The relation of industrial legislation and statutory regulations to poverty

by

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Carnegie Conference Paper No.133

Cape Town 13 - 19 April 1984
THE RELATION OF INDUSTRIAL LEGISLATION AND
STATUTORY REGULATIONS TO POVERTY

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All legislation which affects mobility, either geographical or vertical has
effects on poverty. The general principle is that any law, statutory
regulation, institutional action or prejudice which restricts mobility
decreases potential production and incomes, and increases the relative
poverty of those discriminated against.

1 RESTRICTIONS ON GEOGRAPHICAL MOBILITY.

Laws which limit the right to own or occupy land, such as the Native Land
Act of 1913, the Native Trust and Land Act No 18 of 1936 (later the Bantu
Trust and Land Act and now the Black Trust and Land Act) and the Group Areas
Act No 41 of 1950, as amended, all restrict the ability of those affected to
make their living. Such restrictions affect the ability of all to make the
most economically effective use of the natural resources of the country and
so restrict the aggregate wealth. In practice Africans, Indians and coloured
persons have been much more deleteriously affected than whites because the
land available for their use has been much less, especially in relation to
their numbers.

The restrictions which the Natives (now Blacks) Urban Areas Consolidation
Act of 1945 have laid on Africans has severely circumscribed their ability to
trade or to develop small (or large) industries. These restrictions are
described in the sections on Housing and Licensing. (See also Horrell, M.
Laws affecting Race Relations in South Africa, Restrictions on the activities
of African businessmen within urban African townships. pp. 255-258.)

1.1 Influx Control

The Blacks (Urban Areas) Consolidation Act of 1945, as amended, has
severely limited and still limits the movement of Africans, and particularly
women and children, to the urban areas. In terms of Section 10 (l)(a), (b),
(c) and (d) only the following Blacks may legally live in an urban area:

(a) those born in the area and who have been resident in the area legally
since birth (b) those who have worked for one employer for 10 years or have
resided there lawfully and continuously for not less than fifteen years (c)
the wife, unmarried daughter or son under the age of 18 years of an African in categories (a) and (b) who after lawful entry ordinarily reside with him or (d) those granted special permission to be in the area.

The numbers of those in category (c) depend on the supply of housing. Until recently local authorities, with the approval in each case of the central housing authority, were responsible for the provision of accommodation for Africans.

The supply of housing for Africans in urban areas has never met the demand; consequently from the thirties permission has been refused to large numbers of African women and children to join their menfolk, although many have done so illegally creating squatter settlements near to or within the urban areas, or lodging illegally with legal residents. Some employers, notably the gold mines, have provided housing for their male employees only, with a very limited number of exceptions. Consequently, they came to rely on temporary migrant workers and the pattern of what has been called 'oscillating; migration was established and became widespread.

Especially since the nineteen fifties frequent and often drastic attempts have been made to remove the dependents who have illegally taken up residence in or near the urban areas, and also those, men and women, illegally in employment.

This forcing apart of families and the settlement of dependents in rural areas or in townships, apart from the disruption of family life, adds to the costs of the families who must maintain two living places — one where there are frequently few opportunities of employment and so of a second or third breadwinner in a family.

The Riekert Commission (RP 32/79) was appointed to investigate legislation affecting Africans which did not fall within the Wiehahn Commission's terms of reference which were to inquire into and make recommendations concerning Labour Legislation (RP 47/1979). The Riekert Commission recommended that no less fifty-seven laws affecting Africans be repealed in whole or in part. These laws included the important Blacks (Urban Areas) Consolidation Act of 1945, as amended. Future control of Africans living outside the homelands was to be in terms of the Group Areas Act. Influx control from the independent homelands was to be under the control of the Department of the Interior as was the immigration of whites but the Commission pointed out that officials at present administering black migrant labour could act as agents of the Department of the Interior. The important point is not under which authority the administration falls but the way in which it is administered and the conditions upon which entry is permitted.

Successive Bills drawn up, but not yet passed, indicate that influx control will be made even more onerous and access to rights of settlement in urban more difficult to obtain.
1.2 GROUP AREAS

The Group Areas Act, No 41 of 1950, as amended, imposed controls throughout South Africa over inter-racial property transactions and changes of occupation of property and land. These were made subject to permit. Coloured persons in the Cape Province were for the first time made subject to such control.

1.2.1 EFFECT ON HOUSING

The Group Areas Act has principally affected Coloured and Indian families as Africans were already subjected to segregation in terms of the urban areas legislation dating from 1923 or before.

In terms of the Group Areas Acts from the commencement of the implementation of the first Act of 1950, 80,053 Coloured, 38,472 Indian and 2,262 white families have been removed from where they were living.

These moves have disrupted communities and tended to force them further from the industrial and main commercial districts of towns and cities. Thus they have raised the costs of transport and added to the demand for housing which was already greater than the supply, with long waiting lists for municipal housing. The area of land allocated Coloured and Indian families has also been inadequate and so forced up its price. This further added to the cost of rehousing and is still today a cause of the high prices of housing.

The lack of land and housing for coloured people on the Witwatersrand has had an effect similar to influx control, limiting the movement of coloured people to the country's largest industrial area and market.

Africans, as has been described, were already subject to the Native Land Act of 1913, the Native Trust and Land Act of 1936 and the Natives (Urban Areas) Act of 1923, as amended.

Further, no African may be employed in the Coloured Preference Area, an area in the Cape Province which stretches from the Fish and Kat Rivers in the east to the Orange River in the north, unless a certificate is obtained from the Department of Manpower stating that no suitable coloured labour is available to fill the position. The Wiehahn Commission (RP 32/1979) did not consider this policy on the ground that it was a political matter. Government sources have stated that this policy is under consideration.

The National Party policy has changed to the extent that it has now founded the Small Business Development Corporation to assist small businesses, chiefly by making loans. It has also established an industrial park in
Orlando West, Soweto, occupied by 34 craftsmen such as carpenters, furniture makers, steel-window manufacturers, welders, printers and panel beaters. Business facilities are also being completed at other centres among them Guguletu and Atlantis, both in the Western Cape. (An African and a Coloured area.) [1]

A few areas have been declared open to members of all racial groups for business purposes but none of the central business areas of the metropolitan areas have (as yet) been declared free trade zones; despite the recommendation of the Riekert Commission and representations from local Chambers of Commerce, the central business districts of the major towns remain white areas.

Severe restrictions have also applied to hawkers thus preventing many developing entrepreneurial talents.

Such encouragement as is being given to small businesses is still within the confines of 'group areas' which has a very limiting effect on those so long excluded from the main trading areas.

A committee under the chairmanship of Judge Strydom was appointed to consider the opening of Central Business Districts in white areas to traders of other racial groups. At the time of writing the report and the Government's White Paper thereon were not available. But it has been suggested that this matter will be left to the relevant local authority. It is not yet known whether this will also apply to Asian, Coloured and African townships. Africans have been the most handicapped by regulations which limited them to one small shop, did not allow of branches and prevented most industries being established.

Were Soweto, for example, to be thrown open to white entrepreneurs, chain stores and super markets, there is little doubt that they would pose serious competition for black traders. There is a clash of interest here between black traders and consumers. One suggestion that has been made is that for a limited period, say five years, all restrictions on black traders be lifted but that they be sheltered from the competition of white entrepreneurs for the defined period as a quid pro quo for the many years during which they have been prevented from expanding their businesses.

1.2.2 OTHER RESTRICTIONS ON EMPLOYMENT IN TERMS OF THE GROUP AREAS ACT

Proclamations 3 and 4 of 12th January 1968 in terms of the Group Areas Act provided, inter alia, that no black person might be employed in any trading

1. SURVEY OF RACE RELATIONS 1982, p.129
establishment or business in a group area allocated to another group, in the
capacity of a charge hand, executive, professional, technical or
administrative employee, manager or supervisor unless he worked under the
full-time personal supervision and control of a white person. That is black
persons were debarred from the higher commercial as well as industrial posts
outside their own group area. These regulations have only been applied
spasmodically and now appear to have fallen in disuse, but until repealed
they remain a threat.

Another law which directly restricted the employment of Africans has been
the Physical Planning and Utilisation of Resources Act No. 88 of 1967 (now
the Environment Planning Act) in terms of which the employment of Africans on
land zoned for industrial purposes in 37 magisterial districts in the
Transvaal, Cape and Free State (these included all the main metropolitan
areas in these provinces) Proclamation 6 of 19th January 1968 has been
limited. This proclamation froze the African labour force to the number then
employed in all these areas. This action caused great uncertainty. It was
designed to carry out the policy of decentralisation and the principle was
enunciated that (with the exception of services and locally - bound
industries) only industries which were capital intensive would be permitted
to expand in the controlled areas. The 'extension' of a factory was defined
as any increase in the number of African employees.

As a guideline, the ratio of African to white labour was laid down.
Factories established after 1 June 1973 might be established in the
controlled areas (virtually the whole country except Natal and the homelands)
except by special permission, only if they were to employ African to white
labour in the ratio 2 to 1 or less. Factories established before June 1973
might expand if their ratio was 2,5 to 1 or less.

Although many exemptions were granted the Act gave rise to great
uncertainty and was a cause, inter alia, of the shift of the clothing
manufacturing industry from the Witwatersrand.

The Riekert Commission recommended the repeal of this section (3) of the
Environment and Planning Act and the Government in its White Paper on the
Commission Report accepted this recommendation but as far as I can ascertain
it has not been repealed although it may have become a dead letter. Perhaps,
those from the Transvaal can answer this.

In the Western Cape, as we have seen, the situation was already controlled
and a statement, renewed annually, that there is no suitable Coloured labour
has to obtained from the Department of Manpower, before any African Labour
may be employed.

Severe restrictions have thus precluded or controlled the movement of
labour to the urban and industrial areas, thereby containing them or their
families in areas where opportunities for obtaining employment are minimal
and their productivity low because of lack of capital, knowhow and
complementary resources.
New techniques have created openings to which the old trade union restrictions do not apply and these have been filled by persons of all racial groups and sexes. The highest those of technician of different kinds have been filled mostly by whites as they, and to a less extent coloured and Asian, have had the necessary background education and technical knowhow.

Nevertheless, apprenticeship has remained a barrier for it is still a requirement for the position of artisan in many trades.

2 RESTRICTION ON VERTICAL MOBILITY.

Even within the metropolitan areas the ability of blacks and particularly of Africans, to rise vertically has been, and still is, restricted. The measures that act in this way are many and various. Simple direct legislative action has been a minor factor and declining force compared to the statutory sanction of industrial agreements; these are still a powerful force.

1. One direct measure has been the Mines and Works Amendment Act of 1926 (later 1956) regulations in terms of which Africans are prevented from having access to certain skilled and many semi-skilled jobs classified as 'scheduled' jobs on the mines of the Transvaal and Orange Free State. Trade union pressure extended the jobs denied to Africans to nearly all skilled and semi-skilled work on the mines.

2. The State's own employment policy was for many years to employ blacks in temporary capacities only (e.g. on the South African Railways) and to keep all skilled, semi-skilled and even some unskilled jobs for whites.

3. The Industrial Conciliation Acts of 1924 and 1956, by their definition of employees, (a) excluded Africans from trade unions registered in terms of the Act and thus, from the statutory system of collective bargaining; (b) gave statutory sanction to 'closed shop' agreements of racially exclusive trade unions; (c) gave statutory sanction to minimum wages for different grades of work which exclude those not, in the employers' eyes, worth that minimum.

4. Statutorily binding wages regulations in terms of the Wages Acts of 1925 and 1957 similarly excluded those not considered worth the minimum wages operative.

5. Statutory regulations in terms of the Factories, Machinery and Building
Works Act of 1941 led to a racially rigid structure of the labour force and prevented employers using members of the different racial groups indiscriminately because of the requirements for separate work places, canteens, toilet and restroom facilities. Although the separate cloakrooms, canteens and work places are no longer compulsory their integration has still to be negotiated with the workforce.

All such measures have a twofold effect: on the one hand they exclude certain persons from more remunerative employment, crowd the unregulated part of the market and depress wages there. On the other hand they raise the wages of those in the protected sector. There may be some 'shock' effect of increased minimum wages causing employers to use labour more efficiently or to provide training and make labour more productive – but this could cause increased unemployment and the use of more capital intensive methods of production.

Upward mobility may also be retarded by lack of basic education and training. Education is dealt with elsewhere.

2.1 APPRENTICESHIP

Apprenticeship requirements in terms of the Apprenticeship Act No.26 of 1922 (redrafted 1944), for many years made, and still make, it difficult for blacks, and especially Africans, to be employed in many skilled trades, although the bar on Africans is not now so absolute. Coloured and Indian youths are now much more generally apprenticed (especially in building, metal and motor engineering) but not on the South African Railways. The closed shop still operates in many firms and workshops, although the Government's White Paper on the Wiehahn Commission sided with the minority of the Commission and stated that it would be logical to outlaw the closed shop. The National Manpower Commission and the Industrial Court consider it too deeply entrenched but are examining it further.

The table at the end of this paper gives the number of white, coloured, Indian and African apprentices from 1978 to 1982. It will be noted that Africans do not appear in this official table until 1980 and that there were no black apprentices in the state owned and controlled transport services until 1982 when there were no coloured but 4 Asian and 7 Black apprentices. A total of 1,647 apprentices in these services.

Far-reaching amendments were made to the Industrial Conciliation Act by the Labour Relations Amendment Act, No.57 of 1981, most of them following recommendations of the Wiehahn Commission Report (Part 5) on industrial relations.

A new definition of employee included all African workers, both local and foreign. The 1979 Amendment Act had defined as 'employee' 'African workers excluding foreign and local migrant workers and commuters' (from the
homelands), although an exemption made by the minister had permitted the inclusion of local migrants and commuters.

The Industrial Conciliation Amendment Act. No. 94 of 1979 arising from the Wiefahn Commission and the Government's White Paper thereon had extended the definition of 'employee' to include certain Africans who thus became eligible to join trade unions registered in terms of the Industrial Conciliation Act. The Act still maintained the principle of racially separate trade unions or branches although subsequently, by the Labour Relations Amendment Act No.57 of 1981, these provisions (introduced in 1956) were repealed (Labour Relations Amendment Act, No.57 of 1981).

The Industrial Conciliation Amendment Act No.94 of 1979 had made provision for provisional registration of trade unions (and employers associations). These provisions too were repealed in 1981 (Labour Relations Amendment Act, No.57 of 1981).

Thereafter it became illegal for Africans to join existing unions, should the unions desire to extend their membership, or the membership of their federations, to Africans. Tucsa (Trade Union Council of South Africa) the largest federation of unions had in the past held a vacillating position in regard to the membership of African unions, at one stage welcoming them but subsequently, under pressure from the Government, refusing to admit them to membership; although some of its member unions assisted in the organisation of 'parallel' African unions.

It is still too soon to say what the eventual trade union structure of the country will be: whether mixed or racially segregated unions will predominate. All unions, whether registered or not, have to make certain returns to the Department of Manpower.

The nature and actions of trade unions are crucial because although the notorious Clause 77 of the Industrial Conciliation Act in terms of which Work Reservation Order were made, has been repealed and all have been withdrawn. The admission of Africans to jobs from which they were previously excluded still depends on the goodwill and agreement of trade unions.

3 THE EFFECT OF INDUSTRIAL LEGISLATION ON THE ALLOCATION OF RESOURCES AND INCOMES

We have seen that until very recently, and still today, in certain occupations and industries, notably mining, the operation of a racially exclusive closed shop is legalised. Apprenticeship in many industries is, in practice, barred to blacks, especially black Africans, although in the last five years apprenticeship has been much more generally open to coloured and
Indian youths and to a much less extent, to Africans. Thus they are barred from the higher paid artisan work.

Thirty years ago it was possible to gauge the colour of a worker from his wage. This is no longer the case as blacks are doing a much greater range of work in nearly all industries. The differential between skilled and unskilled wage rates has also declined markedly, especially during the last ten years. Whereas even ten years ago, in 1973, except in mining, the most usual differential between artisan and unskilled wage rates was between 4 or 5 to one. It is now between two and four to one and often is two to one.

In 1973 in some 49 industrial council agreements the lower quartile, median, and upper quartile artisan/labour differentials were 3.18, 4.10 and 4.77. In 1983 they were 2.22, 2.92 and 3.74. The industries included inter alia, the building, parts of the clothing, the furniture and the motor industries. [2]

Given the shortage of skilled artisans and the plethora of unskilled Africans; albeit that many Africans in the rural areas have difficulty getting to what work there is for them in the towns, one would expect the gap between skilled and unskilled wage rates to have widened.

The fact that the gap has closed to a marked extent shows that forces other than those of the market have been at work.

This significant change followed labour unrest, particularly in Natal in 1973, which gave rise to a great increase in the organisation of black trade unions. At the same time the shortage of skilled labour has been and, some would say, is the most important factor in the opening up of many semi-skilled and some skilled jobs to blacks. The acceptance of various codes of employment, both internally and externally drawn up, have also played their part.

These factors appear to have had significant effects. The recognition and eventual inclusion of Africans in the system of collective bargaining, whether their unions are officially registered or not, is an important milestone. This together with the wider range of job opportunities open to them and the acceptance by employers' principle of the 'equal pay for equal work, has tended to raise black wage rates.

The increase in the real wages of Africans which took place during the decade 1970-1980 was particularly marked in the mining industry where, however, it was not the result of industrial legislation. The effect of the colour bar as we have seen, has been to keep Africans out of the 'scheduled' jobs, and many others, and thereby out of the more highly paid jobs. The more than threefold increase in African wages in the mining industry in the period 1970 to 1980 was due, on the one hand to the rise in the price of

2. I am indebted to Delia Hendry of Saldru for this information.
gold, which made more funds available to employers, and on the other to the loss and threat of loss of foreign Africans from Malawi and Mozambique which forced the miners into competition with employers of labour from South Africa. The emerging black unions for whom stringent, but subsequently amended, conditions for recognition were laid down by the Chamber of Mines only at the end of 1980, also played a role.

The greater range of jobs open to the black labour force means that comparisons of average wages are less meaningful than when the type of work done was more circumscribed. Nevertheless the average wage rates of the different racial groupings are shown below in Table 2.

Thus although reduced, the wage gap remains — as African wages and job opportunities have increased so have those for whites.
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TABLE I
APPRENTICES REGISTERED ACCORDING TO POPULATION GROUP, 1978–1982
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Source: Calculations based on Quarterly Bulletin of Statistics.
These papers constitute the preliminary findings of the Second Carnegie Inquiry into Poverty and Development in Southern Africa, and were prepared for presentation at a Conference at the University of Cape Town from 13-19 April, 1984.

The Second Carnegie Inquiry into Poverty and Development in Southern Africa was launched in April 1982, and is scheduled to run until June 1985.

Quoting (in context) from these preliminary papers with due acknowledgement is of course allowed, but for permission to reprint any material, or for further information about the Inquiry, please write to:

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