, it is based on a project that looks at Whiteness from an analytical perspective.

In academia, and even in everyday conversation in South Africa, there is a tendency to speak of Whiteness as a single, homogenous group of people. This article challenges this way of looking at Whites by considering poor White people from Pango Camp, Munsieville in Krugersdorp.

These people are at the margins of Whiteness because of their poor working-class status which means they wield less power and privilege. As a result upper middle-class White people and Afrikaner nationalists have rejected them, but they are accepted by Black people of a similar economic status.

I argue that these poor Whites because of their poverty and their

physical and social closeness to Black people have adopted a lifestyle that is associated with Blackness. Despite this, the relationship between their economic status and the colour of their skin produces a different experience of poverty from that of Black people. This is because they still have some access to a degree of privilege and to powerful social networks.

POVERTY, INCOME AND WEALTH IN SOUTH AFRICA

The racialised landscape of poverty, wealth and inequality has hardly been transformed since the end of apartheid. South Africa is one of the most unequal countries in the world in terms of wealth and income distribution. This is because of the deeply ingrained inequality in the social and economic structures and institutions of the country.

Neo-liberal economists see inequality as an individual problem or as something that reflects a malfunctioning of the country's market forces. This is a misleading way of seeing inequality because it delinks current racialised poverty

from its roots in colonial and segregationist apartheid policies of the past.

Studies show that the apartheid state, under the leadership of the National Party, enacted a multitude of segregationist laws and policies in order to increase the wealth and privilege of White people and to end high rates of poverty among Whites at the beginning of the 20th century. This was done at the expense of all Black people.

The latest 2016 *Poverty Trends in South Africa* report by Statistics South Africa (Stats SA), shows that Black poverty inherited from apartheid persists, severely disadvantaging Black youth due to lack of access to education and employment.

The wealth and income gap in South Africa has been increasing, with the richest 1% owning about 42% of the country's wealth, and the bottom 50% of the population sharing about three billion rands of the country's income. About 60% of Black South Africans live below the poverty line, compared to 4% of White South Africans.



Krugersdorp News

A resident of Pango Camp in Munsieville in Krugersdorp.

HISTORY OF PANGO CAMP

Among this 4% of poor White people in South Africa are the residents of Pango Camp. They number about 150 although the amount is ever increasing. They initially arrived in Pango Camp in July 2015 and decided to name the informal settlement after a former ANC (African National Congress) Umkhonto we Sizwe military camp in Angola.

The Mogale City local municipality of Coronation Park had previously settled them in a public leisure park. A group of 300 lived there in tents without basic amenities. About 130 decided to move into Kleinvallei a privately owned exclusively Afrikaner establishment also in Krugersdorp.

However, the Pango residents decided to move into a Black settlement, where they live in shacks, and have Black neighbours. The majority (90%) in this camp are descendants of poor Whites from apartheid times. There are second, third and fourth (the children) generation poor Whites in the camp. Their ages range between 22 and 65 excluding underaged children.

'WHITE KA**IRS': STIGMA OF POOR WHITES

Poor White people like the residents of Pango Camp, embody a different

form of Whiteness due to the contradiction between the colour of their skin and their socio-economic status. Whiteness is associated with privilege and power, supposedly making Whites superior to people of other racial groups.

The late 18th and early 19th century saw a rise of race theories based on pseudo-scientific disciplines like social Darwinism and the Eugenics movement. These theories created a racial typology and hierarchy which placed Whites at the apex, and Black people at the bottom.

This logic continues to influence ideas of racial supremacy and inferiority. Studies, however, show that there have always been differences in the treatment of well-off White people and 'poor White' people. Upper middle-class Whites still attach a stigma to 'poor Whiteism'. They see poor Whites as an anomaly, a sore that inflicts pain on the White body, and believe White poverty is due to individual shortfalls. They reject poor White people, and consider them as 'unwhitely' or not 'proper' Whites.

The residents of Pango Camp confirmed this. For instance, most of the people who beg or collect and sell scrap claim they receive the most help from Black people, and that they have had countless

experiences of outright rejection and mockery from well-off Whites. Many White people accuse them of being lazy, blaming them for their poverty.

Afrikaner nationalist groups subscribe to the idea of creating a *volk* or one Afrikaner national identity. This idea was one of the founding premises of the apartheid state. So they sympathise with poor White Afrikaners and assist them.

However, the residents of Pango have had bad experiences with major Afrikaner nationalist social and political organisations such as Afriforum and Freedom Front Plus. This was also the case in Kleinvallei owned by a prominent self-proclaimed Afrikaner nationalist, Sunette Bridges. They got labeled 'White Ka**irs' by these organisations.

Pango residents felt these organisations sought merely to exploit them instead of assisting them. Thus they chose to live with Black people. It is clear that well-off Whites continue to treat poor Whites as second class 'White people'. This demonstrates that Whiteness is varied and that Whites from different socio-economic classes experience their Whiteness in distinct ways.

RE-ALIGNING WHITENESS

The studies of 'poor White' people based in other parts of the country such as King Edward Park, Port Elizabeth and Cape Town show that poor Whites assimilate and imitate forms of Whiteness associated with the upper middle-class. They distance themselves from Black people and things that are associated with Blackness. At the core they maintain their *swart gevaar* attitudes (apartheid idea that Black people are a threat to Whites).

The residents of Pango Camp, however, are a different case as they have faced rejection from White people, and misuse at the

hands of Afrikaner nationalist political movements. This meant they chose to live close to Black people.

Pango residents have begun to feel at home in Munsieville and many are planning a future that entails owning a RDP (Reconstruction & Development Programme) house in the same area. The municipality has assigned stand numbers to their shacks. Unlike the people in the other studies, these residents have been propelled to adapt aspects of Blackness that they found when they arrived in Munsieville.

For instance, the men in the camp drink *umqombothi*, an African sorghum beer, in the local taverns with Black men, and also eat food like *Amanqina dust*, chicken feet that are grilled and sold on the streets by hawkers, and they use taxis to travel around as most do not have cars.

Further, there are a few interracial relationships that have developed since they moved to Munsieville. Yet these residents still harbour racist perceptions about Blackness based on stereotypes. They continue to live in this contradictory psychological state of resisting some forms of Blackness while adapting to everyday lifestyle practices of the Black people around them.

INEQUALITY IN POVERTY

Even while redefining their Whiteness, the residents of Pango do not deny the advantages, however minimal, that come with possessing a White skin. These privileges distinguish them from the Black people in the camp.

For instance twice weekly two retail companies, Woolworths and Pick 'n Pay donate food, clothing and furniture to the people in the camp. Upon arrival and distribution of these donations, the White camp leaders make Blacks queue at the back after the White people. Whites receive items first,

then Black people are left to share the remnants, and some walk away empty handed.

This is one of many examples that confirm AE Lewis' conclusion in *What Group? Studying Whiteness in the Era of 'Colour Blindness'*, 'Whites in all social locations are relatively privileged compared to similarly located racial groups.' They still benefit from the social capital (social relationships that have benefits for a particular network of people) that is attached to being White, which includes getting sympathy from well-resourced White-owned companies.

Based on a survey conducted in 30 of the households in the camp, the estimated total monthly household income is R78,470. However, there is a large income gap between the highest and lowest earning people in the camp.

In addition, they have access to powerful social networks which compensate for their low income. This is a privilege that most poor Black people do not have. Hence the poverty of Whites is different from that of Black poverty. There exists a great degree of racialised inequality even among the poor. This reflects the broader racialised landscape of inequality in South Africa.

CONCLUSION

In conclusion, it is clear from this case study of poor White Pango Camp residents that White people are a diverse group. Whites from different socio-economic class groups experience their Whiteness in distinct manners.

'Poor White' people deviate from the norm of Whiteness that is associated with power and privilege. This is particularly true for Pango residents because after rejection by well-off Whites, including Afrikaner nationalists, they are re-aligning their White identities and integrating lifestyle practices that are associated with Blackness in Munsieville.

Nevertheless, the poverty of White people cannot be compared to the poverty of Black people because they continue to benefit from social capital though access to networks of privilege. This pattern reflects the racialised landscape of inequality in the country. ¹⁸

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Restitution of stolen land

Getting it back on track

An article in *SALB* 41.3 recommended that the state grant families in peri-urban areas and former homelands legal land tenure to prevent exploitation of their land by traditional authorities and developers. Now **William Beinart**, **Peter Delius** and **Michelle Hay** discuss how restitution for past land dispossession should be fast tracked and exclude large tribal claims for often imaginary kingdoms.

The Restitution of Land Rights Act (1994) was quickly put into operation following South Africa's first democratic elections in 1994, and the installation of the ANC-led government.

Restitution implied the return of land or alternative compensation to those dispossessed under racially discriminatory laws. However, government conceived of the Act in a limited way to exclude claims for land dispossession in the 19th century, when the British and Boers conquered independent African kingdoms and communities in South Africa.

The ANC wished to look to the future and not restore the precolonial map of South Africa which would involve going back centuries. It would also undermine current agricultural production and generate a divisive ethnic/tribal politics of land.

Restitution was not intended as the main policy to address the legacy of discrimination that excluded black people from owning land in much of the country during the apartheid era. It wanted to address this discrimination through a separate, though related,

programme of redistribution.

Thus the Act dealt only with land taken from people as a result of racially discriminatory laws and practices during the era of segregation and apartheid. This was from the passing of the Natives Land Act in 1913 to its abolition in 1991. People had to submit claims to the Land Claims Commission (LCC) by the end of 1998.

The Act aimed to restore land to people who had suffered from apartheid policies such as the Group Areas Act in urban areas and forced removal of rural African landowners in the rural areas.

The National Party government (1948-94) tried to ensure that Africans held land only within the boundaries of homelands or Bantustans. In rural areas it wanted to ensure the removal of independent black settlements in districts dominated by white ownership. Black people could live on white-owned farms only as workers. These forced removals met with sustained resistance during the apartheid years and such struggles politicised some communities in the countryside.

The Restitution Act aimed to rectify these injustices.

LONG DELAYS & RISE OF CHIEFTAINCY

The state received over 80,000 claims under the Act, which put enormous pressure on the LCC to resolve many complex claims quickly. The Commission was not set up to cope with this task.

Some of the rural claims ignored the 1913 cut-off date and some were overlapping, which required extensive research to resolve. Moreover, the government began to rely on restitution to achieve its targets for transferring land from white to black, placing an added burden on the Commission.

In 2014, government passed a supplementary Restitution of Land Rights Amendment Act that reopened the possibility for claims. However, in 2016, the 2014 Act was overturned by the Constitutional Court but not before people had lodged over 160,000 additional claims, some of which were even more broad-ranging.

The process of land claim has become linked to the reemergence of chieftaincy, contrary to the aims of the policy. The Constitutional Court judgment was based largely on the argument that the government had not consulted sufficiently. The

government can pass the Act again but it will need to meet the criteria for consultation.

After 20 years, some of the first restitution claims have still not been settled. The government has increased the pace of restitution by grouping separate claimants together and making large awards of land to these merged 'communities'. It has transferred land to Communal Property Associations.

Some of these transfers, especially to small communities, have successfully returned land to poor people. But government's tendency to favour large awards has excluded many people from benefiting.

MALA MALA & FICTIONAL CLAIMS

The Mala Mala example shows the abuse of the system which allows for the enrichment of elites rather than the empowerment of the poor.

In the beginning, the owners of the farms that made up the private Sabi Sands Game Reserve decided to collectively resist the restitution claims on their land. But in 2007, without consulting the other owners, the Rattray family, which owned Mala Mala, decided to break ranks and accepted the Mhlanganisweni claim.

The Mhlanganisweni 'community' had been formed specifically for the purpose of lodging land claims over a large area. It had no historical basis.

While the LCC at first agreed to a payment of R740-million, the minister and later the commission rejected it as excessive. The Mhlanganisweni community took the decision on appeal to the Constitutional Court. Shortly before the case was heard, the presidency intervened and withdrew the case and the state bought the Mala Mala reserve for over R1-billion.

This was the most expensive purchase in the South African land restitution process.

Ownership of the land was in part entrusted to the newly created 'Nwandlamhlari community', which was formed by merging

the Mhlanganisweni claimants with overlapping and competing claimants. Some of the members of the new community had made no mention of the Mala Mala farms in their original claims. There is growing evidence that this fictional community now faces internal disputes.

The fact that the state paid about R300-million more for Mala Mala than the highest previous valuation also fuelled suspicion that major corruption was involved.

MORE RURAL CASH SETTLEMENTS

With long delays and massive group land claims, settlements have had disappointing results around maintaining or developing agricultural production, and some farms have become run down.

Given the poor outcomes of transferring land, an obvious question is why the LCC does not give cash settlements more widely in rural claims, particularly as cash settlements were critical in most urban claims. Many rural claimants express a preference for cash payments.

For claimants who have waited since 1998 for the LCC to resolve their claims, many of whom are old, in poor health, and living on social grants, cash has clear advantages over uncertain and slow-moving processes of land grants. To benefit from land awards, families also have to face unsettling moves.

Yet rural claimants' voices have been drowned out. Government wishes to increase the amount of transferred land. A common belief from officials and leaders alike is that people won't be able to handle big cash settlements and will squander the money. This is deeply patronising and contributes to the tragic reality that many people who lived through the trauma of removal have died, or will die, without the comfort that cash compensation could bring in their old age.

Also, some rural claims are in fact family-based labour tenancy claims, for which cash compensation is

applicable (a labour tenant is a person or family who works on a farm in exchange for the right to live there and cultivate a small part of the farm, as well as hold livestock, for themselves). The complicating factor is that many former labour tenant families have joined together and made community claims for lost customary rights. These claims in practice lend themselves more to the return of land than cash compensation.

However, many tenancy families have become frustrated with the slow pace of the process. They now question whether a community award is in their interests, particularly if they have seen what happened in other restitution cases. Some families within these larger groups would now prefer individual compensation. This could also help to lower the tensions caused by the ethnic/tribal politics of land which large community claims fuel.

FAST-TRACKING LAND CLAIMS

The scale and complexity of the problems in restitution cannot be quickly or simply fixed. But the state can take steps in the short term which will help to bring the completion of claims lodged by 1998.

The state should immediately focus on researching outstanding land claims. For this purpose the Land Commission needs more staff, resources and training or to employ experienced researchers who have worked with the courts and lawyers to resolve claims.

The Land Claims Court, a body of judges separate from the LCC, that resolves disputes, has been operating for some years with temporary judges. Appointing permanent judges, including a judge president, will stabilise the court so that it can build up expertise, experience and consistency.

The legal requirements for restitution must be respected, particularly the cut-off date of 1913 and large tribal claims for former,

often imaginary, kingdoms must be dismissed. These claims are divisive. They are also a problem as they are based on a misunderstanding of the role of chiefs in land tenure systems.

In addition, the state needs to provide more support after settlements are reached. Those who move onto the land, need legal, administrative and technical assistance to maintain and develop agriculture and income-generating activities. The state has started some projects but its reach is limited.

CONCLUSION

Restitution is an important response to the injustices of the apartheid era. But the state intended it as a limited and short-term process to be completed in five years.

Restitution creates uncertainty amongst commercial farmers and undermines investment and production. Communities who have moved onto land have received limited support from the state or other agencies to develop agricultural or income-generating activities.

Restitution was not designed as a policy to expand agricultural production or other forms of rural

development. Land reform, and not restitution, should prioritise employment creation, production and economic growth in the local and national economy.

The state should also recognise the reality of rapid urbanisation and that many people are leaving the rural areas. Cash compensation should be prioritised. The first phase of restitution should be completed and the policy then ended.

However, if the Amendment Act of 2014 and goes ahead, it is important that state agencies, NGOs and lawyers are well prepared to deal with the many contested claims that are likely to result.

The policy of redistribution has, like the restitution policy, met with mixed success. However, redistribution is designed to transfer land for the purposes of agriculture and rural development and this should now be the priority. ¹⁸

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affactive societies

RECOMMENDATIONS ON LAND TENURE AND RESTITUTION

Rural and peri-urban areas

- Strengthen rights of existing landholders so that these are similar to ownership.
- Amend the Interim Protection of Informal Land Rights Act in order to strengthen protections for family and individual landholders and provide effective implementation.
- Facilitate the upgrading of land rights to title, starting in the urban and densely settled peri-urban areas, but spreading to develop one system of landholding throughout the country. Connect these developments with planning for services.
- Experiment with pilot projects to adapt rural settlements in order to facilitate the creation of consolidated landholdings for farming.
- Resolve the backlog of over 1-million in registration of titles for RDP houses and update the existing titles.
- Restore the original aims of restitution and ensure that claims are fully researched and fairly settled. Where possible unbundle large chieftancy-led claims.
- Appoint an effective research panel for restitution claims and appoint permanent judges to the Land Court until restitution is complete.
- Prioritise cash payments for restitution.
- The contested Restitution Amendment Act of 2014 should not go forward. It is an ill-considered Act, motivated by short-term political considerations, that will cause uncertainty in the countryside, undermine agricultural production, and give recipients of land little base for rural development.
- Pursue a gradual programme of redistribution that prioritises production and rural development both for existing and new landholders.
- Land tenure and redistribution policy must take central account of the realities of rapid urbanisation.

Laying claim to the farms

Farm workers' migratory belonging

In her research on Karoo farm labour **Nomalanga Mkhize** noted that black workers wholly identified as people of the farms. Yet farm workers live an insecure, migratory existence which she believes has clear policy implications in the present day.

When I was conducting research on farm labour in the semi-arid farming districts of the Eastern Cape, known as the Karoo, the most striking observation I made was that black farm workers considered themselves to be wholly 'people of the farms'. When I asked the question, '*Abantu bakokweni bavelaphi?*' ('Where are your forebears from?') the answer was usually framed as 'from the farms'. This struck me as peculiar as I had not thought 'the farms' would be named as a place of ancestral origins.

However, in the Karoo, it was common for black people to say they were from 'the farms' (*ezifama - die plase*). They referred to themselves as *plaasmense* (farm people). One of the interviewees explained what it means to be a *plaasmens*, 'We must do everything [relating to life] on the farms.' (*Ons moet alles doen op die plaas*). 'We take our wives on the farms. (*Vrou vat ons by die plaas*). But the hardship goes on. We have to take what we get.'

The notion of being people of the farms should not have surprised me as a student of history because I knew that the Karoo districts were the site of conquest, massacre and decimation of independent hunter-herding San

and Khoikhoi clans by trekboer (migratory Afrikaner farmer) commandos in the 18th and 19th centuries.

This history became a concrete reality to me when I was in the Karoo, talking to black people on the farms. Finally my own sense of the world fell into place as I realised that the notion of a *plaasmens* meant to have descended from those who were the early agrarian working class on trekboer farms.

EARLY WORKING-CLASS IDENTITY

Historians such as Susan Newton-King, Timothy Keegan and others have written on Cape history in this era of trekboer economic expansion and their making of African farm labour. But it is curious that in South Africa's political discourse, the working class is completely tied to industrialisation and the rise of the minerals economy.

Thus, the origins of the black South African working class is traced back to the destruction of the South African peasantry in the late 1800s, as told by Colin Bundy in his classic *The Rise and Fall of the African Peasantry*.

If we turn the needle of time a bit earlier than Bundy, Helen Bradford asks this question about the agrarian transition in South

Africa, 'But when did labour-power become a commodity?' The answer is in the 19th century Cape where 'rural capitalist development ... had a century's headstart on the rest of South Africa'.

Bradford's notion of the 'century headstart' of proletarianisation (the process whereby people move from being an employer/self-employed, often in agriculture, to working as wage labour for an employer) is key to understanding the contemporary sense of rooting as 'people of the farms'. It was their forebears who were semi-captive farm labour through the violent kidnappings of San women and children by boer commandos, and their legal conversion into the institution of servitude (servants) through the Hottentot Proclamation or Caledon Code of 1809. This forced Khoikhoi and San peoples to enter into legal contracts with farmers.

As the institution of slavery fell away, forms of 'wage' earning began to evolve on farms. As John Edwin Mason notes in *Fortunate Slaves, and Artful Master*, labour was commodified through the payment of wages in kind in the early 1800s, 'Almost from the beginning of colonial agriculture, payment in kind was a more important part of farm servants income than cash wages.'

There is a paradox in Karoo farm workers identifying their origins and roots as being ‘people from the farms’ while at the same time expressing insecurity on farms. It also raises questions on current state policy aiming to safeguard the dignity of farm workers which needs to both provide housing in town as well as address the historical land question of dispossession in the Karoo.

As early as 1695, the conquest of Khoisan lands had advanced so far that many people had little choice but to enter the colonial economy as farm labourers.

The trekboers took over the livestock herding mode of the Khoikhoi and made them their shepherds. They were truly dispossessed. Unlike other areas in South Africa these farm workers never had a piece of land to work on for themselves because the arid land only allowed for livestock rearing.

By the early 19th century, the practice of paying Khoisan farm workers in kind as an alternative or supplement to cash wages was well established, especially in the northern and eastern districts.

Furthermore, when slave emancipation arrived in 1834, it ‘freed’ slaves to work in the growing agrarian economy of the Cape’s semi-arid farming districts. This led, as Keegan notes, to ‘proletarianisation and economic dependence among the labouring classes’.

What evolved over time on these Karoo farms, and indeed, on farms across the Cape colony, was a labour regime of cash and in-kind wage payment alongside forms of brutal servitude and domination. This is what we still associate with South African farms today.

Hardship on farms led to forms of resistance from farm workers, and this included leaving difficult farms to seek work on other farms, or if possible to abandon farms altogether and live in towns.

FARM IDENTITY AND MIGRATION

Although dependent on employment on farms, people

began to shift from rural to urban areas to Karoo towns from the 1830s. Michael Tetelman in his work on the town of Cradock, states, ‘An 1824 census of adult males revealed that some sixty Khoikhoi and eleven “slaves” (former slaves) – presumably Africans – lived in Cradock’. A non-white ‘location, comprised of “squatter huts” emerged during the late 1830s.’

From the 1850s into the 1900s, a range of Masters and Servants Acts were passed to tighten control over farm workers as the South African economy modernised. Moving from farm to town became difficult as Cape province farmers in the early 20th century complained about farm labour shortages and tried to find legal mechanisms to prevent workers from leaving farms.

Even as late as 1940, the Cradock Town Council and the Inspector of Native Locations, and the Central Farmers’ Association complained to the Native Labour Commission that ‘... there was a large surplus of natives in the location owing to the fact that natives frequently left the farms and found no difficulty in obtaining accommodation in the urban area location.’

Thus even though they were *abantu basezifama, plaasmense* or farm workers, migration is a key historical feature of Karoo farm workers’ lives as they sought to escape harsh working conditions on farms.

In her 1936 work, *Reaction to Conquest*, Monica Hunter noted that farm workers and dwellers in the Eastern Cape did not consider themselves as

either belonging to the reserves or the town – they were farm people. Yet, Hunter also noted three patterns of movement by farm workers and dwellers. These were farm-to-farm circulation in the same district, back-and-forth movements between farm and town, and permanent settlement in towns.

Pamela Scully identified circulation between farms and town as a form of ‘bargaining power’ since farm abandonment can frustrate farmers into improving conditions to prevent high labour turnover.

CONCLUSION

The sense of insecurity because of the constant threat of being fired or evicted by white farmers was a strong feature in farm worker stories, as an interviewee stated, ‘In a farm house one person comes in today and then another tomorrow. Maybe they quarrel with the white person and leave. Another person comes and gets that house. You can’t say you have a house there ...’

There is a paradox in Karoo farm workers identifying their origins and roots as being ‘people from the farms’ while at the same time expressing insecurity on farms. It also raises questions on current state policy aiming to safeguard the dignity of farm workers which needs to both provide housing in town as well as address the historical land question of dispossession in the Karoo. ¹⁸

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Social security in South Africa

Urgent refocus needed

Many South Africans live in poverty and rely on social grants of various kinds. **Avinash Govindjee** highlights social security systems and laws that need to be urgently implemented and overhauled in order to properly protect the country's many vulnerable people.

South Africa's unemployment rate is presently over 27% of the adult population. Over 6-million people are unemployed and more than 2.2-million people are so-called 'discouraged work-seekers'. According to a recent University of South Africa (Unisa) study, a million more South Africans could be unemployed by the end of 2018. In fact, overall unemployment in South Africa has not fallen below 20% in the last 20 years.

Youth unemployment over the same period was even worse. According to Statistics South Africa (Stats SA), around 45% of people aged between 18 and 25 are not in education or training, nor are they employed. Of all the five BRICS countries (Brazil, Russia, India, China and South Africa), the youth unemployment rate of South Africa is the worst – around 50% worse than the fourth worst country in BRICS!

As a result, many people are forced to work in the informal sector. Often because of an inability to obtain other formal sources of income, people operate businesses that just allow them to survive. Around 65% of these small businesses experience a profit of less than R1,500 per month. This is interesting when we look at recent debates in South Africa on the call for a national minimum wage of R20 per hour

which is more than double that amount.

Bearing in mind that about 50% of people live on less than R1,036 per month, and that a basic nutritional intake costs around R450 per month, the harsh reality of many workers and unemployed people is very clear.

RESPONDING WITH SOCIAL ASSISTANCE

The country's response to this state of affairs is partly grounded in the social assistance grants system.

More than 17-million people receive social grants in South Africa. This has had positive impacts on the circulation of money in rural areas. However, given that only 15.5-million people are formally employed, the South African Institute for Race Relations has referred to this situation as a recipe for 'social and political chaos'.

Employment creation, as an alternative to social grant expansion, is hamstrung by the lack of a constitutional framework to do this. Job-creation schemes such as the Expanded Public Works Programme and Community Works Programmes are not regulated by laws and do not qualify as 'social assistance' (in terms of the Social Assistance Act of 2004). There is no legal basis for the 'right to work' in South African law.

Omitting community works programmes from the law could

result in a constitutional challenge on the basis that the state has not progressively used its resources in a reasonable way to bring social assistance to people unable to support themselves and their dependants.

Recent proposals suggest that the ruling African National Congress (ANC) may consider extending the child support grant to people up to the age of 21. (Currently people from 19 to 60 years at the point the state pension comes in are not covered by social assistance.) The World Bank has rated this social assistance as one of the top five programmes of its kind in the world.

But there remain serious issues relating to whether the state can afford the extension of social grants to people over 18 years old.

SOCIAL INSURANCE DEVELOPMENTS

A number of recent developments are in the pipeline in relation to social insurance schemes to which people contribute (contributory) in the country.

These include amendments to the contributory Unemployment Insurance Act, 2001 (UIA), for example. The state has promised to increase unemployment insurance benefits to a maximum period of 365 days rather than the current 8 months. Benefits will accrue at 1 day of benefits for every 5 days worked.



Times Live

A queue for Unemployment Insurance Fund payments at the Department of Labour in Port Elizabeth.

At the moment public servants are not included in the UIF but the state hopes they too will benefit from the Fund. Also, people undergoing learnership training (in terms of the Skills Development Act) will be able to claim from the Fund once their contract ends.

These developments, however, have still not come into operation despite government proposing them some years ago. Government predicts that the UI Fund will have a surplus of around R175-billion by 2019. But there are questions around whether there are sufficient plans to direct these funds towards achieving the broader purpose of the UIA.

Section 5 of the UIA, for example, as amended, proposes to include 'financing of the retention of contributors in employment and the re-entry of contributors into the labour market and any other scheme aimed at vulnerable workers' as part of the Act's purpose.

The Compensation Fund created by the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) is, according to reports, likely to incorporate the Compensation Commission for

Occupational Diseases, which is striving to address a large backlog of cases.

The Fund's attempt to introduce return-to-work arrangements in South Africa have failed to take root, despite research studies conducted five years ago supporting this development.

National Health Insurance (NHI) and the introduction of a National Social Security Fund (in terms of which every working South African will contribute some of their income and be entitled to retirement benefits, life insurance, disability benefits, and unemployment insurance) also remain in the pipeline, despite the idea being introduced some years ago.

The Employment Tax Incentive Scheme (a financial subsidy to encourage companies to employ young workers at a lower wage in order to bring them into the workforce) and a Training Layoff Scheme (voluntary agreement between workers and employers where workers who are in line for retrenchment instead get a temporary suspension of work in order to reskill), remain the subject of debate.

Trade unions like Cosatu (Congress of South African Trade Unions) have particularly opposed the Employment Tax Incentive Scheme as they believe this could result in the lay-off of older workers. These programmes have not grown much over the past few years.

NEED FOR COORDINATION

There is a clear need to extend and improve intergovernmental coordination in the area of social security in South Africa. Many government ministries play a role in different social security provisions without much coordination happening.

For example, the Department of Health, the Department of Social Development, the South African Social Security Agency, the Department of Transport, the Department of Labour, the Department of Public Service Administration and the Office of the Presidency are all involved in social security policy-making.

However, the impact of court judgments has generally been positive. Cases such as *Ngxuza*, *Mashaba* and *Kboza* have made ground-breaking contributions in

respect of class action litigation on social security administration and by ensuring that access to social assistance was extended to all permanent residents.

However, recent judgments, in cases such as *Mazibuko* and *Net1 Applied Technologies* have been more conservative in their approach.

The main problem, however, is the time it takes for changes to social security policy and to the law to happen. This raises the underlying question on the political will to break new ground in this area. The overly long time it is taking to implement the Employment Services Act (to provide public employment services and to establish schemes to promote the employment of young workers and vulnerable persons), the amendments to COIDA and the UIA, are examples of such delays.

Employment law has also not offered much assistance, and vulnerable workers are often excluded from the standard definition of an 'employee' for purposes of labour law protection. Vulnerable workers include people like car guards, waste pickers and sweet and cool drink sellers.

As things stand, generally the system over-emphasises the delivery of financial compensation at the expense of preventing unemployment and creating jobs for the unemployed including strategies to reintegrate retrenched workers into the labour market.

FUTURE OPPORTUNITIES

A number of important issues must be addressed in order to impact positively on the existing social security situation. These are outlined later in the article.

The country's approach to activation must be decided. Activation refers to the state requiring some form of engagement with work opportunities in exchange for receiving social benefits. This is especially true if

the state plans to extend the Child Support grant to people up to the working age of 21.

The tension between the idea of providing 'decent work' at a minimum wage together with job creation, particularly in the context of high numbers of unemployed people in the country, must be addressed. This debate holds many important consequences, for example in relation to the future functioning of labour brokers.

The courts and civil society must become much more active in the social security space. Presently there are relatively few cases challenging existing approaches to social security which allow for groundbreaking and innovative systems to emerge. A new wave of litigation may be necessary to resolve some of the issues highlighted above.

Available funds, such as the very large surplus in the UIF, need to be carefully thought through in order to expand the scope of social security protection in the country. Partnerships, such as a collaboration between the UIF, Commission of Conciliation Mediation & Arbitration (CCMA), National Skills Fund and Sector Education and Training Authorities (SETAs) in relation to the Training Layoff Scheme, and including strong coordination, should be encouraged.

The state needs to make bold decisions, for example, to focus on a broader category of 'vulnerable workers' rather than merely 'employees' for purposes of labour law protection and as an extension of the principle of solidarity with all forms of labour. This would hold significant implications for social security coverage of vulnerable workers.

Policy formulation and legislative amendments must be urgently coupled with a strong implementation focus and effective administration particularly in relation to the Employment Services Act, UIA, COIDA, Road

Accident Fund Act, National Health Insurance and the introduction of a National Social Security Fund.

CONCLUSION

It is clear that South Africa continues to face an unemployment crisis. The manner in which the country's social security (and labour) system responds to this must be improved.

While the expansion of social assistance over a number of years to cover all children is an historic development, and may even expand further to cover people between the ages of 18 and 21, the amounts paid to people unable to support themselves and their dependants is low.

The social insurance system has been plagued by its focus on compensation. It should rather make solid attempts to prevent unemployment and integrate unemployed workers into the workforce.

There have been too many long delays in amendments to legislation and introduction to important new laws. The response of the courts, trade unions and civil society to this state of affairs has been mixed, with past successes being counteracted by recent developments.

This article argues that a number of crucial issues must be addressed, in a methodical and structured way, in order to make a positive contribution to the existing state of affairs around social security. This is particularly true given the desperate situation some people face, many of whom are unemployed and who live in families relying on income from a single grant recipient. There is an urgent need to refocus attention on the social security system operating in the country. ¹⁸

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Minibus, bicycle, boda-boda transport

Ugandans drive to decent work

The Ugandan Amalgamated Transport & General Workers' Union (ATGWU) is responding positively to the informalisation of transport workers. **Dave Spooner, John Mark Mwanika** and **Diana Taremwa Karakire** tell how after decades of declining membership the union now has 60,000 members owing to its mass organisation of informal workers.

After decades of declining numbers of formal transport workers, the ATGWU is recovering and now has close to 60,000 members.

Three years ago, Samuel Mugisha almost quit his job. As the driver of a motorbike taxi (known locally as a boda-boda) in the Ugandan capital of Kampala, police harassment was having a huge, negative impact on his daily earnings. But today, Samuel is thriving as a member of the 38,000-member Kampala Metropolitan Boda-Boda Association (Kamba).

Launched in January 2014, the association is one of the newest members of Uganda's oldest trade union, the ATGWU, which is today leading the drive to represent informal transport workers and help secure decent work for all of its members.

ATGWU's membership is increasing significantly with the intake of informal transport workers such as minibus taxi, bicycle taxi and boda-boda drivers giving the union a new lease of life.

'It hasn't been easy. Many hurdles stood in the way of this formalisation, but we have covered a lot of ground,' says Usher Wilson Owere, the national chairman of ATGWU. 'The journey is still long but we are taking one step at a time.'

Since it was founded in 1938 as the Uganda Motor Drivers Association, the ATGWU has faced various hurdles. The biggest threat to its existence came from plummeting membership numbers after the collapse of state-owned passenger road transport services. Like elsewhere in Africa, the World Bank's imposition of Structural Adjustment Programmes in Uganda during the mid-1980s resulted in mass job losses, particularly in the public sector.

For ATGWU, large-scale redundancies in public bus companies that formed the bulk of its membership decimated the union. By 2006, things were so bad that membership fell to an all-time low of around 2,000 mainly airport members.

'After structural adjustment programmes and privatisation, Uganda was [facing] a new form of raw capitalism, in which you were either rubbed out or built your own power,' explained Owere in a report by the German Friedrich-Ebert-Stiftung (FES).

REGROUPING AND REBUILDING

Sometime in the mid-2000s, the ATGWU decided to regroup and rebuild and the inclusion of informal workers was key to this.

Although it wasn't until 2015 that the International Labour Organisation

(ILO) adopted the landmark Recommendation 204 to help facilitate the formalisation of the 50% of workers in the world who operate in the informal economy. In 2006 the new ATGWU general secretary, Aziz Kiirya, did just that.

Kiirya knew that to regenerate the ATGWU, his union must organise and represent informal workers. Estimates put the number of boda-boda drivers in Kampala alone at somewhere between 100,000 and 250,000, in addition to the capital's 50,000 minibus drivers. So Kiirya changed the union's constitution to include them.

The ATGWU strategy for organising informal workers was based on an understanding that these workers are in many cases were already organised, not within the trade union movement, but through credit and savings cooperatives, informal self-help groups, community-based organisations, and, most importantly, associations.

The Airport Taxi Operators Association was the first to affiliate with the ATGWU in 2008. It was closely followed by other national and regional organisations such as the Long Distance Heavy Truck Drivers Association and the Entebbe Stages and Conductors Association.



African Exponent

Uganda's boda-boda began as cheap informal transport between the Kenyan and Ugandan borders. The now 38,000-member Kampala Metropolitan Boda-Boda Association is a member of the ATGWU which helps informal transport workers secure decent work.

For Uganda's informal transport workers, unionisation has had a dramatic impact including a reduction in police harassment, big gains through collective bargaining, reduced internal conflict within associations, and the improvement of visibility and status for informal women transport workers.

Kampala's airport taxi drivers, for example, have secured standardised branding for their taxis, an office and sales counter in the arrivals hall, proper parking facilities and rest areas, amongst other collective bargaining gains.

Meanwhile, other members have benefited from having union membership cards, particularly when crossing borders.

The ATGWU received a major boost in 2013 when the International Transport Workers' Federation (ITF) launched a project to improve the capacity of unions across Africa, Asia and Latin America to represent informal transport workers.

Key objectives included training organisers and improving work conditions for women. The number of women working in the male-dominated transport sector in Uganda is very small. The Kampala Operational Taxi Stages Association (Kotsa), for

example, only has 45 women conductors and just 13 drivers out of a membership of approximately 36,000.

Juliet Muhebwa is one of Kosta's women conductors. Although the AGTWU has formed a women's committee to support the needs of women transport workers, Muhebwa says women still face the same issues affecting informal women workers across the world. These are long working hours, low pay, dangerous working conditions and the threat of violence, harassment and intimidation.

She describes the attitude towards women in the sector as 'largely negative, which discourages new workers'. AGTWU holds workshops and training for women workers to deal with some of these issues.

MORE WORK TO DO

In February 2015, the union established the ATGWU Informal Sector Committee, comprising the chairs and secretaries of all the affiliated associations. This has helped the members to get to know one another but also to improve systems and procedures within their organisations.

There is more work to do but AGTWU has experience in overcoming major challenges.

In 2013, Ugandan authorities passed a law prohibiting gatherings of more than 10 people.

Trade unions were officially exempt from the law. But in August that year, police occupied and later shut down the ATGWU's offices where taxi drivers and conductors had gathered for a meeting. The police considered the meeting illegal because they were not considered as workers.

The ATGWU responded strongly, threatening to call a strike and to bring Kampala to a standstill if the rights of these workers were not recognised. The ITF wrote to the Ugandan president Yoweri Museveni and as tensions threatened to escalate, the police backed down and the union called off the strike.

The confrontation and victory was a pivotal moment in the organisation of informal workers for the ATGWU. It was a victory against police interference in the business of the associations, and also against day-to-day police harassment and extortion suffered by informal transport workers.

But ATGWU recognises it has 'only just scratched the surface' of what still needs to be done. This ranges from the huge number of people in the informal economy still to be organised, to tackling the reluctance of white collar unions to accept informal economy members as workers of equal standing.

Affiliated association members still do not enjoy full union membership and a lack of voting rights deprives informal workers of the right to fully participate in trade union activities. There are barriers preventing their inclusion. For example, full ATGWU members pay 2% of their salary in union dues. This is a real problem for informal workers who experience differences in daily income and many don't have bank accounts.

'We are members but in a way we are more outsiders,' says Muhebwa, the bus conductor. 'We want to be brought closer. It's the only way we will get more empowered.'

The reform of ATGWU's constitution to ensure the total integration of informal workers will be a key topic at the 2017 ATGWU Quinquennial Delegates Conference.

But for informal workers like Frank, being affiliated to AGTWU has made a huge difference in his life. 'Previously, almost half of my earnings were going into bribing police officers to let me operate. That pressure is off my back now,' says the 32-year-old father of three.

Because he saves more money, Frank can now pay his childrens' school fees. He has also helped his



Informal transport workers attend an AGTWU meeting.

ATGWU

wife to start a grocery business to supplement their household income. 'I was more pessimistic about the future three years ago,' he says while leaning on his crimson-red bike. 'Now I see better times ahead.' ^{LB}

John Mark Mwanika is an official of the Ugandan Amalgamated Transport & General Workers' Union, Dave Spooner is director of the Global Labour Institute, and Diana Taremwa Karakire is a journalist based in Uganda.

'No resting until we get there'

Union formed, owned and run by security guards

In many parts of the world trade union membership is declining. However, **Ngugi Njoroge** tells how a Kenyan security guard trade union through a change in leadership, which includes high levels of accountability to membership, has increased its membership from 327 to over 45,000.

Private security guard John Wafula spends his 12-hour work day on the look out for anything that could harm visitors to the Nation Centre building in the heart of Kenya's capital of Nairobi.

The heavily built 47-year-old father-of-three looks smart with his closely cropped hair, his clean boots

and his well pressed uniform. He finishes work at 6 pm before starting the hour-long commute from the central business district (CBD) to his family at home in Kawangware.

With a monthly salary of 20,000 Kenyan shillings (approximately R2,800) Wafula is one of the 45,000 security guards that belongs to the

Kenya National Private Security Workers' Union (KNPSWU), and he is happy with his membership.

'It was very tough ten years ago. The working conditions were bad and low pay was the order of the day. But now things have changed thanks to vibrant representation by our union,' said Wafula.

Given how common labour unrest is in Kenya with public sector workers such as doctors, nurses and teachers all striking recently for better pay and working conditions, Wafula's positive words are a testament to the gains made by the union. The KNPSWU has worked hard to ensure shorter working hours and better working conditions for its members who are security guards at private houses, public buildings, businesses and events.

'Many firms which did not normally send statutory [social security] contributions now do so and there are also training sessions for guards by their employers.'

TURNAROUND OF FORTUNES

The KNPSWU was founded in 1960 as the Night Watchmen Union with a mandate to secure, promote and protect the rights of private security guards in Kenya. But until recently it was beset with poor leadership with the majority of KNPSWU

In addition, about one-third of the KNPSWU members are women, an impressive number that shows the sector's ability to diversify, modernise and 'break gender stereotypes,' says Arori.

Formal sector companies operate alongside informal sector firms. The segmented labour market structure with high, medium and low-end clients means that the basic needs and conditions of union members are widely at variance.



travelling renegade

Security members of the KNPSWU take to the streets and head for Parliament in Nairobi's City Centre, to demand better pay and conditions.

Since 2009 Kenya's private security industry has mushroomed, after the country became a target for frequent terror attacks from Islamist extremists from neighbouring Somalia.

Charles Arori, a workers' representative for a local branch of the global security firm G4S, says improvements in the welfare of private security workers has increased the pay of some workers by as much as four times in the last ten years.

'The number of wrongful terminations has also gone down because the union has taken up those cases, and our members are rarely subjected to long working hours without holidays,' says Arori.

officials coming from sectors other than private security. As a result it experienced a massive loss of membership.

Since tackling these issues, union membership has risen from just 327 people in 2011 to over 45,000 in 2016. The industry consists of an estimated 450,000 private security guards in Kenya at about 2,000 registered security companies.

'The informal sector accounts for a fairly low proportion of the membership of the union,' notes a recent report 'estimated at less than 5%. This means that upwards of 95% of the members are drawn from the large, medium and small private security firms in the formal sector'

Several years of fractured union leadership had condemned guards to poorly-paid, insecure work in an industry characterised by subcontracting, outsourcing and market segmentation pitting big, medium, small and micro-sized firms against each other.

However, thanks to the new effective union leadership there has been marked turnaround in the fortunes of the sector's workers.

Three key success stories can be told of the KNPSWU. These are the massive growth in union membership, the ability to build internal cohesion and solidarity, and the strategic utilisation of institutional power.

BUILDING WORKERS' POWER

The KNPSWU has managed to build internal cohesion in both its leadership and amongst the rank and file 'moving from a history that was dotted with leadership wrangles, coup d'états, and splinters and mergers to a relatively stable union,' the report states.

To develop common ground and to ensure collective interests out of conflicting demands, the union crafted a campaign message, which stated it is a union 'formed, owned, run and led by private security guards themselves and not outsiders'.

'This really worked magic and gave new and existing members a sense of confidence in the leadership of the union,' KNPSWU general secretary, Isaac Andabwa declared.

The main benefits of having a union run by the guards are increased grassroots visibility, the strengthening of structures and training of shop stewards, the reinforcement of bottom-up processes, as well as an emphasis on the social importance of the work of security guards.

The areas of welfare enhancement targeted by the union in its campaign strategy included basic issues such as salaries, working hours, overtime payment and leave entitlement.

At the time of the campaign, for example, most guards earned basic wages as low as R518 a month, which is about one-third the legislated minimum wage of R1,540. In addition, guards worked an average of 71 hours per week, contrary to the 52 hours provided for in the Regulation of Wages (Protective Security Services) Order of 1998, without overtime pay. And annual leave entitlements were administered through days off rather than actual leave days.

KNPSWU has gained considerable institutional power by increasing its membership and improving internal cohesion in this way. This in turn

has allowed it to influence policy through social dialogue, to establish a wages council for security workers in 2013, and to negotiate various collective bargaining agreements.

The absence of government regulation, poor union representation and years of corruption had hampered efforts to win better pay for guards as rogue security companies abused the rights of their employees with abandon, according to Andabwa.

But all of this is slowly changing. For example, the KNPSWU successfully lobbied the Kenyan government to ensure all public procurement entities obtain a mandatory certificate from the Ministry of East African Community, Labour and Social Protection confirming adherence with statutory minimum terms and conditions of employment before they are awarded any service contract.

Furthermore, at a meeting in December 2016 at the State House, President Uhuru Kenyatta ordered the Ministry of Labour to shut down all private security companies that flout the law on minimum wages. Lobbying measures increased the policy influence of the union while at the same time enhancing its representational ability.

At a grassroots level, union membership are no longer victimised as private security guards were in previous years where they experienced frequent dismissal, and were transferred or penalised because of their involvement in union activities.

Andabwa says the union has secured the commitment of stakeholders at the highest levels to carry out reforms to improve the welfare of private security guards. This includes an end to the stratification of pay based on organising security workers into three different bands determined by whether they work in high, mid or low-end security firms.



travelling renegade

The KNPSWU general secretary also says that the recently enacted 2016 Private Security Regulation Act, which the KNPSWU lobbied for over a number of years, will further boost the sector's operations by providing for the regulation of the private security industry. It aims to ensure the registration and licencing of all private security companies in Kenya, as well as a framework for cooperation with state security organs.

Andabwa admits there is a long way to go to ensure security guards enjoy world-class working conditions but good progress is being made. 'My dream is to ensure our security guards are empowered to the fullest to ensure they effectively complement the work of our security agencies,' says Andabwa. 'There is no resting until we get there.' ^{LB}

This article was researched by Jacob Omolo and Emily Odbong and written by Ngugi Njoroge a Kenyan journalist based on a report by the Friedrich-Ebert-Stiftung (FES) titled 'Trade Unions in Transformation-Developing and Utilizing Power Resources: The Case of Kenya National Private Security Workers' Union'.

Review

Crossing the Divide: Precarious Work and the Future of Labour

Edward Webster, Akua Britwum and Sharit Bhowmik (eds)

(University of KwaZulu-Natal Press, 2017)

Reviewed by Francie Lund

This path-breaking book uses studies on organising experiences from Ghana, India and South Africa to address the challenge of organising in the informal sector. It explores how informal workers and their associations, and trade unions of formal workers, can 'cross the divide' between them.

The editors and chapter authors all have experience as researchers, and most have been or are engaged as activists with workers' issues.

They address the questions of how informal workers organise; the sources of power they draw on and the organising strategies they use; the relationships they build (or not) with formal trade unions and other organisations in civil society; and the responses of formal trade unions to workers in the informal sector.

The editors and authors achieve a combination of real intellectual coherence, in well-written, straightforward English, mercifully free of academic jargon.

The introduction, written by the editors, provides the conceptual and theoretical framework. It summarises the processes of globalisation that have led to the informalisation or casualisation of employment.

They also present a simple and useful framework for understanding sources of power that vulnerable workers in precarious employment can draw on. The introduction gives a useful overview of the contents of the book – a helpful guide through main themes.

Part 1 covers agricultural work: oil palm plantation workers in Ghana, tea plantation workers in India, and two pieces on South Africa: the farm workers' struggle on wine farms in the Western Cape, and farm workers in the horticultural industry in Gauteng.

Part 2 has six chapters: one each on waste pickers in Accra, Ghana and in Pune, India, one on municipal workers in Johannesburg, South Africa, and three sectoral studies of domestic workers in Accra in Ghana, steel utensil manufacturing workers in Delhi, India, and home-based workers in Maharashtra, India.

COMPLEXITY OF EMPLOYMENT STATUS

The above list shows the diversity of sectors and forms of employment which the book takes on, and this leads me to my first point.

The book enables the complexity of informal work to be seen clearly. The classification of status in employment – for example self-employed or wage worker, employer or own account worker – is extremely important both for understanding changing structures of employment, and the possibilities of organising.

The three contributions on waste pickers are particularly good at illustrating the complexity.

Eddie Webster and Carmen Ludwig's study on municipal workers in Johannesburg, South Africa, includes a consideration of changes in the workforce in solid

waste. They describe a reduced core of permanent municipal workers, and workers with different statuses in a privatised firm, third party contractors and labour brokers who also recruit and/or employ waste workers, and some waste workers belonging to the South African Extended Public Works Programme.

On the periphery of these municipal workers are some self-employed waste pickers, who make their own work by collecting cardboard on the streets, or by collecting at waste dumps. This shows the continuum from more or less secure work at the core, to vulnerable workers at the periphery.

This vulnerability makes organising work difficult.

Owusu Boampong and Benjamin Y Tachie describe the 'subtle manoeuvrings of waste pickers' in Accra, Ghana in order to claim space for collecting and sorting.

Malati Gadgil and Melanie Samson present a fascinating story of the formation of a union of women waste pickers, KKPKP, in Pune, India, which devoted attention to developing a political culture based on Freirean organising practice. Over time it gave birth to a number of aligned cooperatives, one of which, SWaCH, made an agreement with the local municipality about improved conditions for waste workers.

Gadgil was an activist with KKPKP, and the authors describe the benefits of, and problems with, this hybrid organisational form.

A number of chapters note the exceptionally vulnerable position of migrant workers, whether in-country or cross-border. uMbuso we Nkosi writes on farm workers from other southern African countries in Gauteng. Sharit Bhowmik tells of tea plantation workers in India, and Akua O. Britwum and Angela D. Akurso write about domestic workers in Accra.

ORGANISING & PHYSICAL SPACE

Work in formal employment largely takes place in defined built spaces such as factories, shops and offices. This regulated workplace is pivotal for the development of trade unions of formal workers.

In contrast, precarious work – whether formal or informal – largely takes place in precarious or invisible workplaces, such as public streets and parks, workers' own homes, and, for domestic workers, the homes of others.

A number of chapters deal with the issue of space, and how this affects organising and organisational form.

Jesse Wildeman analyses the farm workers' struggles for better wages in the Western Cape, South Africa. The workers were formally employed, but at very low wages. Many workers had moved, or been moved, off the farms, and created informal settlements nearby.

Wildeman suggests that helped workers to escape from the paternalistic employer-worker relationship. With the help of mobile phones, they could organise rapidly, and took the struggle out of the isolated farm space, into the public space of a major highway, which they blockaded.

WORKER IDENTITY RECOGNITION

The book explores ways in which informal workers can represent themselves in platforms for negotiation about improved conditions of work. To do this they have to recognise themselves

as workers, contributing to the economy, and others have to recognise them as workers.

A number of narratives address that the organising of informal workers started with the building of self-identity as workers. This was particularly so with poorer women workers.

Indira Gartenberg, working with a union in Maharashtra state called the LEARN Women Workers Union, describes the importance of activists visiting the homes of home-based workers as workers. Through this, the women developed a 'consciousness of being workers', overcoming their sense of inferiority and helping them to value themselves.

In Accra, Boampong and Tachie describe initiatives to integrate informal waste workers into the formal waste management system. They note that this 'marks a shift from seeing informal waste workers as a nuisance to recognising them as important players in municipal waste management'.

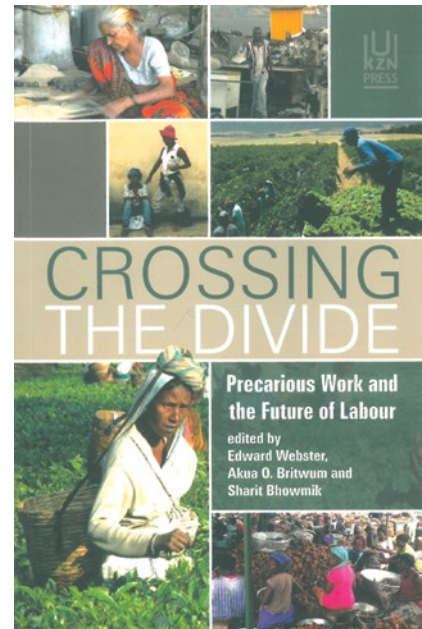
LOCAL GOVERNMENT

In urban areas, informal workers' everyday work lives are deeply affected by what municipalities do and don't do. People working in their own homes, in streets, in parks, beachfronts, or on government owned refuse dumps, all need secure space from which to operate including ventilation, lighting, water and sanitation, garbage removal and access to markets.

A feature of the urban-focused part of *Crossing the Divide* is how informal workers engage with local government. This happens over issues of space allocation, and the provision of infrastructure.

RELATIONSHIP WITH TRADE UNIONS

In the introduction the editors raise the question as to whether informal workers and their organisations are 'a new type of labour movement'. Much depends on formal unions



themselves, and how open they are to different forms of organisation.

Unfortunately, many of the contributions in the book show informal workers keep a distance from formal unions because of class differences and organisational procedures, among other factors.

It is not possible to refer to all contributions in this short review. This book is optimistic. It provides many examples of informal workers organising in new ways. However, there are also honest assessments of the divisions among and between informal and formal workers' organisations of caste, class, ethnicity, religion and language.

The book is a good read. It's interesting, thought-provoking, and useful for teaching and organising. It will be widely welcomed. **LB**

Sharit Bhowmik, chairperson of the Centre for Labour Studies at the Tata Institute for Social Sciences in India, and supporter of informal worker organisations passed away before the book's completion, and it is dedicated to him.

Francie Lund works for Women in Informal Employment Globalising & Organising (Wiego).

Islamic State terror: War without end?

Part 2: ISIL and sectarian and geo-political divisions

In the second of a three-part series **Peter Hain** analyses sectarian Muslim divisions as well as geo-political complexities in the battle against the terror group, Islamic State.

In the Middle East, Islamic State (ISIL) now faces formidable enemies on the ground and in the air, but the war is one of multiple divisions. These divisions are sectarian (hatred and discrimination between different Muslim groups), and geo-political (conflicting interests of international powers).

ISIL, a Sunni Muslim group, murders both other Sunni Muslim groups and all Shia Muslims. Saudi Arabia is combating Iran. Turkey fights ISIL whilst attacking the Kurds who have successfully defeated ISIL in some areas. The United States (US) and Russia, their bombs raining down on Syria, are in an uneasy alliance against ISIL, sometimes supporting their own factions in direct opposition to each other.

Since 2014 military action against ISIL has been ongoing, significantly with the participation of countries in the Middle East— Jordan, Saudi Arabia, United Arab Emirates, Bahrain, Qatar and, coming in late, Turkey. Russia's ruthless bombing in support of the right-wing Syrian regime has also enabled President Assad's forces, backed by Iran, to take territory from ISIL.

Meanwhile western logistical and other military support has helped bolster an Iraqi army in danger of

being overrun, and gradually ISIL has been either held or pushed back.

The Iranian-backed Peoples Mobilization Forces (PMF) played a key role in the 2017 assault on Mosul, controlling the nearby town of Baj, previously an ISIL stronghold. This means Iran has established a land supply route from Tehran (capital) through Iraq and Syria into Lebanon which people describe as a new 'arc of influence'. This was not what Washington intended with its intervention in the region.

WESTERN INTERVENTION

Tragically, headline grabbing British, European and American media on the Syrian war have not given a proper understanding of the conflict. The media has not educated on how the war could be ended, or on how ISIL, other groups and interventionist governments, would generate a monumental refugee crisis.

The Syria crisis is a disaster of biblical proportions, resulting in over five million refugees. In response, European countries have erected more walls around Europe's borders than during the Cold War and the politics of the European Union has been turned upside down.

Since 9/11 (Al-Qaeda 2001 attack on the US World Trade Center), the West has had a low success rate with its interventions in Muslim countries. In Libya the West's intervention supposedly to prevent genocide in 2011 has resulted in an ungovernable state, engulfed in conflict between warring fiefdoms, with ISIL also alarmingly active on Europe's Mediterranean doorstep.

Yet the West cannot isolate itself and never intervene abroad, and do nothing in the face of genocide as it shamefully did over Rwanda in 1994.

The United Kingdom's Tony Blair Labour government, in which I served for 10 years as a minister, was right to intervene and save Sierra Leone from savagery in 2000 and also to prevent the genocide of Muslims in Kosovo in 1999. But very few, even those supporting it at the time, dispute that Blair's 2003 support of US president George Bush in Iraq, has led to disaster.

Now, Britain is helping to defend, with unusually Iran on the same side, a new Iraqi government. The current prime minister of Iraq, Haider Al-Abadi, has promised inclusive Shia-Sunni rule quite different from the Shia sectarianism of his western backed predecessor, Al-Maliki. But he is weak and Sunni sectarianism remains rife in Iraq.

Shia Muslims are in the majority in Iran, Iraq, Bahrain, Lebanon. Sunni dominated countries include Saudi Arabia, Egypt, Turkey and Syria. But most of these countries have both.



Nevertheless there is a real danger that, by stepping in, western powers allow Middle East governments to pursue other agendas which may endanger the anti-ISIL campaign. The West must ensure that there is regional ownership of, and responsibility for, tackling the ISIL problem. The shocking massacre of Coptic Christians by ISIL in Libya in February 2015 which triggered greater involvement by Egypt is a good example of regional cooperation.

If Middle Eastern states are not involved in combatting ISIL, the conflict becomes the one ISIL craves: that the 'infidels' are from the West. The West's past uneven actions, unsupported by the Middle East region, has led to a never-ending cycle of intervention and withdrawal that has weakened and radicalised the entire region.

WHY IS ISIL'S IDEOLOGY DANGEROUS?

Sunni support for ISIL was encouraged by the anti-Sunni bias of the previous Iraqi Prime Minister Maliki, a Shia, and also by the Shia-aligned Syrian President Assad's massacre of Sunnis.

Because in Iraq the Shia-friendly Al-Maliki regime openly persecuted Sunnis, ISIL's call to arms resonated with Sunnis who normally would not support extremism and barbarity. This is one of the reasons why the Iraqi army first folded so easily at the sight of the oncoming ISIL hordes in 2014.

Adding to the deadly politics in Iraq has been the presence of up to one million fighters belonging to different Shia militias. Some of these militias are directly funded by Iran with its Shia majority, making Iraq's Sunnis deeply suspicious because of the violence of these militiamen against Iraqi Sunnis.

There are other groups who also look favourably upon an ISIL caliphate. These are groups that already inspire fear by practicing terror such as Boko Haram in Nigeria and Al Shabaab in Somalia. The possibility of Jihadist groups with support bases merging with ISIL is a very real danger, such as the Egyptian group Ansar Beit al-Maqdis.

Commentators on the Israeli-Palestinian conflict are worried that Israel's failure to negotiate a settlement could allow ISIL to gain a foothold amongst Palestinians. Palestinians are totally frustrated at the inability of their leaders to win recognition for a Palestinian state.

DIVISIONS IN THE REGION

In August 2013 the British parliament, rightly in my view, decided not to agree on military strikes against the Syrian Assad regime or to arming the moderate Free Syria Army. One of its reasons was that arms may fall into the hands of Jihadis, as happened in late October 2014 in Idlib.

As a Shia country in a Sunni dominated region, Iran has expressed frustration that Sunni countries, often allies of the US, have been funding Sunni extremism, including ISIL, for years. The US is only now seeing how this might threaten its own existence. Indeed ISIL considers the governing Saudi monarchy as 'corrupt betrayers' of ISIL and their common Wahhabism (extreme form of Islam based on a literal interpretation of the Quran).

Whereas Saudis, Qataris and Kuwaitis have openly and generously funded radical Syrian Islamist groups, including indirectly ISIL, the United Arab Emirates (UAE) has not. The UAE is concerned that funding radical groups will open the door to Jihadist fundamentalism and even greater chaos. The Emirates were also, before switching to support the Saudis militarily in Yemen, the leading

Gulf nation alongside the US in air strikes against ISIL.

Since 2011 a battle between Sunni groups for influence has driven regional instability, with Saudi Arabia and the Emirates lined up against Qatar and Turkey. At the same time the Saudi-Iranian struggle for regional dominance has dangerously escalated.

After the Arab Spring uprisings, Sunni states competed with each other for influence by supporting rival Islamist groups. Qatar and Turkey promoted the Egyptian Muslim Brotherhood while Saudi Arabia and the UAE viewed it as a real threat.

Egypt, UAE and Saudi Arabia actively supported the military coup that deposed the Qatari- and Turkish-backed Muslim Brotherhood president, Mohamed Morsi. In Libya two blocs backed opposing parties in the civil war in Syria, and Qatar supported al-Qaeda-linked networks where Salafist Islamists (conservative right wing Muslim group) were backed by Saudi Arabia.

Meanwhile in Bahrain in 2011, the Saudis, fearing increased Iranian influence, intervened in 2011 to stop a Shia-led human rights uprising.

The situation in Qatar is now entrenching battle lines and drawing the two conflicts more closely together. Divisions have intensified following the Saudi led economic blockade on Qatar in June, supported by Egypt, the Emirates and Bahrain, and noisily backed by President Trump (though not the US State Department).

These Arab states resent Qatar for various reasons. Its independent foreign policy, its relationship with Iran, its sympathy for the Muslim Brotherhood, for hosting the independent Al-Jazeera television station, and its sponsorship of Jihadi groups. This is ironic because the Saudis have long supported the Jihadist Salafi ideology.

To complicate matters Turkey has airlifted 1,000 troops to Qatar in an act of solidarity against the blockade and its President Erdogan



Kurdish Peshmerga forces detain men suspected of being Islamic State militants southwest of Kirkuk in Iraq in October 2017.

CGTN

has criticised Saudi Arabia for its aggressive foreign policy.

But Qatar hosts the largest US airbase in the Middle East. It is also the world's largest exporter of Liquid Natural Gas with billions pumped into the UK and US economies. Meanwhile Kurdish leaders are pointing fingers in particular at Turkey and Saudi Arabia, the British government, and others for supporting countries who give to Jihadists while they are trying to defeat ISIL.

Certainly Britain's position is compromised by relying on Qatari gas and Saudi oil, as well as making good profits out of sales of British military equipment to them.

Iranian proxies (groups or countries acting on behalf of Iran) and the US have squared off a number of times on the Syrian side of border. The US twice shot down Iranian-made armed drones and downed a Syrian plane. Britain is also defending its proxies advancing towards ISIL's Syrian epicentre of Raqqa, provoking Russia to warn its planes to stay out of its radar range.

Western officials have protested that the Russians 'do not want anyone but the Syrian army, which is nearly all Iranian-backed Shia militias, taking that city (Raqqa).'

Meanwhile Iran has fired ballistic missiles from within its own territory across Iraq and into the Syrian town of Mayadin at regrouped ISIL leaders.

This is the first time Tehran has launched missiles in combat since the end of the Iran-Iraq war nearly three decades ago.

The bewildering movements of five state militaries – Syria, Iraq, Iran, Russia and the US – as well as their proxies seems likely to increase the number of conflicts. Although ISIL has been on the run some analysts insist it is biding its time, ceding ground where it cannot win, but waiting to exploit divisions amongst its opponents to open new opportunities. It is ruthless and militarily smart.

If ISIL is eventually contained or defeated in Syria and Iraq, it will find new targets. Perhaps in Asia which is the home to two-thirds of all Muslims.

Some argue that ISIL's attacks across Europe and the US may be only the beginning. And as ISIL is pushed back, Al-Qaeda's influence has risen in the Middle East and across the Sahel region of Africa, in Libya, Somalia, Yemen and also in Asia beyond Pakistan. Its tentacles have spread also deep into the Philippines.

ISIL remains a powerful threat, engaged in a war without end against infidel opponents globally. ¹⁸

Lord Peter Hain is a British anti-apartheid leader who spent his childhood in South Africa and was a British MP responsible for the Middle East.

Review

The Return: Fathers, Sons and the Land in Between
Hisham Matar (Penguin Random House UK, 2016)

Reviewed by Bongani Kona

In September 1969, a group of rebel military officers led by 27-year-old Muammar Qaddafi, carried out a bloodless coup in Libya, which led to the overthrow of the monarchy of King Idris I. Even as the new regime set about imprisoning high-ranking military officers, the majority held out hope that Qaddafi would usher the North African country into a new, modern democracy. But in the four decades that followed, Colonel Gaddafi presided over Libyan political life with a clenched fist.

'Opponents of the regime were hanged in public squares and sports arenas. Dissidents who fled the country were pursued - some kidnapped or assassinated,' Hisham Matar writes in his Pulitzer Prize-winning memoir, *The Return*. Part elegy for a lost father and part meditation on the history and politics of an embattled country, the book measures the cost of Qaddafi's tyranny to his family and the country at large.

In March 1990, having fled Libya in 1979, Matar's father, Jaballa, a businessman and a leading member of the executive committee of the National Front for the Salvation of Libya, an opposition movement, was abducted by Egyptian secret service agents from the family's flat in Cairo. Handcuffed and blindfolded, he was handed over to agents of Qaddafi's regime and flown by private jet to Tripoli and locked away in Abu Salim.

The infamous maximum security prison, known as 'Last Stop' - 'the place where the regime sent all those it wanted to forget' - almost exclusively housed political prisoners, interned without trial. 'The cruelty of this place far exceeds all of what we have read of the fortress prison of

Bastille,' Jaballa wrote in one of only three letters he managed to smuggle out to his family in the early days of his imprisonment. 'The cruelty is in everything, but I remain stronger than their tactics of oppression ... My forehead does not know how to bow.'

Apart from those three letters, Jaballa was never heard from again, and his decades-long absence, locked away in 'a concrete box ... a steel door through which no air passes,' serves as the book's centre of gravity. *The Return* is Matar's attempt to unravel the mystery of what happened to his father

Matar was 19 and studying at university in the United Kingdom when his father was kidnapped, and because information about what went on inside Abu Salim - the torture, the deaths - was so closely guarded, he had no idea whether his father was alive or dead. 'My father is both dead and alive,' Matar writes. 'I do not have a grammar for him. He is in the past, present and future. Even if I had held his hand, and felt it slacken, as he exhaled his last breath, I would still, I believe, every time I refer to him, pause to search for the right tense. I suspect many men who have buried their fathers feel the same. I am no different. I live, as we all live, in the aftermath.'

MATAR'S RETURN

Beginning in Tunisia, in December 2010, a wave of protests, which would later become known as the Arab Spring, swept through North Africa and the Middle East. Inspired by the events in Tunisia and Egypt, and sparked by the arrest of a human rights campaigner, uprisings sprang up in Libya.

But what began as a series of sporadic protests against Qaddafi's regime, quickly escalated into a bloody battle for territory between the government and rebels which lasted five months. Hundreds lost their lives but in the end Qaddafi was defeated. He was captured and killed on 20 October 2011 during the Battle of Sirte, the final battle of the Libyan Civil War.

The Return opens in March 2012, with Hisham, his mother, and his American wife, Diana, awaiting their arrival in Libya on the 22nd anniversary of his father's first week in captivity. Qaddafi is now dead and the country entered into a brief, hopeful period, 'a precious window when justice, democracy and the rule of law were within reach.'

However, the promise of another Libya was eroded not long after, as rivalries between heavily armed militias escalated. 'The dead would mount. Universities and schools would close. Hospitals would become only partially operative,' Matar writes. With so much death and suffering, 'the unimaginable would happen: People would come to long for the days of Qaddafi.'

Moving between past and present, Matar shares his impressions of Libya, a country he last set foot in three decades ago. 'My family had left in 1979, 33 years earlier. This was the chasm that divided the man from the eight-year-old boy I was then. The plane was going to cross that gulf.'

Matar also shares the stories of relatives who were jailed in Abu Salim because of their connection to his father. Qaddafi described opponents of the regime as 'stray

dogs' and his cruelty towards his enemies was boundless.

One of Matar's cousins, Ali, was arrested in Libya not long after his return from university in Germany and spent 21 years in Abu Salim. He describes his time there, 'He said many things about life in prison, but what stayed with me most was his description of the loud speakers ...The speakers were not in the corridors but inside each cell, fixed to the high ceiling, where they could not be reached or torn off. They played speeches by Qaddafi interrupted only by propaganda songs and slogans expounding the virtues of the regime. The broadcast was on every day from 6 am to midnight, at full volume.

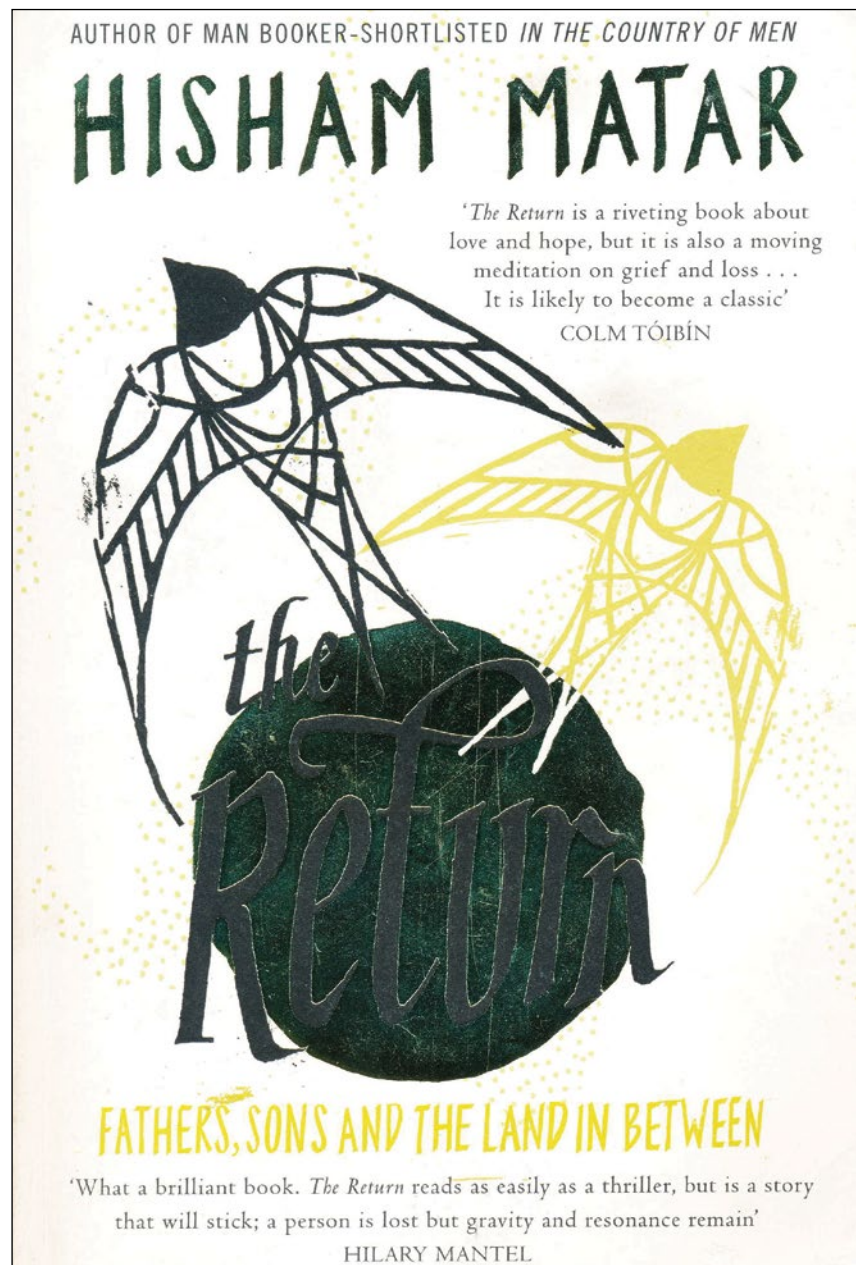
'So loud,' Ali said, 'that it was hard sometimes to make out the words. You could feel your muscles vibrate. I used to lie down and watch the small empty plastic bottle tremble on the concrete floor.'

Despite the stories of suffering, *The Return* is also littered with moments of joy and tenderness, as Matar reconnects with friends and relatives he last saw in the flesh three decades prior. But through it all - every remembrance of childhood, every encounter, or even a walk down a familiar side street - is the ghost of his father. His absence haunts the book.

IN THE END

In the end, nearly 30 years later, Matar is still no nearer to finding out what happened to his father. For years, he petitioned governments and enlisted the help of various international organisations. He even wrote a letter to Nelson Mandela in order to unearth the truth of what happened to Jaballa, but no answers were forthcoming.

In August 2011, however, Matar felt a flicker of hope, when the capital city, Tripoli, fell and revolutionaries took control of Abu Salim. 'They broke down the cell doors, and eventually all the men



crammed inside those concrete boxes wandered into the sunlight.' But his father was not among those men whose skin had not seen the sun in years.

There is, however, another terrifying possibility. In 1996, 1,270 prisoners in Abu Salim were massacred by the regime and the details were kept secret. Not only that, 'the bodies were buried where they fell, in shallow mass graves. Months later, they were exhumed. The bones were ground to dust and the powder poured into the sea.'

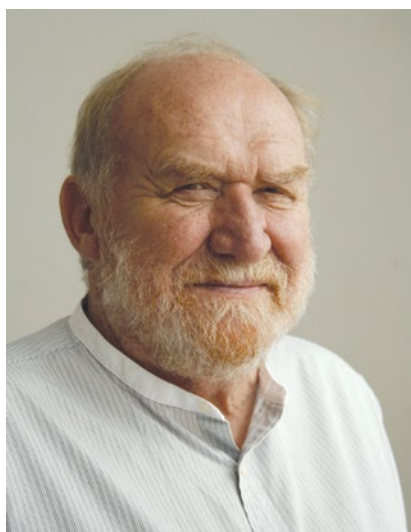
Though for years Matar resisted the thought that his father perished in the Abu Salim massacre, the thought that he died with others, his fellow comrades, and not alone in his cell, now brings him comfort. 'Boys,' Matar imagines his father saying to the young prisoners, before their bodies are shredded by gunfire, 'stand straight'. And then quoting from the Qur'an: 'With hardship comes ease. With hardship comes ease.' ^{LB}

Bongani Kona is a writer and editor based in Cape Town.

Philip Bonner

Turning the world on its head

Professor Phil Bonner was a Board member of the *South African Labour Bulletin* for almost 30 years from the 1970s into the 1990s.



Phil Bonner joined the University of the Witwatersrand (Wits) History department in 1971 where he continued until his passing. He was part of a group of Africanist scholars who challenged liberal historical dogmas and produced new histories that emphasised the experiences of the Black majority.

In the 1970s and early 1980s he was involved in the emergence of the new independent Black trade union movement and served as the Federation of South African Trade Unions (Fosatu) education officer teaching workers the history of trade unionism in South Africa. His involvement in the anti-apartheid struggle led to his detention and a threat of deportation.

Bonner was a founding member in 1977 of the History Workshop

which pioneered social history from below. Under his supervision many postgraduate students undertook research on the lives and struggles of Black workers, women, youth and migrants in townships, mines, factories and villages.

His research focused on squatter movements, urbanisation and Black resistance with oral histories always playing a central part.

Post-apartheid he worked on the development of historical museums including the Apartheid Museum. From the late 1990s he collaborated on histories of Soweto, Ekurhuleni and Alexandra township. In his last years he was involved in a project on South African underground struggles and he leaves two unfinished books on the subject.

Glenn Moss a sometime student and friend of Bonner's recalls a period in the 1970s when Bonner and he debated intensely the direction of the new trade union movement.

TEACHING COMPLEX UNION HISTORY

It must have been some time in the early 1970s that Phil Bonner, a fairly recent arrival in the Wits history department, was first asked to talk to students about the history of trade unionism and worker organisation in South Africa.

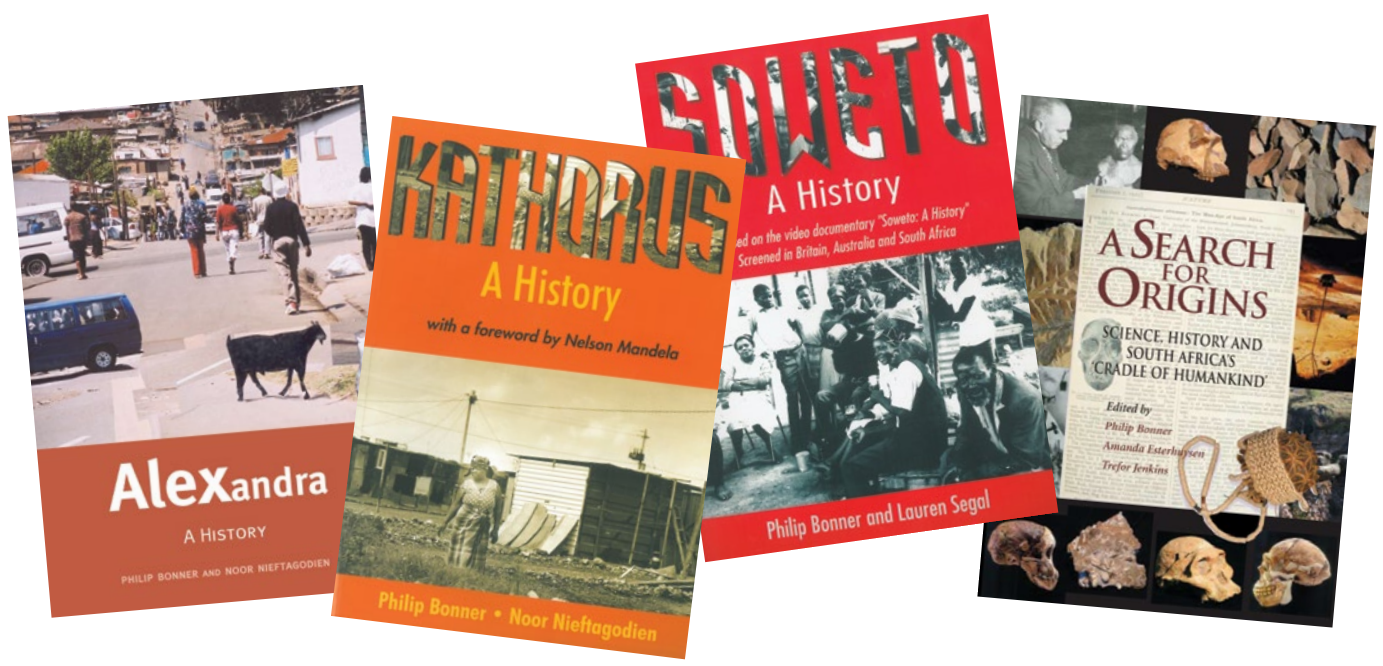
The Nusas [National Union of South African Students] Wages Commission had been set up in 1971, and progressive students were becoming

increasingly involved in efforts to strengthen worker organisation through pamphleteering, a worker newspaper, research and representation at Wage Board hearings [wages of Black workers were often set at such hearings without Black worker representation].

A gradual rediscovery of the rich history of previous efforts to organise workers was underway; of ebbs and flows, successes and failures, in trade unionism; of strike action; and the contested terrain over the relationship between trade unionism and anti-segregationist and anti-apartheid politics.

Bonner stepped up to help guide this new generation of students through the complexities of a labour history not easily accessible or particularly well known. The government had banned books on the subject, and many unionists who had been involved were in exile, imprisoned, banned or under house arrest. The past and the questions it raised, the lessons learned, felt distant and inaccessible.

Bonner was invited by student leaders to run a series of lunch-time talks on the 'hidden' history of working-class organisation, from the early mineworkers' strikes through to Clemens Kadavie's Industrial and Commercial Workers Union (ICU), the Council of Non-European Trade Unions (Cnetu), the Trade Union Council of South Africa (Tucsa) and the South African Congress of Trade



Unions (Sactu) which was part of the ANC-led alliance, and by then functioning mainly in exile.

Students, many for the first time, learnt of the 1946 mineworkers' strike, the Food and Canning Workers Union, debates about the merits of general and industrial workers' unions, and the Congress-led stay away campaigns of the 1950s.

Phil was generous with his time, and particularly active in the student-organised 'History of Resistance' series, which laid the foundations for Nusas's national 'Release all political prisoners' campaign of 1974.

DEBATING CLASS ALLIANCES

From here, it was a small step to ask Phil to join the small band of volunteers who, together with the Wits Wages Commission, began setting up the Industrial Aid Society (IAS) as a structure for worker organisation, worker education and - eventually - independent trade unions.

He was joined in these activities by his wife at the time, Chris Bonner, who left her teaching post to become one of the organising pillars of the new trade union movement in the chemical industry.

Phil's politics was well-developed. His commitment to working-class organisation independent

of compromised 'parallel' trade unionism, separate from class alliances underpinning national liberation politics, was already established. [Many Tucsa coloured unions operated in parallel to the dominant white union at the time.] Part of this commitment was based on his research into the history of trade unionism.

Bonner had become concerned that the working-class focus of Sactu and its member unions had been weakened by participation in the class alliance led by the ANC [African National Congress]. He had seen how unions allied to anti-colonial liberation movements had been undermined in the post-colonial period, as new elites evolved into a comprador bourgeoisie (Black middle class allied with foreign investors, multinational corporations, bankers, and military interests) based on rent-seeking and access to state-held resources.

This took him to the core of the disputes which wracked the IAS in its formative days. What was the relationship between trade union organisation and the movements of national liberation? Were working-class interests inevitably subsumed and weakened in multi-class political alliances? Should unionism steer clear of anti-apartheid politics in favour of developing working-class strength

on the factory and shopfloor? Did this latter position imply an 'a-political' trade unionism, or was it a foundation for the development of a working-class politics?

Phil struggled with these complex political, historical, strategic and tactical issues along with many others in the IAS. These were (and are) difficult questions, and the competing interests at play were never served well by simplistic and dogmatic contestation. That was certainly never Phil's approach.

BUILDING ORGANISATION THROUGH WORKER EDUCATION

Part of Phil's contribution lay in his commitment to worker education as a component of building working-class organisation. He understood that advance guard workers involved in representation as shop stewards, members of factory committees and branch executives, or organisers, would be stronger and better equipped to deal with the complex relationships between bread-and-butter demands and wider political issues if they understood the histories of past union and political initiatives.

This approach found Bonner in the IAS offices weekend after weekend, in the evenings and late at night, meeting with groups of workers, developing and testing materials and manuals.

We have lost one of the very best of a generation that turned the world on its head, that asked new questions and hence found different answers – intellectually, academically and politically.

Broader worker education was combined with more specific and practical organising tools. How to assess the different forms of representation – works and liaison committees, factory committees, shop steward committees? What about the different potentials and strategies implied by industrial versus general union organisation? Did a focus on industrial unionism detract from the development of broader, cross-sector working-class interests? And always, the relationships between class-specific trade unionism and politics based on class alliances.

These questions stayed with Phil from those early days through to his involvement as Fosatu's education officer, and later when he offered worker education courses in some of Cosatu's affiliates.

HIGHLY POLITICAL WORKERIST

Phil was controversial. He was allied with what was sometimes referred to as 'workerism', the independent industrial unionism of Fosatu. He was opposed to Fosatu affiliating with multi-class formations such as the UDF [United Democratic Front], and trade union alliances with 'the community'. He had an often biting and humorous critique of the posturing which accompanied excesses of populist and nationalist politics.

But this does not mean he was 'economistic' or 'reformist' or 'a-political'. He had a sophisticated, but critical, politics and was often involved in the support of a broader politics.

His detention and threat of deportation was probably the state's retaliation for his role in couriering messages to the International University Exchange Fund on behalf of a group concerned about the security status of police agent Craig Williamson.

In much the same way, he was supportive of the Detainees Parents Support Committee (DPSC), making Wits facilities available for its first meetings responding to the detention of activists and trade unionists. His strong disagreement with the politics of many detained in the September 1981 raids in no way detracted from his support of the detainee support movement.

Phil was amongst those who initiated and taught the marvellous multi-disciplinary Development Studies honours course at Wits in 1976. Together with academics like Sheldon Leader, Eddie Webster, Jeremy Keenan and Alf Stadler, Phil's history block in 'Dev Studs' helped lay the intellectual foundations for the course's first students who went on to start *Work In Progress*, the *South African Review*, and Development Studies Information series, which endured for well over a decade.

Phil showed a loyalty to individuals, even when he differed with them. When a senior academic argued to the Wits higher degree committee that I was delaying submission of my Master's thesis to avoid military service, Phil was quick to argue that there was nothing wrong with that if it was true. He then pointed out that the allegation was not true as I was well within time frames, and was medically exempt from military service.

And although we ended up on different sides of the corrosive IAS dispute, he declined to join the chorus of personal vitriol which accompanied that dispute.

RACE AND NATIONALISM TO LOOT STATE

I have a vivid memory of bumping into Phil one evening on the Wits campus, just outside of the office

he occupied in the Central Block. It must have been winter, in the early 1980s, because it was dark already, and Bonner seemed down.

Almost without prompting, he started talking about his concern about the way 'race' might be mobilised in any post-apartheid dispensation. He drew on his extensive knowledge of elite behaviour in post-colonial Africa to warn of the dangers of new elites mobilising race and nationalism as a protective cloak for the looting of the state, as a way of deflecting criticism of the emerging petty and comprador bourgeoisie. I'd not thought of this much – indeed, few of us were, at that stage, even contemplating the possibility of living to see a post-apartheid order, never mind the dangers it would face.

We have lost one of the very best of a generation that turned the world on its head, that asked new questions and hence found different answers – intellectually, academically and politically. Phil was never boring, always controversial, usually steely in his principles – and a character of massive and endearing proportions.

In the late 1970s, Phil and I sometimes ended up in different political 'camps' but we were able to retain a friendship, and an engagement, albeit occasionally tense.

I am gutted that I will not again see him pulling his beard, jutting out his chin to disagree, or startling those present with an insight or perspective which truly changes the way we think and see the world. ^{LB}

This is an edited version of a tribute that first appeared as a blog on www.thebenewradicals.com 'In memory of Phil Bonner 1945-2017.'