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LLM (Labour Law)

**THE PENROSE STAIRS OF HISTORY: AN ACCOUNT OF THE
LEGISLATED TREATMENT OF THE 'DESIGNATED GROUPS'.**

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ABSTRACT

A Penrose Staircase- an impossible object always ending ascending yet constantly descending and ending as an illusion. This is Employment Equity legislation in South Africa with its purported aim of redressing the disadvantages of its designated groups. It is legislation that aims to promote equal opportunity, fair treatment and eliminate unfair discrimination yet cannot unshackle itself from the very types of racial identifiers that it wishes to have eliminated.

This paper is an attempt to give greater content and context to the purpose of Employment Equity than the few sentences provided in the preamble of the Act. In particular, I have focused on the Act's own racial differentiator – 'Blacks' - as a seemingly convenient catch-all rubric which is drenched with the very abhorrent salience of race and thickening of racial classifications which it wishes to escape from. 'Blacks', as Africans, Indians and Coloureds, as I will conclude, have intertwined yet different experiences of apartheid and their emergence from Apartheid and projected future can be so vastly contrasted that Employment Equity measures based on its current simplified Verwoerdian racial descriptors will perpetuate inequality and racial disunity.

This paper is a study some of the more than three hundred years of policies, practices, laws and the might of the sophisticated government machinery which aimed at placing Whites at the apex of control over the country's resources and contrast how each of the designated groups have (1) experienced legislated discrimination aimed against them; (2) as a snapshot of 1994, how they have emerged from this history and (3) the predicted trajectory that each group can expect in their share of resources in the future.

Now, with almost two decades of Employment Equity legislation behind us, we are in a far better position than its drafters to assess its efficacy yet South Africa not only has inter-racial inequality to contend with but intra-racial inequality too. I will conclude that workplace equality will not come with lumping the responsibility with employers. It will come with the hard task of making significant strides in the critical areas of significant education improvement and skill development as well as an

investment in the creation of private business enterprises at an Industrial scale to rival South Africa's post war efforts.

To Julien

‘ If there ever comes a day when we can’t be together, keep me in your heart, I’ll stay there forever’.

- Winnie the Pooh

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*'We learn from history, what we don't learn from history'*¹

-Desmond Tutu

I. INTRODUCTION

On 31 July 2014, the Spokesperson for State President Jacob Zuma released a statement announcing that the long awaited amendments to the Employment Equity Act² would be released the following day.³ 'Minister Oliphant', the statement declared, 'said no one could deny that the labour market still suffered from the impact of the apartheid race exclusion legislation' and that the 'amendments were meant to contribute towards the restoration of human dignity and would address the persisting inequalities experienced by the majority of South Africans as a result of Apartheid laws'.

In her earlier address at the opening of the Employment Equity and Transformation Indaba in Johannesburg on 9 April 2014⁴, Minister Oliphant remarked that 'the passing of the Employment Equity Act marked a turning point in our history as it is the first equality legislation to be passed by a democratically elected parliament to give effect to the Constitutional provisions related to equality in South Africa'. Rather pointedly, Minister Oliphant commented further (that) 'the Employment Equity Act was introduced against the background of extreme disparities in the distribution of labour market opportunities'. 'The negative impact of this exclusion' she added, 'is the gross under-representation of Black people, women and people with disabilities in key areas of the labour market, including management, science and technology-based occupations. 'Back then', she added, 'the highest positions for most Black people, particularly Africans, would have been Head Garden Boy and Head Tea Girl'.

To emphasize her point, the minister argued:

¹ Tutu D *No future without forgiveness*. 1st ed. New York: Doubleday (1999).

² The Employment Equity Act 55 of 1998.

³ Available at <http://citizen.co.za/223245/employment-equity-amendment-act-commences/> accessed on 2 August 2014.

⁴ Available at <http://www.labour.gov.za/DOL/media-desk/speeches/2014-1/address-by-the-hon-minister-of-labour-ms-mildred-n-oliphant-at-the-official-opening-of-the-ee-and-transformation-indaba-2014> Accessed on 16 August 2014.

Twenty years later into our democracy and 16 years since the enactment of the Employment Equity Act, the remnants of Apartheid still persist. We are confronted daily by assertions that we have had 20 years to make things right'. Rather rhetorically, she asks, 'how is it possible that the effects of 450 years of discrimination can be reversed in such a short period?'

The unveiling of the amendments was not however an easy process for the ruling party with a significant voice coming from the ANC's Western Cape arm. Leader of the party in that region, Marius Fransman, released a statement independently from the national organizational structure in concern of the proposed use of national demographics:

The ANC believes this section in its current draft form, which says that in these organisations national demographics should apply to top, senior and middle management structures, whilst regional demographics may apply in other lower levels, is inconsistent. It is in conflict with the spirit of the Constitution⁵, Employment Equity Act and broader intention of the draft regulations read in its entirety together with court judgments. The ANC believes that the drafters (bureaucrats) have not taken into account the unintended consequences of this section in the practical implementation as it relates to management positions. This is particularly so for two provinces (Western and Northern Cape) where a national minority group, namely the Coloured population, is in fact a provincial majority.⁶

Fransman indicated why he narrowed his concerns to only two provinces - this is after all 'where a national minority group, namely the Coloured population, is in fact a provincial majority'. Yet the cynic could view these comments as mere appeasement against the backdrop of the much-maligned comments made by the ANC's spokesman, Jimmy Manyi in 2011, when he stated that,

So this over-concentration of Coloureds in the Western Cape is not working for them. They should spread in the rest of the country ... so they must stop this over-concentration situation because they are in over-supply where they are so you must look into the country and see where you can meet the supply.⁷

National demographics, regional demographics, sunset clauses, designated- groups. There can be little wonder why the Employment Equity Act is as maligned as it is. The ruling party's apparent ambivalence is symptomatic, perhaps not so much of

⁵ The Constitution of the Republic of South Africa Act 108 of 1996.

⁶ Available at <http://politicsweb.co.za/politicsweb/view/politicsweb>. Accessed on 23 August 2014.

⁷ Available at <http://mg.co.za/article/2011-02-24-Coloureds-overconcentrated-in-wcape-says-manyi> accessed on 17 August 2014.

‘muddled thinking’ or ‘political considerations’⁸, as it is a cursory understanding of the historical reality of South Africa’s past. To try and understand Employment Equity, its purpose, its failures, and its successes, is to understand South Africa’s history- its historical ‘truth for ‘No man can know where he is going unless he knows exactly how he arrived at his present place’.⁹

The history of discrimination that Minister Oliphant refers to is ‘an unsavory tale of intergroup conflict, violence, warfare and plunder’¹⁰. By the time that Nelson Mandela’s cabinet could even begin to tackle ‘South Africa’s massive problems of persistent unemployment, unequal education system and low demand for unskilled labour’¹¹ by enacting Employment Equity legislation post 1994, it had to consider the cold hard facts before it. The Minister of Labour at the time, Tito Mboweni, requested the Directorate of Equal Opportunities to draft a Green Paper to ‘identify the policy proposals for inclusion in a new Employment and Equity Statute’¹². This document made for some disturbing reading: the income distribution in South Africa was already ‘among the most unequal in the world’. ‘Almost one in three African employees earned less than R500 a month’, the report concluded, ‘compared to less than one in twenty Whites’. So too, ‘a White man was 5000 times as likely to be in top management as an African woman’. The report went further to state that ‘massive inequalities in income and status affect, social cohesion, undermine efficiency and economic growth and have a devastating impact on families and individuals’. On average, ‘Africans had half the years of education of Whites’ and ‘Whites own over nine tenths of all assets in South Africa. So while South Africa was the continent’s economic powerhouse, ‘among middle-income countries, South Africa has the dubious distinction of having one of the highest gini-coefficients...in a country where there are islands of wealth in a sea of poverty’.¹³

Certainly, it would appear that the current Labour Minister and the government whose policy she articulates place an enormous responsibility in the

⁸ Benatar D Justice, Diversity and Racial Preference: A critique of Affirmative Action, *The South African Law Journal*.

⁹ Angelou M *Conversations with Maya Angelou*, University Press of Mississippi (1989).

¹⁰ Terblanche S *A History of Inequality in South Africa 1652-2002*, University of Natal Press, 2002.

¹¹ Seekings J *Poverty and Inequality after Apartheid*
<http://www.yale.edu/macmillan/apartheid/seekingsp2.pdf>. Accessed on 22 October 2014.

¹² General Notice 804 of 1996, Minister of Labour.

¹³ Devey R; Møller V *Closing the Gap Between Rich and Poor in South Africa. Trends in Objective and Subjective Indicators of Quality of Life in the October Household Survey*. Research.net (2002).

hands of business owners to assist the government reversing that history of discrimination. Yet, as the Minister is quick to point out, the Act was never meant to be the ‘panacea for all the evils of past discriminatory policies’¹⁴. Even so, Employment Equity is a Constitutionalised reality that is here to stay.

This paper is an exploration of those 450 years that the Minister refers to. It is a study of how generation upon generation of the largest swathes of the populace were hobbled by laws, policies and strategies designed essentially to strip them of adequate opportunities to be educated or to participate competitively in the economy. Apartheid, was not a spontaneous event that commenced in 1948 and ended on 27 April 1994. Rather, ‘apartheid’ is merely a modern moniker to recurrent discriminatory practices that were amended and whittled over successive generations over hundreds of years.

On the eve of South Africa’s first elections, the ANC stated in its election manifesto ‘there are those who would like us to believe that the past doesn’t exist: that decades of apartheid rule have suddenly disappeared. But the economic and social devastation of apartheid remains. Our country is in a mess’.¹⁵ This is a study of that mess and the serious challenges faced to ‘understand the neglect and division of the past’.¹⁶

Race is listed first before any other forms of prohibited grounds of unfair discrimination in the Employment Equity Act as it is in the Bill of Rights¹⁷ not because there is a hierarchy of discrimination in existence but because race is the warp upon which South Africa’s history has been woven. ‘Black people’, as the Employment Equity Act defines them, ‘is a generic term which means Africans, Coloured and Indians’¹⁸, yet as I will argue, there is little commonality in the treatment meted out to these groups as they each have remarkable histories of their own. Accordingly, I will conclude, there can be no generic ‘catch all’ treatment of South Africa’s racial groups. Such practices are not only paradoxical to the purported

¹⁴ General Notice 804 of 1996.

¹⁵ Anc.org.za, *1994 National Elections Manifesto*. [online] Available at: <http://www.anc.org.za/show.php?id=262> (Accessed 18 Aug. 2014).

¹⁶ Ibid

¹⁷ The Constitution of the Republic of South Africa Act 108 of 1996 subsec 9(3).

¹⁸ Erasmus; Jung Park. (2008) *Racial Classification, redress and citizenship: the case of the Chinese South Africans*. Transformation 68 (2008) ISSN 0258-7696.

aim of the Act in its attempt to redress the effects of discrimination, but will perpetuate the Penrose Stairs that has been exposed by expectations of Employment Equity. as enunciated by the likes of Fransman and Manyi. I will examine these racial groups individually and contrast their experiences against the mechanisations put in place to entrench and advance White hegemony and so doing will conclude that while the Minister is correct in backhanding the expectations of Employment Equity after 20 years of Democracy, to truly give effect to the Act's purported recognition of the disparities that have created 'such pronounced disadvantages for certain categories of people'¹⁹, the Act must radically depart from its consideration of those requiring its protection as a generic collective. By 1994, 'Blacks' as defined emerged from Apartheid with vastly different experiences. Accordingly one cannot ignore the 'hierarchy of discrimination'²⁰ that has been created with the absurdity present that with the nature of most workplaces, numeric targets perpetuate discrimination against previously discriminated minorities who experience absolute barriers against promotion to the apex of the organization as highlighted in the recent *Naidoo* decision. While the purpose of Employment Equity is to address the effects of discrimination, new de facto barriers are created. In studying the individual histories of each racial group I acknowledge that as lamentable and deplorable our history is, true emancipation from discrimination does not come from perpetuating racial discrimination. Rather, it comes from eliminating those shackles to our development that are becoming more stark with each day that passes- corruption, cronyism, ineptitude and lack of political will and leadership to take the country forward by the scruff of its neck.

¹⁹ Available at <http://www.anc.org.za/show.php?id=262>. Accessed on 18 August 2014.

²⁰ *Naidoo v Minister of Safety and Security* AO 2013 (3) SA 486 (LC).

II. INDIAN ARRIVAL AND INDIAN DELIVERANCE

'We believe as much in the purity of race as we think they do, only we believe that they would best serve these interests, which are as dear to us as to them, by advocating the purity of all races, and not one alone. We believe also that the White race of South Africa should be the predominating race'.²¹

- Mahatma Gandhi

II.I The Establishment of Indentured Labour

By 1867, the Crown had successfully annexed the Natal Colony and was in the process of wiping away any remnants of Zulu independence from the red tinged map of Africa that adorned Whitehall's offices.²² Prime Minister Disraeli's Colonial Minister at the time, Lord Carnarvon, had already been successful in unifying Canada into a confederation of States²³ and with the support of loyal farmers and prospectors, a similar system was envisaged for Natal.²⁴ The burgeoning farming community looked towards the still independent Kingdom of Zululand and its vast resources for potential labour with some longing.²⁵ The fiercely independent Zulus had little interest in working on White owned farms having been placed in six reserves in various parts of Natal by the Locations Commissions of 1846. There was also a perception amongst the Colonialists that Zulu men were not accustomed to agricultural work, leaving it rather in the hands of women. Bishop Colenso who later became the Bishop of Natal captured the sentiment accordingly:

When natives have been in service for four or five months, however pressing may be their master's circumstances, however earnest his entreaty for them to remain at their post, they will be off for six weeks or two months together to revisit their native kraals and resume their native habits. No doubt this habit is attended with serious inconveniences. The farmer is perhaps deserted at the most critical time or if the

²¹ Kemp A *The Lie of Apartheid and other true stories from South Africa*, Arthur Kemp, 1st ed (2009).

²² Pakenham T *The scramble for Africa, 1876-1912*. 1st ed (1991).

²³ The Constitution Act of 1867, originally enacted as the British North American Act, 1867 which created the Dominion of Canada by uniting the colonies of Canada, New Brunswick and Nova Scotia.

²⁴ Local Imperatives and Imperial Policy: The Sources of Lord Carnarvon's South African Confederation Policy, *The International Journal of African Historical Studies* Vol 20 No.4. 1987, Boston University African Studies Center.

²⁵ Dr Charles Johnston, the representative of the Victoria County in the first Legislative Council of Natal, felt that 200 000 'Natives' would be required for the entire coastline. *The Settler. Tribulations, Trials and Triumph*, Barlow Governder and Naidoo. Barlow Govender Foundation.

settler be engaged in a trade, no sooner does the native become expert at it, then he is gone²⁶.

The Zulus were known to fiercely preserve their independence by ejecting speculators and traders and farmers had to make use of migrant Pedi Labour.²⁷ Some insight into the administration's consideration of Zulu labour can be gleaned from Natal's Secretary of Native Affairs, Theophilus Shepstone who declared of King Cetshwayo:

Had Cetywayo's (*sic*) thirty thousand warriors been in time changed to labourers working for wages, Zululand could have been a prosperous and peaceful country instead of what it is, a source of perpetual danger to itself and its neighbours.²⁸

At the time, there was a constant shortage of labour for the coffee, tea and sugar plantations and the government made use of Amatonga workers from Northern Mozambique, Basothos and slaves dubbed 'Zanzibaris' who were rescued from dhows off the Spice Islands.²⁹ Yet still the demand was not sated and the authorities turned their focus towards the Empire's crown jewel, India, for inspiration with that country having already been exporting labour to the colonies after the banning of slavery in 1834.³⁰ An industry of recruiting agents flourished in the areas around Madras³¹ and with some local farmers having already found success with the small teams of Indian workers that they imported themselves, Indian labour began to look increasingly popular by the time the first public meeting was held about the labour problems in 1851.³² It was then that a call was made to import 'Coolies from the East' no doubt using the well established indentured labour industry that for over

²⁶ Govender, B. and Naidoo T. *The settler*. 1st ed. Durban, South Africa: Barlow Govender Foundation (2010).

²⁷ *Reader's Digest illustrated history of South Africa* 1st ed Pleasantville (USA) Reader's Digest Association (1998).

²⁸ Guy J. *The British invasion of Zululand: some thoughts for the centenary year* (1979).

²⁹ Bhana S. and Brain J. *Setting down roots* 1st ed Johannesburg: Witwatersrand University Press (1990).

³⁰ 'The Slavery Abolition Act of 1833 declared that the sale and ownership of slaves became illegal through-out the British Empire. On 1 August 1834, the practice of slavery was abolished in its entirety and was replaced by four year apprenticeship of slaves. This was to enable slave owners to retain their workforce and for slaves to learn a trade'. South African History online. <http://www.sahistory.org.za/dated-event/slavery-abolished-throughout-british-empire>. Accessed on 20 August 2014.

³¹ Barker B. and Oakes D. *Reader's Digest illustrated history of South Africa*. 1st ed. Pleasantville (USA): Reader's Digest Association (1998)

³² Govender B. and Naidoo T. *The settler*. 1st ed Durban, South Africa Barlow Govender Foundation (2010).

thirty years already had spread from South East Asia to Hawaii, Malaya and the Caribbean.³³ Even so, the use of African Labour was not discarded entirely but the eventual compromise reached was that liberated slaves and convict labour be used only.³⁴

The visit of Sir George Grey to the Colony³⁵ prompted a group of farmers to petition him to approach the Government of India directly to assist with the problem.³⁶ Grey duly wrote to the Secretary of State for the Colonies for assistance who in turn wrote to the Government of India.³⁷ ‘Coolie Agents’ had some difficulty at first in acquiring able labour but by the time that the second shipment was due, India was facing a crisis of its own with drought and famine resulting in no shortage of willing conscripts who would be prepared to take the journey to South- East Africa.³⁸

The Natal Coolie Law³⁹ was duly passed in that year whereby it was consequently made possible for the Colony to accept the immigration of Indians as indentured labourers officially at a time when the Industrial Revolution was at its zenith.⁴⁰ This law provided labourers who had completed their period of indenture with a portion of Crown Land as well as full citizenship rights. The process of recruiting labourers from across South East Asia was in itself remarkable for its time. Professional agents of the Emigration Services cast their nets far and wide with workers from as far away from Madras as Burma, Nepal and Kashmir agreeing to work in Natal.⁴¹ For a country as rich in diversity as India, the resultant mix of labourers created an assortment of languages, castes and skills.⁴²

³³ <http://www.britannica.com/EBchecked/topic/136194/coolie>. Accessed on 23 August 2014.

³⁴ Hailiday I G; Henning C *Natal and Indentured Indian Immigration: The indentured Indian in Natal, 1860-1917* 1st e. New Delhi: Promilla & Co (1993).

³⁵ Sir George Grey was at the time the Governor of the Cape Colony having already served two successful terms as the Governor of New Zealand.

³⁶ Bhana S. *Essays on indentured Indians in Natal*. 1st ed. Leeds, Yorkshire, England: Peepal Tree Press (1990).

³⁷ Ibid

³⁸ Bhana S. and Brain J *Setting down roots*. 1st ed. Johannesburg: Witwatersrand University Press (1990).

³⁹ The Natal Coolie Law 14 of 1859.

⁴⁰ Meer F *Portrait of Indian South Africans*. 1st ed. Durban: Avon House (1969).

⁴¹ Bhana, S and Brain J *Setting down roots*. 1st ed. Johannesburg: Witwatersrand University Press (1990).

⁴² Ibid

‘Coolie No. 1’ and his family (Coolies 2, 3 and 4) joined 338 others as they boarded the *Truro* on 12 October 1860 in Madras.⁴³ The 10 shillings a month that he would expect to receive must have been enough of an incentive to uproot his family to travel to an unknown land with an uncertain future. Their voyage was partly paid by the government with the farmers paying another £8 per head and upon reaching Natal, they would become known as indentured labourers whose interests would be governed by the Coolie Immigration Agent who would act as an inspector of sorts being required to visit each plantation twice a year.

The essential terms of the contract were as follows⁴⁴:

- The labourer would be assigned to a particular planter and be indentured for a period of three years (later amended to five years).
- An option to re-indenture for a further two years was possible.
- The labourer was thereafter a ‘free-worker’ and could offer his services as a free agent for a period of five years where after he could return for free to India or remain on the Colony on a small grant of government land.
- Free food, clothing, lodging and medical attention was required and an annual increase of a shilling a month was to be provided after the first year of service.
- Fines could be imposed for absence from work for ‘any unacceptable reason and a pass was required when leaving the plantation.

The *Truro* duly dropped anchor on 16 November 1860 and an armed guard took the immigrants to barracks whereafter eight days and the death of four, they were taken to the plantations. Conditions were notoriously poor, families were separated and workers could not leave the estate to seek recourse against wayward employers.⁴⁵ The Natal Witness⁴⁶ summed up their situation accordingly:

The ordinary coolie and his family cannot be admitted into close fellowship and union with us and our families. He is introduced for the same reason as mules from Montevideo, oxen from Madagascar or sugar machinery from Glasgow. The object for which he is bought is to supply labour and that alone. He is not one of us, he is in every respect an alien; he only comes to perform a certain amount of work, and return to India...

⁴³ Desai ‘*Master Coolie Arrives*’: *Indenture and the Origins of Hindusim in Natal*. Kamla- Raj Publishers (2013).

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Paul S *The Ubuntu God: Deconstructing a South African Narrative of Oppression*. Wipf and Stock Publishers (2009).

Complaints by Indians returning to Madras bough about the creation of the Coolie Commission and the appointment in 1872 of the Protector of Indian Immigrants in accordance with Law 12.⁴⁷ Indians could often expect brutal conditions with floggings, poor sanitation and illness the cause for many of the complaints and by 1911 it was recorded that ‘the most serious and persistent problems faced was that of suicide’.⁴⁸

In 1872, recruiters from the Natal Government Railways stood in the queue at the Durban dockside when the next batch of labourers arrived from India.⁴⁹ Employment on the railways increased the movement of Indians into the hinterland of Natal and exposed free Indians to the possibility of exploring the newly discovered Goldfields of the Transvaal where employment opportunities were to be found.⁵⁰ By 1895, the role of the Indian worker had morphed from a purely agricultural role to occupying many of other positions from writers to artisans. According to Bhana, ‘this was not purely as a result of the need for better infrastructure (and access to resources), but was also occasioned by the various castes that had arrived in the country’.⁵¹

Indians from all castes arrived in South Africa yet there is some conjecture as to the extent that the caste system may have contributed to the apportionment of skills amongst Immigrant Indians. Bhana⁵² argues that there is evidence to suggest that employers used class *and* caste among indentured Indians in colonial Natal as a form of labor control. Some came with specialized skills that were necessary in building railways and coal mining, while another group known as Special Servants had skills to work in hotels, residential clubs, and hospitals. Employers no doubt decided that their pool of labour could be best exploited in those areas where the workers had the most skills and experience. *The South African Tribune* gave solid advice for the new arrivals: ‘those who want to be on friendly terms with Whites must be prepared to come up to our standard of living and refuse to cooperate with those social and industrial tendencies which have such tendency to degrade the White man’. Readers would also have been informed that the ‘weak contemptible Arabs were regarded as

⁴⁷ Law 12 of 1872 passed by the Natal Legislative Council of the Natal Colonial Government.

⁴⁸ Accessed at <http://www.sahistory.org.za/archive/14-suicide-among-indentured>. Accessed on 20 January 2014

⁴⁹ Dhupelia-Mesthrie U *From cane fields to freedom*. 1st ed. Cape Town: Kwela Books (2000).

⁵⁰ Ibid

⁵¹ Bhana S ‘Re: Indentured Indians’. Message to the author. 11 Nov. 2000. E-mail.

⁵² Ibid

‘slum-bred specimens of humans who were absolutely worthless’. Coolies were considered ‘the concentrated scum of India, a dead failure and a nuisance everywhere’. ‘As a result of his filth, prostitutes, disease and swarms of children, vermin were the constant companions of the red-turbaned, Black-faced, foul smelling coolie’.⁵³

Harry Escombe, who later became Prime Minister addressed the Natal Legislative council on 29 July 1884 with heaped praise of Indians:

These peasant market gardeners pay a very considerable rent to their landlord. They cultivate their land with evident care, they bring their produce into the Durban market and at all events in that one borough, the town is seemingly dependent on these small Indian producers for the advantages they get from that class of people.⁵⁴

Indian skills were credited for the ability of households in Durban to be supplied with fresh fruit and vegetables and Indian fisherman had a virtual monopoly on fishing from the Bluff.⁵⁵ So successful were Indians in clearing what was regarded as unsuitable land for cultivation, that farmers preferred to have Indians settle in their areas and to purchase such land to allow Indians to settle on it only to sell the land once it had been cleared by the tenants at a considerable profit.⁵⁶

While the railways expanded into Northern Natal with the opening of the coalmines, a need for a variety of skills arose and ‘Passenger Indians’ began arriving in Natal on their own volition.⁵⁷ The Empire had already established a long history of trading with Indian Merchants in East Africa⁵⁸ and it was only a matter of time before traders began to arrive to take part in the rapidly growing economy of the Colony.⁵⁹ Passenger Indians saw the potential of the mining fields to ply their trades but although the immigration officials introduced a compulsory literacy test in 1897, it merely had the effect of encouraging Indians to disembark in Delagoa Bay from where they made their way to the Transvaal.⁶⁰ During this period, the Colonial government’s efforts to regulate Indian Labour had begun to gain traction in the

⁵³ Visser W *‘Natal is a White Man’s Land’: Anti-Asianism and Pro-White Labour Politics in Colonial Natal, c 1906-1909*. University of Stellenbosch.

⁵⁴ Bhana S; Brain J *Setting down roots*. 1st ed 1990).

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Freund B *Insiders and Outsiders. The Indian Working Class of Durban 1910-1990* (University of Natal Press: Pietermaritzburg (1995).

⁵⁸ Gregory R *South Asians in East Africa: An Economic and Social History 1890-1908* Boulder: Westview Press (1993).

⁵⁹ Bhana S *Setting down roots*.

⁶⁰ Dhupelia-Mesthrie, U *From cane fields to freedom*.

colony at a time when much debate was present with regards to the extent of independence from the Crown the settlers wanted. The ‘Indian Question’ was regarded as a politically divisive issue⁶¹ at a time when many Indians had begun to throw off the cloak of indenture and had started participating in the economy in competition with the White settlers.⁶² The import of Indians in Durban Harbor peaked in 1890 at considerable antagonism⁶³ while their continued presence in the Colony was hotly debated.

II.II Legislated Curtailment of Indian Development

By 1885, 66 Indian stores had become established in Durban⁶⁴ and the 40 Indian owned properties in the area had attracted White tenants much to the annoyance of some who found the extent of Indian landlords to be unpalatable.⁶⁵ The Wragg Commission was established to investigate the conditions of Indian traders and had found that some Indian merchants had even been extended credit from White Durban merchants at a time when few White traders were given the same undertakings.⁶⁶ The Commission found that the conditions that Indians were in were ‘eminently satisfactory’ and by 1897, the Governor of Natal, Sir Walter Hely-Hutchinson, expressed the opinion that ‘anti-Indian feeling was based more on the fear of competition’.⁶⁷

The Indian population was increasing massively so while indentured immigration stopped in 1913⁶⁸, by 1904 already, Indians outnumbered Whites in Natal.⁶⁹ By the late 1800’s White business interests were clearly under threat and as somewhat of a forerunner to White workplace protectionism, The Working Men’s Association was founded in 1888 to protect White interests against cheaper and more competitive Indian and African labour.⁷⁰ Similarly, The Typographical Society of

⁶¹ Pachai B. (1979). *South Africa's Indians*. 1st ed. Washington: University Press of America (1979).

⁶² Ibid

⁶³ The Natal Mercury, 1 August 1890, Natal Archives.

⁶⁴ Pachai B *South Africa's Indians*.

⁶⁵ Bhana S *Setting down roots*.

⁶⁶ Pachai B. *South Africa's Indians*.

⁶⁷ Governor to Secretary of State, 15 January, 1897, Natal Archives, Government House, vol 1282, 120

⁶⁸ Bhana S *Setting down roots*

⁶⁹ Available at <http://www.natalia.org.za/Files/23-24/Natalia%20v23-24%20article%20p68-75%20C.pdf>. Accessed on 20 January 2014.

⁷⁰ Ringrose *Trade Unions in Natal*, 4-5; Brian Lawrence Reid, ‘Organised Labour in Natal.

Natal and The British Amalgamated Society of Engineers (ASE) established branches in Durban to join The Engine Drivers' Society, The Operative Bricklayers' Association, The Postal and Telegraph Association and the Journeymen Tailors' Association. The Working Mans Association was so determined to have their anti-Indian stance brought to the fore of the political discussions of the time that they created the Labour League as a political party aiming to contest the elections with their sole mandate to create legislated changes aimed at specifically dealing with Indians⁷¹ by maintaining and enforcing White protectionism.

While the Labour League's success at gaining significant membership was evidently unsuccessful⁷², it is nevertheless worth noting that within weeks of the League's first meeting, Durban Magistrate Frank Churchill, representing the Durban Reform Association, applied to have every Indian struck from the voter's roll despite the fact the Charter and Franchise Law of 1882⁷³ qualified Indians as free British subjects. The Legislative Council had already by 1882 given the franchise to Indians who could pass an education test which limited the vote to only 400 Indians.⁷⁴ The Application was brought before Magistrate Dillon- also of the Durban circuit- who delivered the judgment that 'every Indian, Arab and Chinaman' be struck from the roll.⁷⁵ James King, the editor of *The Mercury* and vocal representative of the Working Man's Commission stated in his editorial:

The usage of one colony is not the usage of another. In India nobody has a vote, as representative institutions are yet unknown. The Indian loses no right he enjoys at home by being disqualified here. As a matter of fact, it is notorious that the Indian vote is altogether worthless as a trustworthy factor in any election. Politicians of all shades of opinion have found that any calculations based on the premise of Indian voters are utterly misleading. To the Indian wholly unversed in the theories of European Liberty, the power of voting is a privilege that may be bartered away without any violence to conscientious scruples. As it happens, Mr. Hulett's restrictive liquor law of last session has given the coup de grace to the Indian vote. It establishes a new and special disability which would have been fatal to the vote had other barriers not already interposed.⁷⁶

⁷¹ D. Ticktin 'The Origins of the South African Labour Party 1888-1901' (PhD diss., University of Cape Town, 1973).

⁷² The Natal Mercury, 4 August 1890; Natal Advertiser, 6 August 1890. *Inside Indenture. A South African Story 1860-1914*. Desai and Vahed. Madiba Publishers 2007

⁷³ The Natal Franchise Law of 1882

⁷⁴ Bhana S *Setting down roots*

⁷⁵ Bhana S *Essays on indentured Indians in Natal*. 1st ed. Leeds, Yorkshire, England: Peepal Tree Press (1990).

⁷⁶ Ibid

The barriers spoken of were clearly entirely aimed at restricting the threat that Indian trade imposed by eliminating the Indian franchise, White interests would be aggressively pursued.

The Decision was later overturned but the fact that the franchise was restored merely had the effect of galvanizing the League and dissent amongst Indian shopkeepers created somewhat of a common enemy between the opposed Forward Party and Labour League.⁷⁷ The resultant election saw an alliance of these two parties and in July 1884, the legislative assembly, without opposition, passed the Indian Franchise Bill⁷⁸ and for the next 110 years, the franchise was effectively denied to South African Indians.⁷⁹ So too, Immigration to Natal was stopped and a £3 tax was levied against Indians who refused to be either re-indentured or return to India.⁸⁰ The Sellers Licensing Amendment Act⁸¹ prevented Indians from competing commercially with Europeans and if this was not enough, the 1887 Dealers Licenses Act, No 18⁸², gave Natal Licensing Officers the power to issue or refuse trading licenses. The problem faced with White protectionists even had a name- 'the Asiatic Menace' which influenced unrest by Whites who complained 'bitterly about their loss of income as a result of the unfair way in which Indians were undermining their income'.⁸³ So extreme were sentiments that White crowds even succeeded in preventing Indian Immigrants from landing in Durban.⁸⁴ For Whites, an economic depression at the time was aggravated by the undercutting of their skills and services by Indians which in turn led to a further seething of racism aimed at Indians. In the Supreme Court, White witnesses were heard first because 'the time of a White man is, or should be, of more value than that of a Black'.⁸⁵

⁷⁷ Ibid

⁷⁸ The Indian Franchise Bill of 1884

⁷⁹ Partial franchise was given in 1983 through the tricameral parliament but full franchise was only achieved in 1994.

⁸⁰ The Indian Immigration Amendment Bill No.17 of 1895, Natal Government Gazette XLVII, 13 August 1895,1126.

⁸¹ The Sellers Licensing Amendment Act No.17 of 1895 of the Colony of Natal

⁸² The Dealers Licenses Act, No. 18 of 1897 of the Colony of Natal.

⁸³ Visser W *'Natal is a White Man's Land': Anti-Asianism and Pro-White Labour Politics in Colonial Natal, c 1906-1909*. University of Stellenbosch.

⁸⁴ Ibid

⁸⁵ Ibid

II.III Indians in the Boer Republics

By 1911, the census put the total number of Indians in South Africa at 149 791 and a sizable proportion of them were South African born Indians who had the opportunity of simply working where work was available.⁸⁶ Indians in the Boer States however found their presence to be regarded as similarly problematic to the governing forces as it was in Natal. By Ordinance 29 of 1880⁸⁷, the Volksraad of the Republic of the Orange Free State introduced a total barring of Indians from the state but if Indians thought they would get a reprieve on account of being British subjects, the bar was upheld during the occupation between 1900 and 1902.⁸⁸ Until that stage, Indian Labourers had to apply for permits to be employed in the Free State in accordance with the stated aim of the Act being ‘to provide against the influx of Asiatics and the removal of White criminals entering the state from elsewhere’. From 1891, Indians were completely denied the opportunity of owning land or carrying on any business.⁸⁹ The Statute Law of the Orange Free State prohibited⁹⁰ ‘an Arab, a Chinaman, a Coolie or any other Asiatic or Coloured person from carrying on business or farming in the Orange Free State’. All Indian businesses are forced to close by 11 September of that year and owners were deported from the Orange Free State without compensation. The measures were so drastic that until 1900, only 15 Indians had ever lived in that part of the Country.⁹¹

Indians found the other Boer Republic only slightly less inhospitable. The South African Republic, or ZAR, regained its independence from the British Government in 1881 and within the four years of the removal of the Crown’s pesky rule, the legislature commenced passing discriminatory legislation and in only the third piece of legislation that was passed in ZAR, the Staat proclaimed⁹²:

- i) This law shall apply to the persons belonging to any of the native races of Asia, including so-called Coolies, Arabs, Malays, and Mohammedan subjects of the Turkish Empire.

⁸⁶ Bhana S *Setting down roots*.

⁸⁷ Re-enacted by Chapter xxxiii of the Laws of the Orange River Colony.

⁸⁸ Available at http://www.scielo.org.za/scielo.php?pid=S0018-229X2012000200002&script=sci_arttext accessed on 23 August 2014.

⁸⁹ The Orange Free State Act No. 25 of 1891.

⁹⁰ The Orange Free State Statute Book Act of 1891.

⁹¹ Pachai B. *South Africa's Indians*. 1st ed. Washington: University Press of America (1979).

⁹² The Coolies, Arabs and other Asiatics Act. Law 3 of 1885 of the Zuid Akrikaansche Republiek.

- ii) With regard to the persons mentioned in Article one the following provisions shall apply: -
- (a) They cannot obtain the burgher right of the South African Republic (Transvaal).
 - (b) They cannot be owners of fixed property in the Republic except only in such streets, wards and locations as the Government for purposes of sanitation shall assign to them to live in.
 - (c) They shall be inscribed in a Register, if they settled with the object of trading.
 - (d) The government shall have the right for purposes of sanitation, to assign to them certain streets, wards and locations to live in. This provision does not apply to those who live with employers.

Three years thereafter, the Government compelled Indians to carry passes at the risk of arrest and by ordinance in the same year, the decision was made to classify Asiatics in the same category as indigenous Blacks and thereby to regard an entire populace as labourers while the Registration of Servants Act, Law No. 2 of 1888 regarded Indians as members of an ‘uncivilised race.’⁹³

By the time that the gold rush was at its zenith, Indians had nevertheless been able to participate in the economy of the country⁹⁴ but in somewhat of a mirroring of what was happening in Natal, the authorities decided to restrict the ability of Indians to trade in the Republic. Law 15 of 1898⁹⁵ stated that no person of colour may be a licensed holder, or in any way connected with the workings of the diggings in the South African Republic and in the following year, The Regulations for Towns in the South African Republic⁹⁶ stated that persons of colour were prohibited from walking on the side-walks ‘or stoeps serving as a side-walk’ on the streets of its towns.

The Boer War years between 1899 and 1902 saw Indian participation in the Crown’s efforts limited somewhat to 800 members of the Natal’s Indian community including the 28 year old Barrister Mohandas Ghandi who had announced in Durban that the Indian community wanted to ‘give active expression to their loyalty to the Empire’. Unable to fight, Indians would mostly serve as stretcher bearers.⁹⁷

⁹³ Registration of Servants Act, Law No. 2 of 1888.

⁹⁴ Bhana S *Setting down roots*.

⁹⁵ The Transvaal Gold Law No. 15 of 1898.

⁹⁶ Government Notice 531 of 11 October 1899.

⁹⁷ Pakenham T *The Boer War*. 1st ed. New York: Random House (1979)

II.IV Indians under Crown rule

Peacetime South Africa after the Treaty of Vereeniging was signed saw no significant reprieve for the Indian plight. The Peace Preservation Ordinance and Ordinance No. 5 of 1903⁹⁸ however permitted the regulation of the re-entry of Indians who had left the Transvaal for Natal, the Cape Colony and India when war broke out. This legislation also restricted 'Asiatics into segregated locations, refused trading licenses except in Asiatic bazaars and pre-war licenses of Asiatics become non-transferable'.⁹⁹ In the same year, The Transvaal Corporations Ordinance No 58¹⁰⁰ authorised local authorities to proclaim, move, de-proclaim and manage townships for non-Whites. In terms of the ordinance, the residents of these townships could not buy land or have land to rent. They did however have the right to compensation if moved and could erect buildings but only under strict regulations. The Transvaal Immigration Restriction Act¹⁰¹ was passed in 1903 restricting any immigration of Indians to Natal and by 1905, this Act gave the government the power to control the entry of Indians into Transvaal through a special permit system and in the following year, pass laws for Indians were introduced.¹⁰²

The debt caused by the war efforts lead in turn to the lowering of the salaries of civil servants. When Indian railway workers were replaced by Whites, the new employees were outraged when they learned that their wages were even lower than the Indians that they replaced.¹⁰³ Somehow, Indians managed to survive to the extent that they were even accused of monopolizing the rice trade and driving out White businesses that fought back by proposing to abolish Indian trade entirely. The attempt failed along with an attempt to push a motion through Parliament that European hands should only manufacture government goods.¹⁰⁴

By 1906, the Cape Province, was not immune to Indian Immigration either and accordingly the authorities clearly decided to align themselves with their northern

⁹⁸ The Peace Preservation Ordinance and Ordinance No. 5 of 1903 for the Transvaal Colony

⁹⁹ Bhana S; Pachai B *A Documentary history of Indian South Africans*. 1st ed. Cape Town: D. Philip (1894).

¹⁰⁰ Transvaal Corporations Ordinance No 58 of 1903 for the Transvaal Colony.

¹⁰¹ The Immigration Restriction Act No 15 of 1903.

¹⁰² The Asiatic Law Amendment Act No. 2 of 1907.

¹⁰³ Visser W *'Natal is a White Man's Land': Anti-Asianism and Pro-White Labour Politics in Colonial Natal, c 1906-1909*. University of Stellenbosch.

¹⁰⁴ Ibid

neighbors. The Immigration Act in the Cape Colony¹⁰⁵ made all future immigration of Indians to the Cape subject to literacy requirements. In an instance when attaining a formal education was a severe challenge, Indians were restricted in their ability to be able to enjoy the mobility to seek employment opportunities as South Africa's young market was beginning to grow. Like the Cape, so keen were the authorities in preventing the immigration of Indians into the Transvaal that the Transvaal Immigration Restriction Act, No. 15¹⁰⁶ was passed to impose education tests on all future immigrants to that province. An Immigration Department was established to check against illegal Asiatic entries but against all these restrictions, Indian communities began to establish themselves in the Transvaal's metropolitan areas.¹⁰⁷

II.V The Education and Exclusion of South African Indians

Of specific significance to this study is the Education Act of 1907¹⁰⁸ for the Transvaal Province. 'Coloured' children were not allowed into European schools with the target set for separate schools for children of colour to be established. While education was to be free and compulsory for White children, this was not to be the case for 'Coloured' children. In this instance, 'Coloured' was specifically described 'as all people of colour, Africans, Indians and Coloureds'. In the same year, the Transvaal Asiatic Registration Act¹⁰⁹ was gazetted and 'by Royal assent', every Asian man, woman or child of eight years or upwards entitled to reside in the Transvaal, was required to register his or her name with the Registrar of Asiatics and take out a certificate of registration. The Act was repealed by the British government shortly after enactment¹¹⁰ (after some lobbying by a delegation led by Mahatma Gandhi)¹¹¹ although it was re-enacted again in 1908.¹¹²

¹⁰⁵ The Cape Colony Immigration Act No. 30 of 1906.

¹⁰⁶ The Transvaal Immigration Act No. 15 of 1907.

¹⁰⁷ Bhana S; Pachai, B. (1984). *A Documentary history of Indian South Africans*.

¹⁰⁸ The Education Act No.25 of 1907.

¹⁰⁹ Transvaal Asiatic Registration Act No. 2 of 1907.

¹¹⁰ Gandhi's famously referred to the Act as the 'Black Act' and was the inspiration for his Satyagraha resistance. Gandhi, (1954). *Satyagraha in South Africa*. 1st ed Stanford California Academic Reprints.

¹¹¹ Ibid

¹¹² The Transvaal Asiatic Registration Act No. 36 of 1908.

By the turn of the century, the average Indian boy could expect to have his education completed by Standard Four¹¹³ with most of the work based on only three subjects being reading, writing and arithmetic. Indian girls were at an even greater disadvantage with the reluctance by Indian parents to educate their daughters according to a system 'that was quiet foreign to Indian culture and tradition'.¹¹⁴ By 1871 the first four girls were enrolled into formal education and by the following year the number had been extended to fifteen. The shift in labour from one sugar estate to another along with the dire scarcity of Indian teachers are regarded as initial reasons for the lack of available schools.¹¹⁵ At the time, the colonial masters were not aloof to the need for Indian education and a commission was specifically established in 1872 under Lord Musgrave¹¹⁶ to emphasize the need for owners and plantations to provide education with the finding of the commission to recommend to the Durban Municipality to erect schools in Durban.¹¹⁷ Lord Keat, the Governor General, even went so far as to approve of the admission of Indian children into White schools provided that the dress code was adhered to but this policy was implemented for just five years until separate education was introduced.¹¹⁸

An 1884 report¹¹⁹ records the slow development of Indian schooling:

One of the chief hindrances to progress is the facility with which Indian children can earn a living. There is hardly a boy or girl of seven years of age whose earnings do not contribute some trifle to their parents stock, or for whom employment as domestic servants in European families might not be obtained if desired. Boys are frequently kept away from school by their parents for half and even whole days in order that they may hawk fruit and vegetables, work in the gardens.

This finding aptly captures the 45% attendance figures of Indian school children at the time with English being the primary language of instruction to children whose primary language was invariably Tamil, Hindi or Gujarati.¹²⁰ By standard three, the syllabus required the student to be able to:

¹¹³ Pachai, B. (1979). *South Africa's Indians*. 1st ed. Washington University Press of America (1979).

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ The Coolie Commission Report. 1872. Keith & Co Printers.

¹¹⁷ Pachai B *South Africa's Indians* (1979).

¹¹⁸ Ibid

¹¹⁹ The Natal Blue Book of 1884. Mahoney, M. (2012). *The Other Zulus*. 1st Ed. Durham, NC: Duke University Press.

¹²⁰ Pachai B *South Africa's Indians* (1979).

Read from standard three reading book. Recite with intelligence and expression 60 lines of poetry. Point out nouns and verbs, adjectives and personal pronouns and form simple sentences containing them. Chief countries, towns and physical features of the continent.¹²¹

The various denominational churches controlled schooling until 1878¹²² until the Coolie Education Law¹²³ was passed in that year which aimed towards the promotion of basic Indian education. Further developments towards improving education came in 1894 when a Ministry of Education was created. Although state control in education brought about more schools being opened, the under spending of the budget is stark. Of the £1000 pounds that was allocated for Indian education in 1879, only £80 pounds was actually spent.¹²⁴

The progress towards equal education after the Boer War was also slow and by 1909, less than 10% of Indian school children were girls and the only subjects offered were reading, writing, arithmetic and needlework.¹²⁵ A further commission established in 1909 drew the Natal Government's attention to the grave situation and sited, overcrowding, and a shortage of teachers.¹²⁶ The Government failed to respond and by 1925, less than one third of children of school going age could actually be accommodated and it was up to the intervention of the Government of India that led to an agreement¹²⁷ by which the South African Government committed to an 'uplift clause' to ensure that in the provision of educational facilities, Indians would not lag behind other sections of the population¹²⁸ yet, within 8 years of the agreement, an education commission reported that,

With the rapidity with which the present system of Indian primary education has sprung up and the shortness of the average school life, it would appear that the vast majority of Indian Children do not acquire the rudiments of primary education.¹²⁹

Even by 1940, the average Indian pupil would only expect to have to attend 8 years of schooling as by Standard 6 it was compulsory for pupils to have to write an exam

¹²¹ Ibid

¹²² Behr A; MacMillan R *Education in South Africa*. 1st ed. Pretoria: Van Schaik (J.L.) (1971).

¹²³ The Coolie Education Law Act 20 of 1878.

¹²⁴ Behr A; MacMillan R *Education in South Africa*.

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ The Cape Town Agreement of 1927.

¹²⁸ Behr A; MacMillan R *Education in South Africa*.

¹²⁹ Ibid

which determined whether they could continue their education or not.¹³⁰ Even if the pupil passed the exam, the other factor of whether the parent could actually pay for the text books and school fees was of consideration.¹³¹ A further handicap from 1937 was the requirement that they learn Afrikaans as a second language whereas only two schools had teachers for the subject.¹³² White and Indian pupils wrote the same exam papers from 1929 but clearly, the White pupils at the same age would predominantly have been better equipped to be able attain success.¹³³ Education of Indian children was so substandard in the 1920's that the National Government's Hugo Commission reported that the 13000 Indians employed in various industries in and around Durban 'had no technical and vocational education' and suffered in the promotion process.¹³⁴ The report found that very few employees could be considered skilled workers and despite various recommendations to the minister, it was only in 1956 that a Technical College was built in Durban.¹³⁵

Schools were constructed from 1940 albeit mostly from the resources of the local Indian Community as the Government undertook to only contribute one-third of the building costs (raised to 50% in 1943).¹³⁶ The system could not keep up to speed with the growing school going populations and 'platoon and double shift systems' were accordingly introduced.¹³⁷ These systems ingeniously allowed certain classes to be instructed on particular subjects in classrooms while other classes were taught to other students outside. Accordingly, half the day was spent in- doors with the classes still being small enough to be managed. The shift system meant that some students attended school in the mornings, while others attended in the afternoons. These systems continued until 1960.

The education of non-Whites in the Transvaal was at least for free from 1907.¹³⁸ Education was mostly segregated along race albeit that Coloureds and

¹³⁰ Ibid

¹³¹ Ibid

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ A Short history of Indian Education. Kuppusami. Available at http://scnc.ukzn.ac.za/doc/Periodicals/Fiat_Lux/Fiat_Lux_1960s/Fiat_Lux_1966_v1/Fiat_Lux_1966_v1_1_May/Fiat_Lux_1966_v1_1_May_part2.pdf. Accessed on 20 August 2014

¹³⁸ The First Education Ordinance of 1903.

Indians could attend the same schools.¹³⁹ When Indian-only schools were built in 1928, education was in the vernacular and books and stationery was for free. Indians and Coloureds were separated in their education in the Western Cape in 1970¹⁴⁰ and the first Secondary School dedicated exclusively for Indians was Woolhope School in Port Elizabeth, which was built in 1979.¹⁴¹

Dedicated vocational training was only made available when the first college was opened in 1956 and in terms of The Indians Advanced Technical Training Education Act¹⁴²; Indian technical colleges received the same status as White institutions. Indeed, Indian technical colleges can be regarded as particularly successful and separate apprenticeship schools were opened to take on the rapidly growing influx of students.¹⁴³ Specialist courses for chemical laboratory technicians, public health inspectors, medical technologists, draughters and civil engineering technicians were provided.¹⁴⁴

After 1948's momentous victory by the National Party, the Government's apartheid machinery gained speed. The years subsequent to 1958 saw a considerable expansion in Indian education as the responsibility was placed in the hands of a dedicated ministry.¹⁴⁵ At the time, there were only 3025 Indian High School students with a total pupil compliment of 94321 pupils but by 1965, the figure stood on 13000 High School pupils with a total of 130990 children receiving education in Natal.¹⁴⁶ Although the government could boast an increased enrolment of Indians in formal schooling, the proportion of children entering the workforce without secondary education is clearly astounding. The government, aware of the situation passed, the 1965 Indian Education Act¹⁴⁷ with its aim to again separate and control Indian education and place it under the control of the Department of Indian Affairs headed by a White minister. The Act was passed with the aim of separating and controlling

¹³⁹ Ginwala F *Class, consciousness and control - Indian South Africans 1860-1946*. 1st ed. Boston Spa: British Library Document Supply Centre/ (1976).

¹⁴⁰ Ibid

¹⁴¹ Woolhope Indian High School Available at http://scnc.ukzn.ac.za/doc/Periodicals/Fiat_Lux/Fiat_lux_1970s/Fiat_Lux_1971_v6/Fiat_Lux_1971_v6_4_May/Fiat_Lux_1971_v6_4_May_part2_1.pdf. Accessed on 20 August 2014.

¹⁴² The Indians Advanced Technical Education Act No. 12 of 1968.

¹⁴³ MacMillan R *Education in South Africa*. 1st ed. Pretoria: Van Schaik (J.L.) (1971).

¹⁴⁴ Ibid

¹⁴⁵ A short History of Indian Education C Kuppusami. Available at http://scnc.ukzn.ac.za/doc/Periodicals/Fiat_Lux/Fiat_Lux_1960s/Fiat_Lux_1966_v1/Fiat_Lux_1966_v1_1_May/Fiat_Lux_1966_v1_1_May_part2.pdf.

¹⁴⁶ Behr A; MacMillan R *Education in South Africa* Van Schaik Limited 1971.

¹⁴⁷ The Indian Education Act No. 61 of 1965.

Indian education under the Department of Indian Affairs and furthermore, to provide for the establishment of a School of Agriculture even although no land was ever allocated for its purpose.

In 1976, the South African Indian Congress or SAIC took over certain educational functions and in 1979 education was also made compulsory until the age of 15.¹⁴⁸ The Act was a significant step in the advancement of Indian education and along with the provision of commercial vocational training, special education was legislated for ‘handicapped children’ and no fees were required for children up to standard ten with a travel allowance provided for children living more than 3 kilometers from their school. For its time, the provision of vocational training for girls in the form of domestic science and teacher training must have been seen as somewhat of a revolutionary step. At the time though, the per capita income for Indians in South Africa was three times that of Blacks but less only a quarter of that of Whites.¹⁴⁹

II.VI Success in the Face of Adversity

Even so, during the decade between 1970 and 1980 the 3.3% increase in per capita income was the second highest behind Blacks but in the two decades thereafter, Indians enjoyed the highest percentage growth in earnings. No other population group in South Africa has been able to show as much of a drop in its levels of poverty as South African Indians.¹⁵⁰ While 17.9% of their population earned less than the ‘poverty line’ per capita per annum, by 1995, this figure was only 5.3%. The amount of Whites living in poverty over the same period had dropped from 2,7% to 1.4%. In the same period, the contribution made by Indians to the national income increased from 2% to 3% and increased again to 5% by 1995- the greatest increase of any other population group. Interestingly, in the years since the demise of apartheid and the introductions of the Employment Equity Act, the percentage of Indians occupying top occupational categories has remained somewhat steady at 7% albeit that Indians only contribute 2.5% of the national population.¹⁵¹

¹⁴⁸ Indians Education Amendment Act 40 1979.

¹⁴⁹ Van der Berg; Louw *Changing Patterns of South African Income Distribution: Towards time series estimates of distribution and poverty*, University of Stellenbosch (2003).

¹⁵⁰ Ibid

¹⁵¹ Stats SA Statistical Release, Mid year population estimates 2013.

Like their White compatriots, by the end of apartheid in 1993, Indian children completed an average of three grades more in education than Black children by the age of eighteen and have enjoyed greater opportunities to gain access to tertiary education.¹⁵² A 2011 Study by the Center for Higher Education concluded that in that year, 47% of Indians between the ages of 20 and 24 were enrolled in a higher education and were on their way to studying towards a certificate, degree or diploma. The figure is still below the 57% of Whites in the same age category but in stark contrast to the only 14% of Black students who were enrolled. Indians are more likely to succeed in post-graduate studies than the national average of 76% with 78% of students completing the courses. As the smallest population group, Indians contribute over 6.7% of post-graduates across all race groups which in proportion to their population demographic is only slightly less than Whites.¹⁵³

Despite the barriers set, Indian South Africans as a whole manage to enjoy continued success. Economist Dawie Roodt suggests that ‘as a result of their demographic dividend, the improvement in their skills base and BEE benefits, Indians are likely to be SA's most successful population group over the next two decades’.¹⁵⁴

¹⁵² Seekings J; Nattrass N *Class, race, and inequality in South Africa*. 1st ed. New Haven: Yale University Press (2005).

¹⁵³ Ibid

¹⁵⁴ Roodt D; Retief L *Tax, lies and red tape*. 1st ed. Cape Town, South Africa: Zebra Press (2013)

III. THE COLOURED POSITION

'The Afrikaner has denied the Coloured mother. He has denied the Coloured originator of his language. Denied the builder of his houses and the fashioner of his furniture. Denied the designer of his clothes and of his silver. Denied the preserver of his music and the creator of his pleasure'.

- Marie Kathleen Jeffreys 1959¹⁵⁵

III.I An Explanation of Identity¹⁵⁶

Even in post apartheid times, the term 'Coloured' is used casually, rarely with any reflection of the history of this nomenclature in South African lexicon. Since 1994, various organisations have emerged to advance the Coloured cause and have evidently embraced the term. The Kleurling Weerstandsbeweging vir die Vooruitgang van Bruinmense, The December Movement, The Coloured Forum and the Bruin Belange Inisiatief were formed at a time when a growing Coloured consciousness has emerged along with gaining political and social recognition.¹⁵⁷ But who exactly are South Africa's Coloureds and to what extent were they effected by South Africa's racial past?

The South African Population Registration Act¹⁵⁸ defined a Coloured person as a person who is not a White person or a Bantu. Section 5(1) of the Act provides some assistance for the confused reader by providing the following subgroups:

- Cape Coloureds
- Malay
- Griqua
- Other Coloureds
- Chinese
- Indians
- And other Asiatics

¹⁵⁵ Marie Kathleen Jeffreys, 'It's a Heavy Debt, All the Afrikaner owes the Coloured', in Drum December (1959) 34-39 as quoted in 'Denying the Coloured mother': Gender and race in South Africa. Natasha Distiller and Meg Samuelson. Available at <http://www.eurozine.com/articles/2006-03-02-distiller-en.html>. Accessed on 20 August 2014.

¹⁵⁶ Apartheid era Identity Documents contained an 'Explanation of identity' wherein bearers were classified according to official White, Coloured and Indian population subgroups.

¹⁵⁷ The Population Registration Act 30 of 1950. See also *Coloured Identity: South Africa. A Select Bibliography* Available at <http://www.mixedracestudies.org/wordpress/?p=12579>. Accessed on 23 August 2014.

¹⁵⁸ The South African Population Registration Act Act No. 30 of 1950.

Clearly the classification of this racial group was entirely on arbitrary grounds however the term ‘Coloured ‘ was not invented by the Nationalist Government but was rather a hypodescent that can be traced back beyond South Africa’s establishment in 1910. As Abdullah Abduraham noted in his *A letter to the Coloured People of South Africa* in that year:

‘In the Transvaal and Free State laws are to be found the following words: ‘Kleuring’’, Inbooring’ and ‘Naturel’. In the Free State, ‘Kleurling’ (Coloured person) was sometimes defined as meaning a non-White, as in Law 8 of 1893; at other times it was restricted to include the Cape Coloured people only, as in Law 11 of 1894’.¹⁵⁹

A study by the University of Pennsylvania concluded that genetic tests suggest that the ‘South Africa’s Cape Coloureds have the highest levels of mixed ancestry in the world with, a blend of African, European, East Asian and South Indian’.¹⁶⁰ Early Portuguese records made mention of ‘Hottentots, Khoi-Khoi and Bushmen’.¹⁶¹ The Khoi themselves were in turn comprised of independent groups such as the Outeniqua, Attakwa and Hassekwa with the Griquas in particular managing to remain a degree of independence and protection under the crown albeit that Afrikaans was predominantly adopted as the language of use.¹⁶² The proximity of slaves of colour to their European masters with no small measure of exploitative practices assisted with the steady increase in the ethnic mixing of the population however. As the South African Populations Register Act appears to concede, to attempt to classify the most racially diverse population group in the world will be an exercise in absurdity. The Coloured population is clearly not homogenous.

Within seven years of his arrival in Cape Town, Jan van Riebeeck had 18 slaves in his possession.¹⁶³ Not one of them was from South Africa as all had been imported into the colony along with the Dutch East India’s policy to not enslave the native population. The rival Dutch West Indian Company¹⁶⁴ had sole rights to trade

¹⁵⁹ Available at <http://www.sahistory.org.za/archive/letter-Coloured-people-south-africa>. Accessed on 20 August 2014.

¹⁶⁰ Available at <http://www.nbcnews.com/id/30502963/#.Ur6S53kmRQQ>.

¹⁶¹ Theron E. Die Kleurling Bevolking van Suid Afrika 1 (1964).

¹⁶² Ibid

¹⁶³ Barker, B. and Oakes, D. Reader's Digest illustrated history of South Africa.

¹⁶⁴ The Dutch West Indian Company’s mandate was to attack the colonial interests of Portugal and Spain which were concentrated along both the western and Eastern shores of the Atlantic Ocean. Available at http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Dutch_West_India_Company.html. Accessed on 1 December 2014.

slaves along the western coast, which caused van Riebeeck's employers to look eastwards to the regions of Java, Bali, Timor, China and the Malayan Peninsula for their labour with a slave station eventually being opened in Delagoa Bay to receive fresh stock¹⁶⁵. The price of the slaves was not only determined by their health, but also by their nationality. Malay slaves in particular were known as the king of slaves' as they developed all the skills necessary for their masters but the most valuable slaves of all were those born in the Cape to a slave mother and a White father. It was not uncommon for White settlers to take slave women as wives and the slave lodge at the top of Adderley street was also known as the most frequented brothel. By 1685, 57 children were described as clearly having been born to mixed parentage. In the same year, it was decided that slaves could buy their way out of bondage at a cost of 100 guilders. Male slaves outnumbered women four to one and torture and mutilation and bondage were normal acts measured out on slaves by the masters and the authorities.¹⁶⁶

III.II Coloureds under Crown rule

In 1807, Britain captured the Cape Colony and promptly abolished the slave trade albeit that slaves could still be sold but not imported in the colony. A full abolition of slavery took place in 1834 although slaves remained indentured as apprentices for a further four years. The colonialists were not ready to give up their free source of labour just yet. It is estimated that the slave population of the Cape stood at 59 000 at Emancipation¹⁶⁷ and the day of freedom is still celebrated as a uniquely Cape Town event on 2 January as 'Tweede Nuwe Jaar'.¹⁶⁸

London's decision to free the Capes slaves can be regarded as one of the most significant moments in the country's history for it meant that Boer farmers were no longer allowed to expand their farms and grazing areas at the expense of the indigenous population with impunity.¹⁶⁹ Ordinance 50 of 1828¹⁷⁰ granted Khoikhoi

¹⁶⁵ Ibid

¹⁶⁶ Ibid

¹⁶⁷ Available at <http://www.sahistory.org.za/article/1800s>. Accessed on 25 February 2014.

¹⁶⁸ *A history of South Africa to 1870*. 1st ed. Boulder, Colo.: Westview Press.

¹⁶⁹ *A history of inequality in South Africa, 1652-2002*. 1st ed. Pietermaritzburg: Univ. of Natal Press

¹⁷⁰ Ordinance 50 of 1928 of the Colony of the Cape of Good Hope repealed The Masters and Servants Act Ordinance no.1 of 1841 'described what would be regarded in current times as employees as 'servants' as it broadly characterized anybody (regardless of race) who received remuneration as falling under its ambit'. Available at

and Coloureds, the traditional servants and slaves of the Boer farmers, not only the freedom to seek work, but also to own land which lead in turn to a shortage of labour for Boer farmers. This ordinance also put all ‘free inhabitants’ of the Colony on equal political footing before the law.

This was clearly an unacceptable situation for the Boers who decided to seek their own emancipation in South Africa’s hinterland.¹⁷¹ At the same time, wool was beginning to overtake wine as the Cape largest export commodity and accordingly the need for vast tracts of farmland safe from invading Xhosa tribes grew.¹⁷² Land was granted to freed slaves as a buffer between White farmers and Black farmers in accordance with the Kat River Settlement of 1829.¹⁷³ The booming sheep farming industry resulted in a critical shortage of labour with a similar debate that was seen in the Natal Colony emerging during the 1840’s. A group of Cape Businessmen lead by Robert Godlonton called for the importation of labour describing Coloureds as ‘too independent and indolent to submit to continuous employment’.¹⁷⁴ Godlonton had just authored *cher* and declared that ‘The British race was selected by God himself to colonise Kaffraria’.¹⁷⁵ His publications were enough to see the various successful treaties entered between Xhosa chiefs and the Colony tossed aside and violence and war duly broke out in 1846¹⁷⁶. With the Frontier Wars ending with Xhosa subjugation in 1879 the attitude towards the use of local labour changed somewhat with some Boers in particular regarding Coloured labour as the most sought after.¹⁷⁷ They were not without their detractors however and while wages were low, the complaint against Coloured Labourers was often that they tended to work only so long as it suited their own purposes before going off to squat on the most convenient vacant land.¹⁷⁸ While the labourer could expect to receive a wage and food, it was common for a farmer to give permission to build on the land. Unreliable and unproductive

<http://www.nelsonmandela.org/omalley/index.php/site/q/03lv01538/04lv01646/05lv01658.htm>.

Accessed on 21 June 2014.

¹⁷¹ *A history of inequality in South Africa, 1652-2002*. 1st ed. Pietermaritzburg: Univ. of Natal Press.

¹⁷² Barker, B. and Oakes, D. *Reader's Digest illustrated history of South Africa*.

¹⁷³ Kirk, T. Progress and decline in the Kat river settlement, 1829–1854. *The Journal of African History* / Volume 14 / Issue 03 / July 1973

¹⁷⁴ A new history of South Africa. Giliomee, H. and Mbenga, B. (2007). *New history of South Africa*. 1st ed. Cape Town: Tafelberg.

¹⁷⁵ *A narrative of the irruption of the Kafir hordes into the Eastern province of the Cape of Good Hope, 1834-1835*. 1st ed. Cape Town: G. Struik.

¹⁷⁶ Available at <http://www.sahistory.org.za/topic/conquest-eastern-cape-1779-1878>. Accessed on 13 February 2014.

¹⁷⁷ Barker B; Oakes D *Reader's Digest illustrated history of South Africa*. 1st ed Pleasantville (USA): Reader's Digest Association (1988).

¹⁷⁸ *A history of inequality in South Africa, 1652-2002* 1st ed. Pietermaritzburg: University of Natal Press.

labour bizarrely caused farmers to make submissions to the Government to regulate the employment relationship by imposing stricter measures and the repeal of laws protecting labour.¹⁷⁹

On 1 November 1809, the Governor of the Cape passed one of South Africa's most infamous pieces of legislation: the 'Caledon Code'¹⁸⁰ which became enshrined in the minds of early-19th century humanitarians as the final seal in a long process of the 'enslavement' of the Colony's indigenous population, the Khoikhoi.¹⁸¹ The Code required Coloureds to carry passes stating where they lived and who their employers were. Should an individual not be in possession of the pass, he/she could be forced into employment. The seeds for the 'dompas'¹⁸² were sown by a British Government almost 150 years before the apartheid government took steps of their own to require the carrying of pass books.

Despite the restrictions mentioned, the Coloured population began to enjoy greater freedom during the nineteenth century and began to 'integrate more closely into the political, social and economic structure of the dominant society'.¹⁸³ They were even entered onto the common voters role in 1853.¹⁸⁴ Language, religion and cultural leanings meant that Coloureds had a predominantly more westernized identity than Blacks and were able to integrate themselves into the White population with a relative ease.¹⁸⁵

III.III A Marginalised Majority

The extent of mechanization enjoyed by White farmers in the first half of the twentieth century was not evident amongst Coloureds who were clearly not able to take advantage of the various racial based schemes that were established. Coloured labour, reliant on the seasonal work that White farmers were able to provide, were slow to urbanise and by 1920, only a quarter of their population was living in the

¹⁷⁹ Ibid

¹⁸⁰ Also referred to as the Hottentot Proclamation. Elphick R; Giliomee H *The Shaping of South African society 1652-1820*. 1st ed Cape Town: Longman (1979).

¹⁸¹ Dooling W *The Origins and aftermath of the Cape Colony's' Hottentot Code'of 1809*. Kronos (2005).

¹⁸² The Pass Laws Act 67 of 1953 required Black South Africans over the age of 16 to carry a pass book at all times. It included details regarding employment history and employee performance and behavior.

¹⁸³ *The Coloureds of South Africa A Factual Survey* S.C. Cilliers Banier Publishers (1963)

¹⁸⁴ The Cape Constitution of 1853.

¹⁸⁵ Du Pre, R. (1992). *The making of racial conflict in South Africa*. 1st ed Johannesburg Skotaville Publishers.

urban areas¹⁸⁶ and predominantly remained living in the Cape Province no doubt in response to the greater political freedom that the Colony (and later province) had to offer. For those Coloureds living in South Africa's rural areas, the conditions must have been desperate and the outlook for the average individual to improve his/her lot would have been slim. A 1961 study¹⁸⁷ concluded that the rate of death in the Coloured population was almost double that of Whites. Infant deaths were staggeringly five times that of White babies yet the Coloured population was still increasing at a rate double that of Whites.

These statistics clearly indicate the stark extent of the societal pressures and further interrogation of the reports reveal that average life expectancy of a Coloured was in the mean, 21.5 years less than Whites. The same study indicated that 54% of Coloureds were living below an 'elementary minimum standard of living' with significantly poor standards of health including a rate of tuberculosis more than 11 times that of Whites. This figure in itself points to the classic contributing factors of poor nutrition, inadequate living standards and sub-standard access to health facilities. One of the most tragic statistics for the Western Cape- and the Coloured population group in particular – is the extent of damage that was inflicted by use of the notorious 'dop system'. Wine farm owners through the years paid (at least) a portion of their workers wages by providing them with an allocation of the product. Generations of labourers became enslaved by their own addictions. The 'dop system' had a twofold effect being that employers did not have to pay much to their workers seeing that the income would be supplemented by a 'dop' and furthermore, the addiction to the 'dop' lead to a more submissive employee who would be unlikely to desert.¹⁸⁸ A 2001 study published in *The American Journal of Public Health*¹⁸⁹ estimates that alcohol fetal syndrome is present in 11% of the population with South Africa having the highest rate of fetal alcohol syndrome in the world. Generation after generations of Coloured labourers have lived their lives through this must exploitative practice.

¹⁸⁶ supra

¹⁸⁷ Monthly Bulletin of Statistics Vol XLI/5, Bureau of Census and Statistics, Pretoria.

¹⁸⁸ McCann M (2011). *Alcohol, drugs & employment*. 1st ed. Cape Town: Juta Law.

¹⁸⁹ May, P., Brooke, L., Gossage, J., Croxford, J., Adnams, C., Jones, K., Robinson, L. and Viljoen, D. (2000). Epidemiology of fetal alcohol syndrome in a South African community in the Western Cape Province. *American journal of public health*, 90(12), p.1905.

The rate of FAS in the Western Cape, according to a 2005 study by the World Health Organisation, was 33148 times greater than the United States.¹⁹⁰ The resultant societal problems related to alcoholism such as poverty, family disorganization, impairment of health and unemployment have found blame at the feet of the dop system and the government was aware of the extent of the problem in the fifties.

The dop system was only officially prohibited in South Africa in 2003 when the Liquor Act¹⁹¹ stated that ‘an employer must not supply liquor or methylated spirits to any person as an inducement to employment; supply liquor or methylated spirits to an employee as or in lieu of wages or remuneration; or deduct from an employees’ wages or remuneration any amount relating to the cost of liquor or methylated spirits’.

At the turn of the twentieth century, the allocation of land to Coloured people was very similar to that of Blacks. Legal recognition of reserves was only provided by statute in the Mission Stations and Communal Reserves Act of 1909¹⁹² which was later succeeded by further restrictive race based legislation in 1930, 1955, 1957, 1960 and 1961.

III.IV Classrooms and workplaces

As with Natal’s Indians, Church and mission schools carried almost all the responsibility of Coloured education in the 1800’s.¹⁹³ The Cape government simply subsidised education which resulted in the poorer Coloured communities not having the financial means to educate their children which resulted in the schools becoming predominantly White and by 1910 there were only three schools for Coloured students in the Cape town area.¹⁹⁴

The 1905 government made education free and compulsory for Whites only and a petition in 1922 that subsidies be provided, albeit at only half of that received by White schools, was rejected by the union government.¹⁹⁵

¹⁹⁰ Available at <http://www.who.int/bulletin/volumes/89/6/11-020611/en/>. Accessed on 3 September 2014.

¹⁹¹ The Liquor Act No.59 of 2003.

¹⁹² The Missions Stations and Communal Reserves Act 29 of 1909 (Cape of Good Hope).

¹⁹³ Giliomee H; Mbenga B *New history of South Africa*. 1st ed. Cape Town: Tafelberg (2007).

¹⁹⁴ Ibid

¹⁹⁵ Ibid

In 1982, the government spent an average of R498,00 per annum on the education of each Coloured child whereas White children could expect to have R1211 spent on their education. This resulted in Coloured children attending schools that were significantly under-equipped with facilities like libraries, sports fields and laboratories.¹⁹⁶ The poor education given to Coloureds was always going to spill into workplaces and from there, be reflected in national statistics for years to come and hence underpin the need for redress.

White workplace protectionism through such mechanisms as the Juvenile Affairs and Apprenticeships Acts of 1921 and 1922 respectively¹⁹⁷ dealt a heavy blow for Coloured youths chances of gaining employment with them being required to reach at least a standard 6 level of education in an instance when very few were able to reach this level. With the accompanying Juvenile Advisory Board's main function was to find suitable employment for these White youths, it is little wonder that Whites had significantly better prospects as they were not only provided with better education and skills, but had the benefit of a government led campaign to find them meaningful employment. The Act furthermore aimed to regulate the standard of education provided and required a standard 8 to enter an apprenticeship. With few Coloured families being able to afford schooling in the first place, the opportunity to get employment would always be lost on them. The 1925 Wage Act¹⁹⁸ set high minimum wages in key industries and accordingly undermined the ability of Coloureds to undercut White wage demands.¹⁹⁹

Giliomee notes:

By the early 1930s the Coloured community was marked by deepening poverty and growing political despondency. Because by far the greater part of this social group consisted of farm workers and a downtrodden urban proletariat, the Great Depression took a disproportionate toll in economic hardship. Additionally, Coloured people, including the educated strata, suffered severe disadvantage in the workplace as a result of the Pact government's 'civilised labour' policy – despite promises that they would benefit from it by being included in the definition of 'civilised' and be protected from Black competition along with Whites. A White skin became a better recommendation for a job than ability. Poor Whites began displacing significant numbers of skilled and semi-skilled workers who were not White, especially in the

¹⁹⁶ Cooper C; Horrell M; Streek, B *Survey of race relations in South Africa, 1983*. 1st ed. Johannesburg: The Institute (1984).

¹⁹⁷ The Juveniles Affairs Act of 1921, The Apprenticeship Act of 1922

¹⁹⁸ The Minimum Wages Act of 1925.

¹⁹⁹ Giliomee H Mbenga B *New history of South Africa*.

public sector. Better-qualified Coloured school-leavers found it progressively difficult to obtain suitable employment.²⁰⁰

While Roodt foresees progress for South African's Indians, the opposite is true for SA's Coloured population. 'Despite rising employment and a tripling of the proportion of Coloureds with postmatric qualifications since 2001, these gains appear insufficient to support population growth. This group's dependency ratio has remained stagnant at 0,5 since 2001, with incomes mirroring the national average'.²⁰¹ STATSSA estimates that over 30% of Coloureds aged between 15 and 24 are not in employment, education or training.²⁰² Remarkably, since 1997 the Coloured population is the only 'Black' designated group to show an increase in unemployment as a percentage of its population.²⁰³ Coloureds are least likely out of all racial groups to become self-employed and in the period between 1993 and 2008, Coloureds were the only population group to show a decrease in monthly average wages. The barriers set in all areas of Coloured existence are significant and unique and should be considered accordingly. For a population group that was born from the farms of their masters and have suffered from the worst abuses of slavery, war, malnutrition, drug dependency and crime, the real tragedy is that for this group, Employment Equity legislation has not met its purported claim.

III.VI South Africa's Chinese

While I do not intend providing a full exegesis of the history of discrimination faced by this marginalised minority, it is worth noting that the Chinese were also subjected to discriminatory legislation and were only allowed to move into White residential areas, subject to the approval of the White neighbours and until the mid- seventies, were prevented from owning property and forced to rent homes and business premises.²⁰⁴ Classified as Coloureds under apartheid but apparently initially excluded under post-apartheid's equity legislation, Chinese South African's have since been lumped with Japanese South Africans who were regarded as 'honorary Whites'

²⁰⁰ Ibid

²⁰¹ Roodt D; Retief L *Tax, lies and red tape* (2013).

²⁰² Available at <http://beta2.statssa.gov.za/?p=1034> Accessed on 14 September 2014.

²⁰³ Leibbrandt M Woolard I McEwen H and Koep C *Employment and Inequality Outcomes in South Africa* School of Economics University of Cape Town.

²⁰⁴ Erasmus; Jung Park *Racial Classification, redress and citizenship: the case of the Chinese South Africans*. Transformation 68 (2008) ISSN 0258-7696 (2008).

whereas this they never received such ‘recognition’. Rather, the Chinese specifically did not want to be regarded as White and accordingly rejected the privilege that legislation provided.²⁰⁵ More particularly they rejected White rights and wanted full rights. In response to the exclusion of Chinese from the definition of ‘previously disadvantaged’ in equity legislation, The Chinese Association of South Africa’s 2007 application²⁰⁶ highlights further the illogical process of trying to apply apartheid style discriminatory definitions to post apartheid legislation. Do South African Chinese include only those who proclaim themselves to be of Chinese descent and just how unfair must the previous discriminatory practices be before equity legislation can be applied? As Erasmus and Jung Park argue, South African Chinese, like Coloureds are faced with a double jeopardy problem of not being White enough previously yet not being Black enough currently yet within their respective communities there are individuals who have attained wealth and status to an extent which begs the questions as to whether they should still be beneficiaries of Employment Equity at all.

²⁰⁵ Ibid

²⁰⁶ *Chinese Association of South Africa AO v The Minister of Labour AO (Case No. 59251/2007)*.

IV SOUTH AFRICAN BLACKS- CENTURIES OF DEPRIVAL AND DENIAL

'After climbing a great hill, one only finds that there are many more hills to climb.

- Nelson Mandela²⁰⁷

IV.I Blacks, Land and Crown Rule

By the time that the crown was able to claim Natal, the Boer States and the Cape Colony as her own, Black South Africans lived in squalled conditions in impoverished reserves and as peasants on White owned farms²⁰⁸ and by the turn of the twentieth century, were about to experience some of the most oppressive practices ever known that will take perhaps centuries to unravel. Those Blacks that lived in the semi-independent reserves were invariably forced to seek employment under White farm owners who benefitted from legislation that heavily taxed independent African tenants living in rural areas.²⁰⁹ The 1884 Native Location Act in the Cape Colony²¹⁰ and the 1887 Squatter Laws in the Transvaal²¹¹ went a long way towards undermining Black farming enterprises as Blacks, simply as a result of their ethnicity were prevented from owning land outside of the reserves that they were corralled into. Although the Cape Colony had by 1894 been under the rule of the crown for seven decades, the government was as intent as its Natal counterparts to pass a constellation of repressive laws. In that year, the Glen Grey Act²¹² was passed with the aim of increasing the governments control over Black labour by introducing a system of land tenure that was no doubt inspired by the successes of the Natal government with its Indian indentured labour and as South Africa was about to enter into the twentieth century, the foundation for another 90 years of apartheid was laid with laws allowing forced removals and labour tenantry.

²⁰⁷ Mandela, N. (1994). *Long walk to freedom*. 1st ed. Boston: Little, Brown (1994)

²⁰⁸ Terreblanche *A history of Inequality in South Africa 1652-2002*.

²⁰⁹ Ibid

²¹⁰ The Native Location Act of the Cape Colony of 1884.

²¹¹ The Squatters Act No. 11 of 1887.

²¹² The Glen Grey Act of 1894.

In the 1800's, it was not uncommon for Black farmers to produce better results than their White counterparts. As noted by Bundy, 'It is an indisputable fact that comparing them with Europeans, taking man for man and acre for acre, the native produces from a smaller extent of ground, and with more primitive appliances, more than the Europeans'.²¹³ Yet despite the successes of Black farming at that time, decades of repressive laws and policies took their toll and Black farming enterprises were precluded from the support given to White farmers who were able to benefit from the assistance from such institutions such as land banks and insurance companies.

The roots for grand apartheid found fertile ground in the Land Act of 1913²¹⁴ at a time when South Africa had just become a union of states and was emerging from a devastating war and about to launch itself into another. The King's representative in South Africa at the time, Lord Gladstone spent the ominously dated June 16 of that year signing into effect sixteen new Acts of Parliament²¹⁵, which at the stroke of a pen, set into motion the prevailing government policy for decades to come. The Land Act immediately made it an offence to provide land to a landless Black with a transgression inviting a penalty of £100 or six months imprisonment.

With it, 'Scheduled Native Areas' were reserved for certain 'native clans'. The peculiarity of the Act was that even members of the clans themselves could not buy the land and it remained in perpetual trust. The Chieftains of the clans would rule the area so long as their loyalty was given to the crown. While 4500 000 Blacks in effect had limited access to one-eighteenth of the land, Whites owned the remaining share.²¹⁶ Not surprisingly, the Act was not universally popular amongst White farmers. Hearings documented by Sol Plaatjie record a deep dissatisfaction with the Act as it dealt their ability to attain cheap localized labour a blow. Proponents attempted to get landowners to see the virtues of replacing Black tenants with poor Whites and labeled farmers with Black tenants as practicing 'kaffir- farming'.²¹⁷

The preamble of the Act makes it clear that it was 'enacted by the King's most excellent Majesty, the Senate and the House of Assembly of the Union of South Africa' and except with the approval of the Governor General, 'Natives' were not

²¹³ Bundy C *The Rise and Fall of South African Peasantry* 2nd Ed: Cape Town: David Phillips.

²¹⁴ The Land Act No. 27 of 1913.

²¹⁵ The Natives Land Act, No 27 of 1913.

²¹⁶ Terreblanche A *history of Inequality in South Africa 1652-2002*.

²¹⁷ Plaatje S *Native life in South Africa*. 1st ed. New York: Negro Universities Press (1969).

entitled to ‘enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a Native, of any land or of any right thereto, interest therein, or servitude there over’. The Abolition of Racially Based Land and Measures Act²¹⁸ only repealed legislated restrictions on Blacks being able to purchase land other than in designated territories in 1992.²¹⁹ At a time when South Africa had a predominantly agricultural based economy, Blacks could simply not gain any foothold. While the matter of access to farming opportunities for Blacks is today so emotionally charged, it must be remembered that generations of Blacks have been denied the opportunities to practice anything other than subsistence farming and to acquire the ability to catch-up after a century of exclusion cannot be underestimated.

Cattle herding has for centuries played an integral role in the cultural lives of Black South Africans with the presence of healthy herds signifying the wealth of the individual, community or tribe. Healthy cattle herds act as the gold standard of the Black African community with debts settled by the exchange of cattle, marriages solemnized by the handing of heads of cattle as dowry and animals slaughtered to recognize important cultural events. The 1950 Stock Limitation Act ‘paved the way for the forced removal or slaughter of cattle belonging to African people in the reserves’.²²⁰ The effect of the Act was to limit the number of livestock that individuals and families in the Black reserves could own and to furthermore place restrictions on ploughing, tree felling and the culling of cattle and with it, major commercial farming was placed squarely and solely in the hands of White commercial enterprises. While the stated aim of the Act was to prevent overgrazing, soil erosion and better regulate the management of Black farming in general, a sample study of the area of Babanango in Rural Kwa-Zulu Natal illustrates the Act’s effects:

More than any other type of apartheid dispossession, betterment resulted in mass removals, of particularly the underprivileged who resided in rural areas. Moreover, some of the evictees were considered to be squatters, because an individual farmer wanted to take over their land. In addition Babanango evictees were old, disabled or unsatisfactory workers whom the farmers considered ineffectual hence they were driven off the land... Consequently, what emerged was labour tenancy, a system of

²¹⁸ Abolition of Racially Based Land and Measures Act 133 of 1992.

²¹⁹ Seekings J; Nattrass N *Class, race, and inequality in South Africa*. 1st ed. New Haven: Yale University Press (2005).

²²⁰ South African History Online. Available at www.sahistory.org.za/place/babanango. Accessed on 21 June 2014.

near slavery without legal sanction.²²¹

In the same year as this Act was passed, the government put into effect the Prevention of Illegal Squatting Act²²² which authorized officials to move Blacks from privately owned land and to establish ‘resettlement camps where squatters could be concentrated’. These camps were the founding sites for South Africa’s particularly unique creation of racially based townships along the outskirts of the urban areas from which laborers had to make their way in ‘the thick iron breath that you inhale at six in the morning and exhale from five noon’.²²³ Whereas working class citizens reside typically near to the city center in other countries, in South Africa apartheid has created the opposite model yet still with an absence of a safe and reliable public transport system. So while White workers have a relatively short commute to work in their cars, Blacks have to typically run a gauntlet of mini-buses and trains just to get to their crime ridden communities once the sun has long set already. With the absence of appropriate lighting and in tiny hovels, generations of Black parents would try and assist their children where they could with whatever homework the Bantu Education system required of them.

IV.II Black Gold- The Value of Cheap Black Labour

This legislation had a catastrophic effect. Entire communities immediately lost their land and for millions of Black people it became impossible to live off the land that was allocated with overcrowding, hunger, poverty and starvation a reality.²²⁴ So dire were the prospects for those in the reserves that thousands left their rural homes to seek work in the far off cities. This was not an unintended consequence of the Act- this was the Act’s purpose. With the Boer War having ended and the discovery of diamonds in 1867 and gold in 1886, mine bosses clearly wanted large numbers of people to work for the ever-deepening mines of the Reef. While White workers could organize themselves into trade unions and confront the mine bosses collectively with the leverage of strike action, Blacks were specifically prohibited from taking part in strikes and simply had to accept their lot.²²⁵ Successive governments, mindful of the

²²¹ Ibid

²²² The Prevention of Illegal Squatting Act No. 52 of 1951.

²²³ City Johannesburg, Mongane Wally Serote. Available at <http://www.tallstoriesbookshop.com/tall-in-the-land-of-stories/mongane-wally-serote-city-johannesburg>. Accessed on 3 April 2014.

²²⁴ Ibid

²²⁵ The Native Labour Regulations Act 15 of 1911.

importance of the labour hungry mining industry to the Country, introduced a raft of laws and taxes designed to force people to leave their land. South Africa's Hut Tax²²⁶ provides an example of legislation designed to mobilise labour optimally in that it forced Blacks from their homes and into White workplaces. Generations of Black children grew up in households without at least one of their parents at home as migrant labour became a reality in South Africa. It was not unusual for migrant workers only to return to their homes once a year or to take up second families in the mining towns with any money going back to the homelands squeezed to an unreliable trickle. The landscape of poverty was immortalised by Allan Paton in *Cry the Beloved Country*:²²⁷

The great red hills stand desolate, and the earth has torn away like flesh. The lightning flashes over them, the clouds pour down upon them, the dead streams come to life, full of the red blood of the earth. Down in the valleys women scratch the soil that is left, and the maize hardly reaches the height of a man. They are valleys of old men and old women, of mothers and children. The men are away, the young men and the girls are away. The soil cannot keep them any more.

Paton's poetics aside, the practical and statistical effect of migrant labour on South Africa's Black populace is staggering. It is estimated that by 1972, approximately 1500 000 migrant workers were employed in South Africa and South West Africa and 'when families are taken into account, the system probably effects about six million people.'²²⁸ With migrant labour, South African rural communities were left with the phenomenon of women-headed households. By 1971, women headed 15% of White households and 30% of Black families had an absent father.²²⁹

To meet the promises to its White electorate, the post Boer War government was tasked with radically changing workplaces through introducing its 'Civilised Labour Policy'²³⁰, by passing the Mines and Works Regulations Act of 1912.²³¹ The Act was born out of heavy criticism of mine management for employing large

²²⁶ In Natal, under The Hut Tax Law 13 of 1857, 14 shillings a month was payable per hut occupied by natives that lived in European style houses with only one wife were exempt from the tax. In the Cape Colony, under Act 37 of 1884, 10 shillings per hut was due with exclusions for the elderly. The Dog Tax levied similar taxes on dogs, which were used by rural subsistence farmers for shepherding and hunting.

²²⁷ Paton A *Cry, the beloved country*. 1st ed. New York: C. Scribner's Sons (1948).

²²⁸ Kane-Berman J *Migratory Labour- The Canker in South African Society* The Black Sash, August 1972).

²²⁹ Ibid

²³⁰ The Beskaafde Arbeidsbeleid implemented by Prime Minister Hertzog's Pact government in the early 1920's in order to replace Black workers with Whites.

²³¹ Seekings J; Natrass N *Class, race, and inequality in South Africa*

numbers of unskilled Whites 'often entirely ignorant of mining, and whose principal and often only recommendation is their physical fitness and their suitability for rough work'²³². Yet when the commission released its report in 1910, it submitted draft regulations that were heavy with colour bars. Some appeared in the interpretation of terms, as when the words 'White person' were inserted in the definition of banksman, onsetter, ganger and mine manager. Some took the form of an injunction to employ only Whites in specified occupations, such as blasting, running elevators, driving engines, supervising boilers and other machinery; or as shift boss and mine overseer. Furthermore, only Whites would be allowed to obtain the certificates of competence required, for positions such as engine drivers and boiler attendants. The effect of course was that Blacks were in effect only allowed in White areas and White workplaces 'as servants and never as owners of independent producers'.²³³

IV.III South Africa's Forgotten Black Soldiers

The participation of 83 000 Blacks in World War One was in the main limited to non combatant roles.²³⁴ The local success in drafting Blacks into labour resulted in the government sending contingents to the front in Europe. In 1917, the sinking of the SSM Mendi mainly carrying Black servicemen from the South African Labour Corps saw the loss of 607 Black troops. Prime Minister Louis Botha speaking to parliament paid tribute to Black servicemen accordingly,

If we have ever lived in times when the Native people of South Africa have shown great and true loyalty, it is in times like the present... I have all my life dealt with the Natives, but at no other time have they displayed greater loyalty than they have done in the difficult, dark days through which we are now passing... These people said: 'This war is raging and we want to help', and in so doing they have shown their loyalty to their flag, their King, and country, and what they have done will redound to their everlasting credit.²³⁵

The credit that Botha envisaged though was limited to memorials and occasional wreath laying. Blacks returning from service were not awarded any medals or ribbons. While Blacks from the 'High Commission Territories' of Lesotho,

²³² Nelsonmandela.org, (2014). *Padraig O'Malley - The O'Malley Archives*. Available at:

<http://www.nelsonmandela.org/omalley/index.php/site/q/03lv01508.htm> Accessed 8 January 2014.

²³³ Wickens P L, 'The Natives Land Act of 1913: A cautionary essay on simple explanations of complex change', the South African Journal of Economics, Vol 49 (1981).

²³⁴ The Role of Non-Whites in the South African Defence Force, Cmdt C.J. Nöthling. *Scientia Militaria, The South African Journal of Military Studies*, vol 16, Nr 2 1986.

²³⁵ Soldiers without Reward, J.S Mohlamme, *Military History Journal* vol 10, No 1- June 1995.

Botswana, Swaziland and South West Africa were rewarded even although they served in the same units as South African Blacks, no such recognition was given to the South Africans.²³⁶

South Africans went on to participate in World War 2 with distinction and upon their return from the theatre of war, White South African servicemen could expect a degree of assistance from the government that was sadly not given to their Black comrades. Although nearly 37% of the soldiers were Blacks²³⁷, the government did not have any immediate plans to repatriate Black servicemen. In anticipation of the return of thousands of men, the Directorate of the Union started a demobilization scheme but in sight of victory, the government's stance changed somewhat and it declared that it would endeavor 'to reinstate the soldiers in their pre-enlistment status and occupations and in keeping with the training they had received in the army'.²³⁸ The idea of South African combatants being 'brothers in arms' was certainly not the situation when it came to pay as Whites were at a distinct advantage with what could be expected as remuneration. A Select Committee on Soldiers' Pay and Allowances was appointed in February 1943 to compare the rates of pay and allowances payable to soldiers and their dependents in other parts of the British Commonwealth of Nations and to make recommendations regarding payments of soldiers from the Union. The committee recommended that Coloured soldiers were to be paid out one-half of the rates for Whites, and that Africans were to receive two-thirds of the rates of Coloureds. Annual leave was to be 30 days for Whites, 24 days for Coloureds, and eighteen days for Africans.²³⁹ Legislation had been enacted while the war was still in progress, which aimed at compelling employers to re-employ employees who had, with their employer's permission, given up their occupations in order to enlist. In fact, the African soldiers had every reason to believe that their lot would improve after the war, for the Prime Minister of the Union, General J C Smuts, had expressed himself in favour of fair treatment for African soldiers in February 1942 when he said: 'I want the natives to be treated fairly and decently and not just discarded when their service is finished'.²⁴⁰ Even so, the Financial Assistance Scheme that was established to help ex-soldiers re-establish and adjust themselves to civilian life awarded £10 019 844

²³⁶ Ibid.

²³⁷ Grundy K *Soldiers without politics*. 1st ed. Berkeley: University of California Press (1983).

²³⁸ Ibid

²³⁹ Ibid

²⁴⁰ Ibid

for male Whites yet only £5 795 for servicemen from Native Military Corps. Despite repeated promises, no land settlement scheme comparable in any way to schemes for Whites, had been instituted for African ex-volunteers.²⁴¹ Blacks returning from war would continue their lives of servitude.

IV.IV Colonialism Dismantled, Apartheid Assembled

While the European governments had begun to reconsider their position as colonial masters around the world in the aftermath of the war, South African leaders were about to take apartheid to its next level. On the eve of the 1948 elections, the rural population of South Africa was overwhelmingly African. Approximately half of Blacks lived in the reserves that were set aside for them in terms of the 1913 and 1936 Land Acts²⁴² which at the time compromised approximately 15% of the country.²⁴³ Subsistence farming was largely practiced and the populace was reliant on the financial pipeline provided by migrant workers. The Fagan Commission of 1946 recommended that the influx control of African people to urban areas should be relaxed in order to increase the flow of labour and prevent the problem of migrant labour living in distant rural areas. With its capitalist motive clear, the report called for the creation of a ‘stabilised population of African workers within urban areas to create a reliable work force for business as well as an increased consumer base for retailers’.²⁴⁴

The report was published at a time when Smuts’ popularity was low and his detractors had more support. In response the South African National Party assembled the Sauer Commission whose suggestions were more persuasive, being that segregation should continue and be implemented across all social and economic areas of life. The rise of postwar Apartheid can be attributed to the Sauer Commission.²⁴⁵ The Social and Economic Council recoded that ‘in practically no areas do the Reserve Inhabitants as a whole produce sufficient food for the most elementary requirements of health’²⁴⁶ and the Lansdowne Commission found that production met

²⁴¹ *Soldiers without reward.*

²⁴² The Native Trust and Lands Act No.18 of 1936.

²⁴³ Seekings J; Nattrass N *Class, race, and inequality in South Africa.*

²⁴⁴ Deane *Understanding the need for anti-discriminatory legislation in South Africa* 2005 (11) Fundamina, University of South Africa.

²⁴⁵ *Ibid*

²⁴⁶ Seekings J; Nattrass N *Class, race, and inequality in South Africa.*

‘only half the minimal needs of an average family of five’.²⁴⁷ Malnutrition, low life expectancy, high infant mortality and fractured families were characteristic problems. Women made up to three times the middle age cohort in rural communities and had to take up the role of having to tend to the land and raise children alone. The ability to adequately deal with whatever scant resources there were in these overpopulated areas was clearly curtailed. Even so, the Chamber of Mines argued that wages could be kept low on the basis that Blacks were supposedly able to supplement their income by subsistence farming. The governments of the 1930’s created numerous agricultural boards such as the Banana Board and the Potato Board²⁴⁸ as parastatals to market produce and to control prices. These boards effectively acted as cartels which regulated the pricing of sectors in the agricultural industry which had the effect of benefitting large scale, mechanized producers at the expense of Black farmers who were simply not able to compete.²⁴⁹ Deregulation of the South African agriculture only began to take place in 1996. As for the other half of the Black populace living in the rural areas in 1950, more than half a million men, 180 000 women, 100 000 boys and 50 000 girls under 16 were employed on White farms.²⁵⁰ These same official statistics described these employees as ‘servants’ with payment in kind accounting for up to half of the value of wages and in some instances, squatting was allowed (albeit that it was against the law until 1956) as an exchange for the lower wages that farmers were prepared to offer. From the statistics provided, it is evident that a significant proportion of children were prevented from going to school by having to work on farms and while the living conditions for White farmers improved significantly during the years of apartheid with access to running water, electricity, rural boarding schools etc., ‘workers continued to live in daub huts, in shacks, and (a more recent development) in compounds. They had no electric light; water came from an outside tap, or, more commonly had to be fetched by bucket from some distance away; and lavatories, if they existed, were of a pit type’.²⁵¹ With conditions

²⁴⁷ Ibid.

²⁴⁸ Kirsten J; Edwards L; Vink N *Distortions to Agricultural incentives in South Africa*. Available at <http://ageconsearch.umn.edu/bitstream/48514/2/South%20Africa%20-Agricultural%20Distortions%20Working%20Paper%2038%20,%20Dec%202007.pdf>. Accessed on 5 February 2015

²⁴⁹ A revolution in the Market- the Deregulation of South African Agriculture. (2000). *OPM Review*, [online] 3. Available at http://www.opml.co.uk/sites/opml/files/OPM%20Review%203_0.pdf. Accessed 16 July 2014.

²⁵⁰ Seekings J; Nattrass N *Class, race, and inequality in South Africa*.

²⁵¹ Ibid

like this, life for rural Blacks would not have been that different to what would have been found in Europe during the feudal ages.

Closer to the cities, urbanized Blacks still had to travel vast distances to get to and from their workplaces. Townships, established on the periphery of urban towns and cities, created significant challenges for Black workers who had to spend significant portions of their meager incomes on travel. Today even, while South Africa's Department of Tourism proudly proclaims 'South Africa's townships are infused with the spirit of Ubuntu'. and invites tourists to 'Take a township tour and experience the spirit of togetherness and unity among its people'²⁵², it was not unusual for Blacks to leave their homes at 3am after having arrived at home only four hours earlier. A 2011 study²⁵³ ranks South African workers as having on average the worlds longest commute but not included in the cold statistics are the effects on generations of children living in townships who had minimal support as their parents worked far away in the cities and leafy suburbs of White South Africa.

IV.V Black Serfdom

In 1951, the Native Building Workers Act²⁵⁴ legalized the training of skilled Black labour in the construction industry but limited the places in which they could work as it prohibited Blacks from doing construction in White urban areas.²⁵⁵ The Act made it an offence for Blacks to work for Whites performing skilled labour in their homes. This Act proclaimed that Blacks were prohibited 'from performing skilled work on buildings in urban areas except in the segregated townships'. The 1922 Apprenticeship Act²⁵⁶ set minimum educational standards for apprenticeships in various trades. For Black South Africans brought up on the typically abysmal educational standards that were available at the time, the chances of attaining the very basic skills to enter into a trade were immediately denied and White trainees would for generations afterwards have an advantage on factory floors. The opportunity for skilled Blacks to be able to launch themselves into entrepreneurial enterprises in the

²⁵² <http://www.southafrica.net/za/en/articles/entry/article-southafrica.net-townships-in-south-africa>. Accessed on 1 December 2014.

²⁵³ Gallup World Poll.

²⁵⁴ The Native Building Workers Act No. 27 of 1951

²⁵⁵ Deane *Understanding the need for anti-discrimination legislation in South Africa* 2005(11-2) Fundamina. University of South Africa.

²⁵⁶ The Apprenticeship Act No. 26 of 1922.

White urban areas was clearly eliminated. The Government had already excluded Blacks from the benefits of unemployment insurances through the Unemployment Insurance Amendment Act of 1949²⁵⁷ but three years later, The Natives Laws Amendment Act²⁵⁸ empowered local authorities to establish a labour bureau to match work seekers with jobs however they took the drastic step in limiting the entry of Blacks into urban areas.²⁵⁹ The free flow of labour, which a healthy free market economy demands was severely curtailed by a government that allocated labour where the government thought fit.

IV.VI Blacks and Education

In 1953, Parliament passed the Bantu Education Act.²⁶⁰ H.F. Verwoerd, who at the time was the Minister of Education, captured the prevailing attitude of the government towards Black education by declaring,

There is no place for [the Bantu] in the European community above the level of certain forms of labour ... What is the use of teaching the Bantu child mathematics when it cannot use it in practice? That is quite absurd. Education must train people in accordance with their opportunities in life, according to the sphere in which they live.²⁶¹

Racial based education was hardly the invention of Verwoerd and it could be argued that the policies handed down over the 40 years of National Party rule was a legislated articulation of what had been taking place in the country for 300 years already. For purposes of this study in this chapter, and at the risk of appearing to glance over some of the most oppressive and systematic practices in history, I shall dwell on the most significant.

To emphasize the importance of racial based education for the new government, it was only one year into its reign that the government appointed the Eiselen Commission with the task of considering African education provisions. The Commission recommended 'resorting to radical measures' for the 'effective reform of

²⁵⁷ The Unemployment Insurance Amendment Act of 1949.

²⁵⁸ The Natives Laws Amendment Act No. 54 of 1952.

²⁵⁹ Seekings J; Nattrass N *Class, race, and inequality in South Africa*.

²⁶⁰ The Bantu Education Act 47 of 1953.

²⁶¹ Lapping, B. *Apartheid*. 1st ed. London: Grafton Books (1986).

the Bantu school system.²⁶² The government for the first time took full control of the education of Blacks by centralizing the finance and administration of educational facilities under the auspices of the Department of Native Affairs. The role of mission schools like the one attended by Nelson Mandela were eliminated and 'ethnic training colleges were introduced, open universities were closed to Blacks, to be replaced by tribal or bush universities'.²⁶³ The education of any Black child had to be registered and the Minister had the power to make regulations prescribing the courses of training and instruction. The Governor General enacted on behalf of the 'the Queen's Most Excellent Majesty on 5 October 1953 and while sitting at his desk also signed into effect the amendments to the Industrial Conciliation Act²⁶⁴ which 'introduced a formal system of racially segregated trade unions' and made strikes by Blacks illegal in all circumstances. Affirmative Action for Whites became a reality.

The Spine along which the Bantu Education Act was created was the desire of the Nationalist government to introduce 'Christian National Education' at a level 'to keep Black people within the hierarchy as defined by apartheid, that of semi skilled work force that could be exploited for cheap labour'.²⁶⁵ The government strategically decided that Gardening was of importance as a subject for Black children but that Science, Geography and History were evidently not. By glancing at the respective weekly timetables for White and Black schoolchildren, one would be forgiven in thinking that the standard of instruction was the same. White and Black children would both appear to receive lessons in such subjects as Geography, health and arithmetic however this does not reflect the content of the study undertaken as it has been argued that by Standard 2, Black children were three years behind their White counterparts of the same age as Black children had to be at least seven years of age before they started school whereas White children could be as young as 5.²⁶⁶ At the same time, White children were being taught about foreign cultures, industries and world geography, Black children were being prepared for a life better suited as

²⁶² *The Native Education Commission*. Available at http://uctscholar.uct.ac.za/R/?func=dbin-jump-full&object_id=6975&local_base=GEN01. Accessed on 5 February 2015.

²⁶³ Disa C N *Comparison of the syllabus of the Bantu Education Department with that of the Transvaal Education Department and other related matters* University of Kwa-Zulu Natal.

²⁶⁴ The Industrial Conciliation Act No. 48 of 1953 and the Industrial Conciliation Act 28 of 1956.

²⁶⁵ Ndr.org.za, (2014). *NDR › National Digital Repository › Indigenous Knowledge › Stories › Education In Our lifetime : Education under Apartheid*. [online] Available at: <http://ndr.org.za/indigenous-knowledge/stories/386> Accessed 9 Jun. 2014.

²⁶⁶ Disa C N *Comparison of the syllabus of the Bantu Education Department with that of the Transvaal Education Department and other related matters* University of Kwa-Zulu Natal.

domestic workers. While the standards of arithmetic in the first four years of education were the same, Black children were not compelled to attend schooling beyond Standard 6 and while instruction was in the home language, African languages had not all developed adequate words for English words used in arithmetic which meant that teachers often struggled to maintain an interest in the language and learners often failed to grasp the basics in the formative years. If Blacks continued with their education to standard 10 they wrote the same exams as their White counterparts but had to somehow make up the shortfall in information, which their syllabus failed to provide.²⁶⁷

By the time that the National Party government had begun dismantling apartheid in 1990, approximately 80% of the South African population was prohibited from owning or leasing land in over 80% of the country.²⁶⁸ Whites, making up only 14% of the total population owned 83% of the land and were accordingly dominant in all spheres of commercial farming. By 1994, the situation was no better and 80% of the land was still owned by Whites but in that year, 50 000 White farms owned 85% of all agricultural land.²⁶⁹ By 2008, Blacks still earned lower average wages than any other racial group and unemployment as a percentage of the population has increased from 17% in 1993 to 27% in 2008.²⁷⁰

For economists such as Roodt, 'the Black population, however, appears to be following the classic demographic pattern...that in 20-40 years this group could reap a demographic dividend'²⁷¹ So if Roodt would be believed, it would take that many years of school leavers generations of youths who would have been at the sharp end of Affirmative Action before fertility rates fall and growth really starts. For now this is speculation and since Employment Equity Legislation has been enacted, true economic emancipation has yet to become a reality.

²⁶⁷ Ibid

²⁶⁸ Weideman M *Who shaped South Africa's land reform policy?. Politikon* (2004)

²⁶⁹ Maganye E Coetzee S; Turok B; Beukes E (Eds) *South Africa: Perspectives on Development*, IFAA, Johannesburg 1994.

²⁷⁰ Leibbrandt M; Woolard I; McEwen H; Koep C *Employment and Inequality Outcomes in South Africa* School of Economics University of Cape Town.

²⁷¹ Roodt D; Retief L *Tax, lies and red tape*.

V. WHITE HEGEMONY

*'Is not our role to stand for the one thing which means our own salvation here but with which it will also be possible to save the world, and with which Europe will be able to save itself, namely the preservation of the White man and his state?'*²⁷²

-Prime Minister Hendrik Verwoerd

V.I Institutionalised Domination

The White population of South Africa has not always lived in South Africa in a state of luxury and privilege. After cessation of hostilities were declared in Vereeniging in 1902 thereby sending home the biggest army ever sent to foreign shores since the reign of King Henry V, South Africa was a wasteland. The Afrikaner nation had lost almost ten thousand men in combat and almost 230 000 women and children had perished in the concentration camps that dotted the bleak burnt landscape. While the graves of the British and Boer dead were meticulously recorded, the exact figures of Blacks who were killed in the war are unknown although it is estimated that over 12 000 were killed and thousands more had to be resettled.²⁷³

While the farms lay fallow, production in the Gold mines had plummeted to around 10% of the prewar peaks but had recovered somewhat to less than half that amount by 1902²⁷⁴. Party to the negotiations for peace in Vereeniging was Lord Alfred Milner, an aggressive imperialist who was promoted to High Commissioner for South Africa and Governor of the Orange River Colony and Transvaal immediately after the war by an Imperial administration no doubt well aware of his ambitions for White South Africa. Milner's first task was to resettle and repatriate the over 25 000 Boer prisoners who were returning from Camps scattered around the world and to convert them into model British subjects. Accordingly, a generation of fatherless children returned to South Africa but with only rudimentary concentration camp education behind them. 30 000 Boer homesteads had been turned to ashes during the war, livestock was destroyed and the land had not been tilled for years.²⁷⁵

²⁷² Speech 1964 quoted in Oxford History of South Africa, volume 2, chapter 10 M. Wilson and L Thompson (1971).

²⁷³ Pakenham T *The Boer War*.

²⁷⁴ Ibid

²⁷⁵ Ibid

For the White orphans and widows of war, there was hope. The Crown made £3 million available to cover the resettlement costs of Boers and another £3 million was set aside for interest loans for the purchase of seeds and farming implements. While the Boers could return to their farms, £16 million²⁷⁶ was also made available to compensate British nationals, foreign neutrals and Blacks although in the end, only a fraction was spent towards Black recovery and the war is widely regarded as having a disastrous impact on Blacks whose dreams of self determination were destroyed. The misery of the war did not end with the stroke of a pen as a lingering drought in 1902 and 1903 exacerbated the situation considerably.²⁷⁷ It was under these conditions that at least one fertile African seed was sown and in 1912, the ANC was formed in Bloemfontein.²⁷⁸

Under Milner's leadership of the fledgling colony, gold production increased enormously and by 1907 the mines were churning out more than twice as much ore as they were four years before. Even so, Afrikaners were largely impoverished and excluded from the wealth brought by Johannesburg's gold mines. Johannesburg, the epicenter of the gold industry became the beacon for South Africa's post war urbanisation and Milner famously built a string of cookie cutter schools in South Africa to carve away the roughness of the local population. Milner Schools throughout South Africa thrive to this day and have educated generations of South Africa's most talented White males. Affirmative Action for Whites had all but in name, was about to become an institutionalized reality.

While Milner had a vision of creating an outpost of colonial Britain on the Highveld, his efforts had somewhat of a different effect. Historian G H L Le May held the view that although Milner's 'plans that the war, which was to have been the prelude to a gigantic exercise in physical and social engineering should have been quick and decisive...it did more to unite Afrikanerdom than Kruger had ever succeeded in doing. The war gave to Afrikaners through-out South Africa common victims to mourn, common injuries upon which to brood, a common cause in the restoration of republicanism'.²⁷⁹

²⁷⁶ The Aftermath of the Anglo-Boer War, Ken Gillings, Die Suid Afrikaanse Vereniging (2008).

²⁷⁷ Ibid

²⁷⁸ Available at <http://www.anc.org.za/show.php?id=206>. Accessed 6 August 2014.

²⁷⁹ Spies S *Methods of barbarism?* 1st ed Cape Town: Human & Rousseau (1977).

Two years after the union of South Africa's four colonies into the Union of South Africa in 1910, the Land Bank was established to help struggling White farmers and in 1913 the Natives Land Act was passed designating only about 13% of land to Blacks. The Act, it could be argued, provided White farmers for the first time, a firm commitment to legislated protection at national level.

As war was still raging in Europe in 1918 the Afrikaner Broederbond was formed and in the same year of establishment, SANLAM was founded as a vehicle for 'creating business opportunities for the Afrikaner minority'.²⁸⁰ Today, SANLAM regards itself as 'a pioneer in transformation'.²⁸¹ The same could be true of SANLAM in 1918. The Afrikaner- Broederbond has been regarded as having one of the most powerful influences on the shaping of South Africa during the twentieth century and can be regarded as a major force in the establishment of the country's White male hegemony.²⁸² Every South African premier from 1948 to 1994 was a member of this organization with its close links to institutions such as United, Volkskas and Allied Banks, Altech Defence Systems, Remgro, Reddingsdaadbond, Dagbreekpers, the Afrikaanse Handelsinstituut and Rand Afrikaans University. In 1934, the organisation's Chairman articulated the Afrikaner Broederbond's destiny and encapsulated its purpose- 'The primary consideration is whether Afrikanerdom will reach its ultimate destiny of domination in South Africa'.

Of the Broederbond it has been commented that 'It not only dedicates itself to establishing organisations and institutions at a national level, but makes it its business to appoint, promote and protect the 'right man'. An important strategy is that of gaining control of school committees, school boards, church councils and boards of directors in order to achieve its aims'.

The 'right man' was clearly a White Afrikaans male²⁸³ as women were specifically excluded from membership and could only gain affiliation in 1993- so long as they could speak Afrikaans. By 1938, there were still 300 000 Afrikaners who could be regarded as 'poor Whites',²⁸⁴ and the stirring of Nationalism caused by the

²⁸⁰ Sanlam.co.za, (2014). *Sanlam - Our Heritage*. [online] Available at http://www.sanlam.co.za/wps/wcm/connect/sanlam_en/sanlam/about+sanlam/our+heritage/default+content. Accessed 24 Jan. 2014.

²⁸¹ Available at http://www.sanlam.co.za/wps/wcm/connect/sanlam_en/sanlam/about+sanlam/who+we+are. Accessed on 12 December 2013.

²⁸² Wilkins I; Strydom H *Broederbond*. 1st ed. London: Corgi Books (1980).

²⁸³ Available at <http://www.nelsonmandela.org>. Accessed on 12 December 2014.

²⁸⁴ Wilkins I; Strydom H; Du Preez, M *The super-Afrikaners*. 1st ed.

Great Trek Centenary Celebrations of that year, were regarded by the Afrikaner Broederbond as ‘one of the most important milestones in the development of the history of the Afrikaner nation’ with ‘the greatest value (being) that it deflected the Afrikaner’s eyes from his poverty and made him conscious of his great potential on the economic front’.²⁸⁵ The Bond wasted no time in establishing organization after organization aimed at Afrikaner domination- one organization benefitting the next. The *Ekonomiese Volksgongress*’s 1939 decision for Afrikaner upliftment was to create the *Reddingsdaadbond*. A 1969 Broederbond publication stated²⁸⁶ :

The strength of the Reddingsdaadbond was that it went to the nation with a new message and vision. It brought about a message of strength to a nation which had become almost disheartened in its struggle against poverty. To a nation which regarded a position of economic subservience as almost natural, it presented the ideal of an Afrikanerdom which would not be only employee, but also employer, not only a foreigner in the economic life his fatherland, but also the proud owner of material power, which rightfully belongs to him.

It was through the voluntary contributions made by donors to the Reddingsdaadbond that the number of Afrikaans businesses grew from 3710 in 1939 to 13047 in 1949 with an increase in turnover increasing from £61 million to £322 million in a year. With this money, the bond was able to build such beneficial institutions as co-operative schools, insurance companies, and what was by 1977 the third biggest bank in the country- Volkskas.

Other Afrikaner-Broederbond organisations included such organisations as²⁸⁷ Federeale Beleggings with its aim ‘to pool a part of Afrikaner capital in one company, and to make it available for the establishment or takeover of commercial and industrial concerns’. So too, Federale Mynbou- in its time one of South Africa’s largest gold mining companies as well as The Rembrandt Group was established by the Broders. A tobacco and industrial conglomerate, By 1988 The Rembrandt group through its the Swiss luxury goods company, Richemont, acquired Rembrandt’s shares in Rothmans, the worlds forth largest tabacco company at the time. Richemont also owns such luxury brands as Cartier; Alfred Dunhill and Sulka; Seeger (leather bags); Piaget, Baume & Mercier and Vacheron Constantin (Swiss watches) and Montblanc (pens). Saambou, Federale Volksbeleggings and The Rand Afrikaans

²⁸⁵ Ibid

²⁸⁶ Ibid

²⁸⁷ Ibid

University were established as well as a number of charities and cultural and media organisations.

Broederbonders could be found seated in the boardrooms of South Africa's largest organisations with members fulfilling the role of directors of Iscor, South Africa's Atomic Energy Board, the SABC, the Reserve Bank and SASOL. Broederbonders acted as chancellors of the Universities and Colleges. 'In certain respects, the Reddingsdaad campaign foreshadowed the Black Empowerment movement of post 1994 South Africa, though the earlier movement was not based on the transfer of capital favourable financing schemes or share options'.²⁸⁸ Indeed, the Broederbond built its success from scratch.

In their controversial book *The Super Afrikaners*, the authors note:

It is one of the many wonders of the Afrikaner Broederbond that it could have achieved so much on the economic front in only a few decades. On that strength alone, it proved to be an organization unique in today's world, with superb secret organization, strict discipline and determination seldom seen in any other organization in history.²⁸⁹

One of the big challenges for the Broederbond was to assist Afrikaners in overcoming the effects of the Great Depression of the 1930's. Prof. CGW Schumann from the University of Stellenbosch calculated that the per capita income of Afrikaners in 1936 averaged £86, as opposed to the £142 of other South African males.²⁹⁰ The tremors caused by the stock market crash in New York in 1929 had catastrophic consequences for far off South Africa affecting not only a ten year long depression but arguably causing the seeds to be sown for South Africa's most significant legislated policies related to Grand Apartheid. In 1927, the philanthropic Carnegie Commission in New York²⁹¹ was commissioned by the South African government to conduct a study aimed at the eradication of the poor White problem. The recommendations presented by the commission saw the creation of the department of social welfare and the 'civilized labour' policy, which guaranteed work for Whites at the expense of Blacks.

²⁸⁸ Dommissie E; Esterhuyse W *Anton Rupert*. 1st ed. Cape Town: Tafelberg (2009).

²⁸⁹ Wilkins I; Strydom H; Du Preez, M *The super-Afrikaners*.

²⁹⁰ Anton Rupert supra.

²⁹¹ Seekings J *The Carnegie Commission and the backlash against welfare state-building in South Africa, 1931-1937*. Center for Social Science Research Working Paper No. 159 (2006).

Today, the Carnegie Foundation looks back on their study as follows²⁹² :

The good that came out of this was that the South African government allocated more funds to address the problems of poverty. The negative impact of the study was that the recommendations for solving poverty were used to improve the conditions of Whites at the expense of Black South Africans.

The Carnegie report included recommendations for the segregation of Black and White labor and the creation of areas where Whites would be given land from which Blacks first had to be removed. In fact, Verwoerd, Prime Minister of South Africa from 1958 until his assassination in 1966, and widely known as the architect of apartheid, used the Carnegie Corporation inquiry to formulate his basic recommendations to segregate South African society as a whole. In this instance, knowledge gained through the White-poverty inquiry was used for terrible purposes in South Africa.²⁹³ The report recommended that ‘employment sanctuaries’ be established for poor White workers and that poor White workers should replace ‘native’ Black workers in most skilled aspects of the economy. The report went further to conclude that White superiority would require support from social institutions.

Post Second World War South Africa enjoyed somewhat of an economic boom. With a decimated Europe struggling to get itself back on its knees, South African products were in demand. Despite more money in the economy and a greater tax base, the government still saw it fit to radically alter its welfare system. Although African pensioners could benefit from an old age pension for the first time from 1944, the actual allocation that White pensioners received was considerably higher. So bleak was the outlook for Black pensioners that ‘the maximum value of an African pension fell from 25% of a White pension in 1947 to just 18% in 1950. By 1960, that value was 15% and just 13% in 1965.’²⁹⁴

²⁹² Columbia (2014). *Special Feature | South Africa | First Inquiry into Poverty | Carnegie Corporation Oral History Project*. [online] Available at: http://www.columbia.edu/cu/lweb/digital/collections/oral_hist/carnegie/special-features/ Accessed 14 September 2014.

²⁹³ *Special Feature South Africa First Inquiry into Poverty Carnegie Corporation Oral History Project*. Available at http://www.columbia.edu/cu/lweb/digital/collections/oral_hist/carnegie/special-features/ Accessed 7 December 2013.

²⁹⁴ Seekings J; Nattrass N *Class, race, and inequality in South Africa*. 1st ed. New Haven: Yale University Press.

Just before The National Government implemented apartheid as an official government policy, about 85% of South Africa's farmland was reserved for White ownership. White farmers could access subsidised credit through the Land Bank and began to mechanise their farms and introduce modern irrigation and fertilizing methods. Industry was not left behind and between 1960 and 1970, manufacturing output increased by 8.6% a year with investment in the country increasing by 12.3% during the same period. Although these figures in today's climate appear to be exemplary, emerging sanctions meant that South Africa was not able to effectively compete in the global market and consequently always lagged behind its emerging market competitors.²⁹⁵

The establishment of Iscor in 1928 was aimed at creating employment opportunities for South Africans in the hope that it would be part of the driving force towards the industrialization of the country. The first influx of Black workers 'only came in 1937 when 875 previously White jobs were turned over to Blacks- an event known in the corporation's folklore as the 'Kafferisation' of Iscor.'²⁹⁶ South Africa's labour legislation of the fifties entrenched White hegemony further. The Industrial Conciliation Act of 1956²⁹⁷ - subsequently renamed the Labour Relations Act separated trade unions along racial lines. Section 77 of the Act allowed the minister to reserve skilled jobs to White workers to 'ensure they will not be exploited by the lower standard of living of any other race'. Section 12 of the Mine and Works Act²⁹⁸ aimed at specifically favoring White workers over their Black counterparts. 'Statutory closed shops also functioned to preserve a range of crafts for White workers and to impede the development of more representative unions'.²⁹⁹

The South African Defense Force and its earlier incarnation as the Union Defense Force played a significant role in providing artisanal skills to generations of White South African males. Even before South Africa entered the crucible of war in 1939, the country was already preparing for the possibility that hostilities would commence by forming various new units of the South African Permanent Force.³⁰⁰ Along with the Military Police Corps, South African Naval Service and South African Air Force, South Africa now had an Instructional Corps and a Central

²⁹⁵ Ibid

²⁹⁶ Davies R; O'Meara D; Dlamini S *The struggle for South Africa*. 1st ed. London: Zed Books (1998)

²⁹⁷ The Industrial Conciliation Act No. 28 of 1956

²⁹⁸ The Mines and Works Act 12 of 1911 was later repealed by the Mines and Works Act 38 of 1987.

²⁹⁹ Basson et al *Essential Labour Law: Collective Labour Law* 3rd ed (2002).

³⁰⁰ Proclamation No. 276 of 1939, Government Gazette 2699

Organisation of Technical Training (COTT) with its sole purpose to train up to 12000 young men at a time as machine operators.³⁰¹ White South Africa was to enjoy a massive investment in developing its youth the benefits of which would be enjoyed for generations. Candidates could take up vocational training in a variety of disciplines that would arm them with the skills that they could take with them for the rest of their lives and courses offered included Fitting and Turning, welding, grinding, Blacksmithing and Shaping. 2100 men were sent from other units to receive training at the COTT or were sent to private companies for a period of time where after they were reposted back in the Defense Force.

As South Africa's war machinery entered into the Rubicon years during apartheid's zenith, the Defense Force's ability to train young White South Africans as engineers, mechanics, meteorologists, paramedics, technicians, plumbers and surveyors was exemplary. For those servicemen who did not have a college or university education to look forward to, the possibility of finding employment would certainly have been advanced by the time spent in the Defense Force. If the Defense Force was not chosen, the South African Police was only too eager to absorb a candidate into its ranks.

³⁰¹ Available at <http://www.sadf.info/TechnicalServicesHistory.html>. Accessed 6 September 2014.

VI. PERPETUATED DISCRIMINATION

The Employment Equity Act in its current guise has not met its purported aim. Whether it has created ‘economic development and efficiency in the workplace’ is at best debatable and its ability to redress hundreds of years of disadvantage is maligned by falling into the very morass that it sought to avoid- by treating those affected by apartheid as ‘categories of people’ with only a general idea that they appeared to all have been disadvantaged or had suffered from discriminatory laws and practices. Inequality today is becoming marked by the increasing disparities between rich and poor- disparities that are most pronounced within the very groups that are the recipients of equity legislation’s protective blanket. ‘Declining *interracial* inequality (has become) accompanied by rising *intra-racial* inequality’,³⁰² and in effect, South Africa has perhaps arisen from a ‘skewed revolution’³⁰³ at a time of continued falling formal unemployment. As Terreblanche states,

We are forced to ask: for how long can White wealth and elitism remain entrenched; for how long can the Black elite continue to indulge in Black elitism; and how far can the inequality between the Black bourgeoisie and the Black lumpenproletariat extend before the system cracks?

If Terreblanche and Roodt’s predictions are to be believed, while the Employment Equity Act stands sentry, wealth and employment dynamics will veer markedly from its purported aim and the downward movement of the Black underclass will continue with businesses carrying the burden of trying to address the country’s imbalances. The members of the designated groups have emerged from Apartheid with different stories to tell, with differing levels of success and with differing prospects for the future even in at an employment equity era. While South African Indians appear to have a trajectory of success to look forward to, the same trajectory for the other groups have been split by a prism influenced by such factors as political affiliations, tribalism or access to basic resources. These are factors that Employment Equity never envisaged and will never overcome. South African leaders need to learn from the past that real development (and thereby emancipation) requires a radical investment in new business enterprises and entrepreneurship, and an uncompromising priority for quality education, which will not be achieved by a fixation with

³⁰² Seekings J; Nattrass N *Class, race, and inequality in South Africa*.

³⁰³ Ibid

designated groups, racial profiles, percentage targets and threats of non-compliance fines.

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