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THE SOCIAL CONSEQUENCES OF INDUSTRIAL ACCIDENTS:

DISABLED MINE WORKERS IN LESOTHO

by Rachelle Susan Arkles

A research report submitted to the Faculty of Arts, University of the Witwatersrand, in fulfilment of the degree of M.A. (Sociology), 1993.

I hereby declare that this dissertation is my own work and that I have not submitted it to any other university for any degree

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Rachelle S. Arkles

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PREFACE

> "My home is not like another person who works in the mines ... who started working in the mines when I started. The men who I started to work with in the mines are better than me. My family is not improving. We go backwards, not forwards"[1].
>
> (Sydney, paraplegic ex-miner)

When looking at the impact of disabling accidents at the workplace for migrant workers, one crucial question needs to be considered: to what extent is the burden of disablement (in particular its economic and social dimension) being displaced on to rural communities from which mineworkers are recruited? The importance of this question lies in the fact that, prior to the accident, the disabled person was a productive and stable wage-earner contributing to the maintenance and well being of his dependants and hence, indirectly to the community. The worker's social position prior to the disabling accident becomes the relevant yardstick of comparison with the circumstances the worker finds himself in after the accident[2].

There are two related but separate issues here. Firstly, the question of the social consequences of a disabling work injury for migrant workers and their families. Secondly, the adequacy of the relevant legislation in providing protection to workers who experience a serious accident at work. These are broadly speaking the two major concerns of this thesis, which ultimately

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[1]Quoted in Arkles, RS, 1985. Industrial Accidents:The Social Consequences, DSG/Critical Health, University of the Witwatersrand:34.

[2]I use the male gender when referring to workers, since currently only males are employed as mineworkers underground.

raises questions about the nature of compensation and social policy appropriate to the specific needs and problems of migrant workers disabled in industry[3].

The objectives of the thesis and the set of research questions posed have evolved largely through the experience and findings of two studies conducted by the author. The first was a series of in-depth case-studies of paraplegic ex-miners from Lesotho and the Transkei[4]. The second was a fieldwork project conducted in Lesotho whilst employed at the National Centre for Occupational Health (NCOH) in Johannesburg[5]. Both studies were informed by international studies on industrial disability, as well as, examples of compensation legislation that has changed to accommodate the needs and demands of injured workers.

The indepth case-studies were essentially concerned with what happens to paraplegic ex-miners once they are discharged from hospital. In this exploratory study, the five workers interviewed gave eloquent accounts of the nature and extent of the problems they experienced as a result of their disability. First and foremost, they highlighted their problems with compensation - those compensated before the introduction of pensions for black

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[3]The focus of this study is on migrant workers who become disabled in industrial accidents on the mines, and I will be referring to this group of workers throughout the thesis. However, while there are specific problems relating to the separation of work and home, and, to the experience of disability in a rural context, the problems and policy implications pertaining to disabled workers in urban areas and in other industrial sectors are not fundamentally different. Workers' compensation, the provision of rehabilitation, vocational retraining and employment, and appropriate services and facilities remain the key issues confronting all workers who become disabled. In this sense, the findings, and consequent policy implications of this study have much resonance for disabled workers elsewhere.

[4]Arkles, RS, 1985. Op Cit.

[5]Arkles, RS et al, 1990. The Social Consequences of Industrial Accidents:Disabled Mineworkers in Lesotho, NCOH Report No. 13/1990.

mineworkers in 1977 being in the most precarious situation. They drew attention to the additional expenses they incurred as a result of the disabling injury, as well as lost income, not only from mine wages but from the labour they used to perform at their rural homes in between mine contracts. They highlighted their frustration at the drop in their wages as a result of transfer to surface jobs, and for those no longer employed, at being in a wheelchair and unemployed. They told of the sadness of not being able to care adequately for their families; how their wives had to take on extra burdens; and, how the schooling of their children suffered. Some spoke of the support they got from members of their communities while for others their experience was one of increasing social isolation.

These case-studies provided detailed accounts of the experiences of migrant workers confined to wheelchairs as a result of spinal injuries. Their life stories revealed a number of serious flaws in the system of workers' compensation and rehabilitation for workers in industry. They began to expose the unique problems experienced by para- and quadriplegics living in remote rural areas. This constituted the first steps towards a body of literature describing the social and economic impact of occupational injuries for migrant workers (and their families) with permanent total disability in rural areas.

The impact of industrial accidents on the lives of workers with injuries resulting in permanent partial disability was yet to be documented in the South African context[6]. Critical appraisals of workers' compensation systems elsewhere emphasised the point that permanent partial disability is a much more complex entity than

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[6] 'Permanent total disability' refers to workers with 100 per cent impairment according to the Workmen's Compensation Act (WCA). 'Permanent partial disability' refers to any permanent impairment rated at less than 100 per cent. See appendix 3 - the first schedule of the WCA.

permanent total disability[7]. This is because the degree of disability - a percentage rating - ascribed to a given impairment in workers' compensation acts, may bear little, if any, resemblance to the amount of disability actually experienced by the individual. Yet, systems of compensation do not necessarily take this crucial reality into account.

The research on workers with spinal injuries suggested that this was the tip of the ice-berg in understanding the complexity of disability in industry with its ramifications for workers, their families in rural areas, regional economies, worker organisations, management and relevant government offices. The mining industry seemed an appropriate place to continue the investigation. There were three main reasons for this. Firstly, the mining industry produces a substantial proportion of all cases of permanent disability amongst black workers in South African industry[8]. Secondly, the industry employs vast numbers of migrant workers from all over the southern African sub-continent who, once they are no longer employed on the mines, must return to their rural homes where not much is known about the conditions (social and environmental) under which disabled mineworkers live. Thirdly, the centralisation of the industry, and, the presence of an active trade union for Black workers -

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[7]cf.Ginnold, RE, 1976. **A Follow-Up Study of Permanent Disability under Wisconsin Workers' Compensation**, Washington, DC:US Department of Labour (NTIS PB273784); Weiler, PC, 1980. **Reshaping Workers' Compensation for Ontario**. Toronto:Government Printer.

[8]Compensation figures for 1985 show that of 17 180 workers compensated for permanent disability in South African industry, Rand Mutual (which administers compensation for all members of the Chamber of Mines plus some other Mines and Works) granted compensation to 11 613 workers. Since 1985, this ratio has changed as a result of a shrinking mining industry and a declining accident rate. The most recent published workmen's compensation statistics show that in 1988, 7 567 workers were granted compensation by Rand Mutual for permanent disability as compared with 17 504 for industry as a whole. See, **Workmen's Compensation Act 1941:Report on the 1985 Statistics**. Hennies, Government Printer; **Workmen's Compensation Act 1941: Report on the 1988 Statistics**. Hennies, Government Printer.

The National Union of Mineworkers (NUM) - meant that it would be possible to chart the organisational developments towards a comprehensive strategy for the industry's disabled.

The research on disabled mineworkers was extended to include workers with all types of disabling injuries (above a certain defined percentage), and, designed to enable one to generalise the results to a broader population. The emphasis of the fieldwork survey, out of which this thesis evolved, was on the collection of quantitative rather than qualitative data in providing a picture of the longer-term impact of work-related injury for workers in rural migrant communities. This extrapolation from sample to population is however, `one mode of generalisation'[9]. As argued by Burawoy, a second mode of generalisation is that which refers to the "extension from the micro context to the totality which shapes it"[10]. The thesis thus draws on the specific life situations of individual migrant workers with disabilities to illustrate both the human dimension of the consequences of industrial accidents, and, to illuminate the relationship of these specific experiences to the general whole. Further, interviews with key players involved in occupational safety - mine medical management and union safety and executive representatives - provide insight into the struggles and strategies utilized by the various parties to advance and protect their respective interests[11]. These individual, collective and corporate struggles around disability from mine accidents have been profoundly shaped - both with

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[9]Burawoy, M, 1985. The Politics of Production, Verso:18.

[10]Ibid.

[11]The Workmen's Compensation Commissioner (WCC) had agreed to an interview by the author to put forward the views and perspectives of his office. However, due to his involvement in an urgent commission of inquiry, he was subsequently unavailable for interview. As the compensation legislation (including the proposed Injured Employees Compensation Draft Bill, 1993) has been drafted by the Commissioner and representatives of his office, their perspective will be inferred from the compensation legislation itself.

respect to cause and consequence - by a particular economic and political system, namely, migrant labour. This study focuses on the socio-economic consequences of industrial disability in the context of a system of labour migrancy. This does not imply that other factors - personal characteristics of an injured worker, family dynamics, psychological impact and cultural perceptions - are unimportant in shaping the individual's experience of disability. Rather, while individual responses to disability and to rehabilitation may vary, the common denominator is a particular structural reality, namely, the system of migrant labour, which frames the private struggles of individual disabled migrants and sets limits on their productive capacity.

The specific objectives of the study can be summarized as threefold: Firstly, to document the social consequences of permanent disability for migrant mineworkers; secondly, to provide a critical evaluation of the extent to which the Workmen's Compensation Act is able to deal with the problems raised by permanent disability (both total and partial) in industry; and thirdly, to establish a method for sampling `rare' populations (workers with physical disabilities) in the context of remote rural areas, and where `conventional' sampling universes are unavailable.

Chapter one argues the need for a sociology of occupational disability, which locates disabled workers in their social context, by pointing to the gap in the sociological literature in at least two respects. Firstly, the vast literature on labour migrancy has paid little attention to the legacy of occupational disability borne by migrant communities. Secondly, the literature on safety, health and work - studies in the `labour process' tradition - have tended to stop short of examining both the impact on, and the capacity of, rural households to provide for the `reproductive' needs of workers who become disabled. This chapter also sets out a guiding theoretical framework - Marx's theory of the reproduction of the labour force in capitalist society - in which the findings and discussion are located. More

specifically, two key concepts of this theory's application to the system of labour migrancy, namely, the separation of the `maintenance' and `renewal' functions of reproduction, are particularly helpful analytic concepts[12].

Chapter two looks critically at the legal framework in South Africa which covers occupational disability in relation to work accidents. The Workmen's Compensation Act, No. 30 of 1941 (as amended) is the key piece of legislation examined. The procedural requirements in the Labour Relations Act (LRA) covering `dismissal on the grounds of incapacity' are also considered. The central critique advanced of the Workmen's Compensation Act revolves around its narrow focus on a clinical assessment of disability, which fails to take the social and vocational dimension of disablement into account. In considering the implications of these problems for a more appropriate legislative framework, it has been instructive to look at an example of a compensation system elsewhere - the Ontario legislation in Canada - which was broadened to include a more sociological approach to workers' compensation. The above is scrutinized and evaluated for its potential applicability to the South African context. This chapter also points briefly to the historical and industrial relations context of workers' compensation.

Chapter three considers the dilemma of sampling in the absence of conventional sampling universes, and explores a method appropriate to the southern African context. Alternative methods of sampling, those that work within community networks, such as multiplicity sampling or `networking', and `snowballing', are explored and evaluated. In addition, the use of interviews and a biographical approach to the collection of research material

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[12]Burawoy's usage of the terms `maintenance' and `renewal' are particularly useful conceptualisations of Marx's notions of daily reproduction (maintenance) and generational reproduction (renewal) of the labour force. See, Burawoy, M, 1980. "Migrant Labour in South Africa and the United States", in Theo Nichols ed., Capital and Labour:138-173. Fontana Publishers.

is presented to complement, and highlight the limitations of survey techniques. The discussion draws a distinction between methodology, the total process of inquiry, and methods, the use of specific techniques to generate knowledge.

Chapter four provides the results of a survey of 64 disabled mineworkers - injured after 1970. It focuses on issues of compensation, employment and vocational training, as well as, access to rural resources, such as income-generating activities and other facilities necessary for daily living. The emphasis in this chapter is on descriptive, quantitative data in its attempt to provide a picture of the longer-term effects of occupational disability for workers in rural migrant communities. The analytic potential of the survey is also explored by looking at the relationship between different variables.

Chapter five brings the `quantitative' issues of the previous chapter to life by exploring the human dimension of living in a rural area with a disability. The chapter also raises issues not captured by survey data alone. Five brief biographies are presented to highlight the different dimensions of the struggles and strategies of individual disabled workers, and, to illustrate their relationship to the more general problems experienced. This chapter also demonstrates, through an individual's life-story, how direct intervention - a change in research strategy - can significantly alter the outcome of research enquiry.

Chapter six focuses on the organisational initiatives in the mining industry around disability. The emphasis is largely on the NUM's organisational strategy around disability, which has cohered since the 1990 wage negotiations with the shift in collective bargaining towards issues of the `social wage'.
The changing nature of mine medical practice - management's initiatives in rehabilitation over the last two decades - is also examined in the context of changes to the system of labour migrancy and in the subcontinent as a whole. It is suggested that the current crisis in the mining industry has the ironic

potential for positive changes around the issue of occupational disability. Ultimately however, these developments will be constrained by the economic vicissitudes of the industry.

Chapter seven concludes by looking at the problems and policy implications raised by the findings of the study's fieldwork and interviews with key players. On the one hand, the research demonstrates many continuities with past `reproductive' practices in respect of the mines' disabled workforce. On the other, important shifts in the industry's approach to rehabilitation are identified. These are largely a result of the erosion of the `interdependency' - between the spheres of `maintenance' and `renewal' - necessary for the migrant labour system's continued functioning. This chapter also reflects on the relationship between the generation of knowledge and its practical implementation by highlighting the manner in which concepts and ideas can assist in reshaping the policy agenda.

In the two and a half years since the fieldwork project was completed enormous changes have occurred in the country as well as in the mining industry. Firstly, the mining industry is experiencing its worst financial crisis to date and is currently in the process of major restructuring. Secondly, the government's reform programme, beginning in February 1990, has given the political role of organised black labour more potential than ever before. The implications of these changes and developments for disabled mineworkers could well prove contradictory. On the one hand, there is increasing negotiation between the Chamber of Mines and the National Union of Mineworkers around the issue of disabled mineworkers. On the other, the mines' fiscal crisis, the closure of mines and subsequent retrenchment of large numbers of workers, the shrinking TEBA - The Employment Bureau of Africa - base (the point of contact between disabled workers in rural areas and the mines), and the increasing impoverishment of the rural reserve areas, could threaten the financial and rehabilitation prospects of disabled mineworkers.

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CHAPTER ONE - INTRODUCTION: TOWARDS A SOCIOLOGY OF OCCUPATIONAL DISABILITY

The role of labour migrancy in the development of modern South Africa has been described as "a story that highlights the country's uniqueness"[13]. The central feature of this economic and political system has been the geographical separation of home and work and the movement of workers, without their families, between rural and urban areas. While migrancy itself is not a labour system peculiar to South Africa[14], its uniqueness in the southern African context has been in its tenacity, its centrality to the development of the South African economy, principally through mining, and, in its political, and especially, institutional form. Not surprisingly, a sizable body of literature has emerged looking at the institution of migrant labour in terms of its historical development[15], its relationship to the economies of both South Africa and the labour

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[13]Crush, J, Jeeves, A, Yudelman, D, 1991. South Africa's Labour Empire:A History of Black Migrancy to the Gold Mines. Westview Press Inc.

[14]See for example, Castles and Kosack, "The Function of Labour Immigration in Western European Capitalism", in Theo Nichols ed. Capital and Labour, Fontana, 1980:117-137; Also, Cohen, R, 1987. The New Helots: Migrants in the International Division of Labour, Gower Publishers.

[15]A number of social historiographies have detailed the manner in which traditional communities became embroiled in the migrant labour system. See for example, Beinart, W, 1982. The Political Economy of Pondoland 1860 - 1930. Ravan Press; Delius, P, 1983. The Land Belongs To Us:The Pedi Polity, The Boers and the British in Nineteenth Century Transvaal. Ravan Press; Luli Callinicos's Gold and Workers (Ravan Press:1981), provides a popular historical account of these processes, rooted in the experiences of the emerging proleteriat. For an overview of the historical development of migrant labour in the mining industry, see Allen, V, 1992. The History of Black Mineworkers in South Africa:Volume 1, The Moor Press.

supplying areas[16], its own defining characteristics[17], and its impact on aspects of family and community life[18]. Much of this body of literature, falls within a paradigm that sought to explain and clarify the functioning of the system of migrant labour, with all its social, political and economic manifestations, in relation to the dominant interests in society. This Marxist, or historical materialist approach, broke from earlier traditions that explained migrancy in individual and ethno-cultural terms. The `revisionist' revival focused largely on the migrant labour system's functionality to capital accumulation in South Africa. Webster has referred to this tradition as `something of an orthodoxy' and points to two

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[16]cf. Frederick Johnstone's, Class, Race and Gold, University Press of America, 1976; Rob Davies', Capital, State and White Labour in South Africa 1900-1960, Harvester Press Ltd., 1979; Harold Wolpe's seminal work on the development of capitalism in South Africa and the centrality of cheap labour-power to its development. See, "Capitalism and cheap labour-power in South Africa:From segregation to apartheid", Economy and Society, 1(4), Nov, 1972; Also, Norman Levy's focus on the `cheap labour system' in the South African gold mines. See, The Foundations of the South African Cheap Labour System, Routledge and Kegan Paul, 1982. For the impact of migrant labour from a specific labour-supplying area, see Ruth First's study, Black Gold: The Mozambican miner, proleteriat and peasant, Sussex, The Harvester Press, 1983.

[17]For discussion on the nature of labour repressive institutions within systems of migrant labour, two studies are particularly useful. Michael Burawoy's, "The functions and reproduction of migrant labour: Comparative material from Southern Africa and the United States", American Journal of Sociology, 81, (5), 1977; Stanley Greenberg's, Race and State in Capitalist Development:Comparative Perspectives. New Haven, 1980. See also, Sean Morony's, "The compound as a mechanism of worker control". South African Labour Bulletin, vol 4,(3), 1978. A classic historical study of `forced' mine labour is Charles van Onselen's, Chibaro:African Mine Labour in Southern Rhodesia 1900-1933. Pluto Press, 1976.

[18]For the impact of migrant labour in Lesotho, see Colin Murray's, Families Divided, Cambridge University Press, 1981; A 1947 study on the impact of migrant labour on "tribal life", is Schapera, I, Migrant Labour and Tribal Life: A Study of Conditions in the Bechuanaland Protectorate. Oxford University Press, 1947.

recently published studies that challenge it[19]. The work of Crush, Jeeves and Yudelman[20], and James[21], focuses on the transformation of the migrant labour system within the context of the industry's restructuring, as well as, broader developments within South Africa and the region[22]. The notion of the system's functionality is scrutinized in posing the question of migrancy's future survival.

In the context of this economic and political system of labour migrancy, studies of occupational disability and its wider ramifications can be usefully placed in a theoretical framework which revolve around Marx's notions of reproduction of the labour force in capitalist society. More specifically, the application of this theory to a system of migrant labour, where within the sphere of repr ction, the functions of `maintenance' and `renewal' of the labour force are separated. In simple terms, `reproduction' refers to those activities necessary for the daily and generational survival of the labour-force. In capitalist society, these two spheres, namely `maintenance' and `renewal', are usually concealed[23]. What differentiates systems of migrant

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[19]See, Webster, E, 1993. "Rethinking Migrant Labour". South African Historical Journal. (forthcoming).

[20]Crush et al, 1991. Op Cit.

[21]James, W, 1992. Our Precious Metal: African Labour in South Africa's Gold Industry, 1970-1990. David Philip.

[22]The Migrant Labour Project (MLP) - a collaborative effort between the Department of Sociology at the University of Cape Town and the African Studies Unit at Queen's University, Canada - has kept the debates around migrant labour circulating by focusing on a range of topical and diverse issues pertinent to transformations in migrant labour today. See for example, Laburn-Peart, C, and Mohlabane, H, "Transforming mine housing in South Africa:Changes in the attitudes of black mineworkers towards home ownership schemes". Migrant Labour Project, Working Paper Series no. 11; Hunter, P, "Hostels, Home-ownership and Rent Subsidies at JCI's Gold Mines". Migrant Labour Project, Working Paper Series.

[23]It has taken a body of feminist literature, much of it within a Marxist problematic, to expose the hidden world of unpaid labour performed by women in the domestic sphere, and, to

labour, is the geographical separation of the spheres of `maintenance' and `renewal' and the politico-legal mechanisms to ensure this. It is the oscillatory movement between work and home that links these two spheres intricately. Burawoy conceptualises it thus. "The state organises the dependence of the productive worker on the reproductive worker, while the economy organises the dependence of the reproductive worker on the productive worker"[24]. This interdependence, argues Burawoy, applies to both the worker and his family, as well as, between the state supplying labour and the state employing labour. In relation to the migrant and his family, renewal processes are dependent on income left over from maintenance which is remitted home; in turn, workers require continued support from their families engaged in renewal at home, precisely because they have no permanent legal or political status at the place of work. In relation to the state supplying labour, revenue and employment is required for its population, while the `host' country requires labour at low wage rates[25].

For capital, the key advantage of importing labour power, is that it enables considerable savings to be made in the costs of the social reproduction of the labour force, thereby raising correspondingly the overall average rate of profit[26]. This is accomplished, argues Castells, in essentially three ways: by recruiting immigrants from the young and productive thus avoiding

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analyse its economic, political and ideological function in relation to capitalist society as a whole. See for example, Veronica Beechey's article, "Critical Analysis of some Sociological Theories of Women's Work", in A. Kuhn and AM. Wolpe, 1978. Feminism and Materialism:Women and Modes of Production, London, Routledge and Kegan Paul; also, Seccombe, W, 1974. "The housewife and her labour under capitalism", New Left Review, no.83.

[24]Burawoy, M, 1980:139. Op Cit.

[25]Ibid.

[26]Manual Castells, "Immigrant Workers and Class Struggle in Advanced Capitalism:The Western European Experience", Politics and Society, 5(1), 1975:108.

the costs of `rearing' workers and the maintenance costs after their working lives have ended; by a system of workers as `forced bachelors', thus avoiding the costs of reproduction of families, such as housing, schools, hospital care, welfare benefits; and by lowering the costs of the reproduction of the immigrants or migrants themselves in relation to other workers in the society[27].

Much of the advantage to capital of the utilization of systems of migrant labour, rests on the ability of the spheres of `maintenance' and `renewal' to ensure the continued interdependence of worker and family, or in Burawoy's terms, to `regulate the sphere of labour' between the place of work and home. For the `twin dependency' of the spheres of maintenance and renewal operate with mechanisms (political and legal) to ensure both their separation and their continued connection. This interdependency is crucial to the functioning of the system. By implication, a breakdown in one sphere would impact on the other. Due to the dominance of the capitalist mode of production, a breakdown in the functions of `maintenance' has far greater implications for workers, their families and regional economies than the other way round. The large reserve army of labour in areas from whence the mines recruit has kept wages down, reduced the bargaining power of organised labour, increased the vulnerability of workers (able-bodied and especially, disabled) and ensured the replacement of workers. Nevertheless, given the continued use of migrant labour, and given changing economic, technological and political pressures on the industry, it is worth pondering - in relation to the `interdependency' required for the functioning of the system - what the implications for mining capital might be if a breakdown, en masse, in the `renewal' functions of migrancy were to occur[28].

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[27] Ibid.

[28] This breakdown could be induced by economic and/or political factors: increased dependence on wages, the progressive erosion of what is left of the productive capacity of the reserve economies, civil conflict (in countries like Mozambique), and

The economic dependence of southern Africa's labour reserves, including the `independent' states, on South Africa is reflected in the household struggles of individual migrants and their families throughout the subcontinent[29]. This raises issues pertinent to debates around `development' and `underdevelopment'. While the arguments are complex and controversial and too numerous to engage in here, two opposing positions that have enjoyed widespread currency, are useful for their differing interpretations of dependency and its implications[30]. One position argued that development in the `metropolis' was predicated on underdevelopment in the `periphery'[31]. The latter was seen as a powerless entity in the face of the political and economic dominance of the `metropolis'. This position has been largely superseded by one which asserts the reshaping of precapitalist `modes of production', rather than their destruction, by capitalist modes of production[32]. With the

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possible union-driven strategies by mineworkers and their wives to defy the mechanisms of migrancy.

[29]For example, at the beginning of the 1990's, over half of Lesotho's national income derived from migrant miners working in South Africa. Crush et al, 1991. Op Cit:1-2. Murray, in the preface to Families Divided Op Cit, states that "no aspect of contemporary village life can be understood without central reference to the dependence of villagers for their livelihood in earnings derived from the export of labour".

[30]For a discussion of these debates see, "The Hidden Abode of Underdevelopment", in Michael Burawoy's, The Politics of Production. Op Cit:209-252. Also, Munck, R, 1984. Politics and Dependency in the Third World:The Case of Latin America. London, Zed Books Ltd.

[31]One of the foremost proponents of the `development of underdevelopment' school was the early work of Andre Gunder Frank. See for example, Frank, AG, 1967. Capitalism and Underdevelopment in Latin America. New York, Monthly Review Press.

[32]In a later piece of work, Frank shifted his position to look at the workings of capital accumulation on a world scale. cf. Frank, AG, 1978. Dependent Accumulation and Underdevelopment. London, Macmillan. According to Munck, "the preoccupation of early writers with international relations of `dependence' has been replaced by more detailed studies of the concrete structures

latter conceptualisation, the notion of two separate `modes of production' becomes obsolete in the face of capital's increasing encroachment in the world economy. Further, the ability of interest groups in the `periphery' to shape developments in the `metropolis' is not discounted. For Burawoy, "once the dominance of the capitalist mode of production has been established and other modes subordinated to its requirements, the raison d'etre of the colonial state disappears. A new form of state emerges, concerned with the expanded rather than the primitive accumulation of capital, with the extraction of relative surplus value from production rather than of specific surplus labour through exchange, and with the production of specific types of labour power rather than the generation of labour supplies [my emphasis][33]. The issue goes further than economics per se. In all the studies of `modes of production', notes Burawoy, the labour process is left out. Consequently, "it is not surprising that the struggles over its relations - the politics of production - are ignored as well"[34].

For Burawoy, the implications of separating `renewal' and `maintenance' are two-fold: one relates to the function of migrant labour; its economic and political advantages to the dominant interests in society. The second implication, concerns the reproduction of the system of migrant labour itself; the reproduction of migrancy's own defining characteristics, including of course, the separation of `maintenance' and `renewal' processes. The strength of Burawoy's argument is that he roots his analysis of the functions of migrancy in specific conjunctures. For example, he dissects the notion of `cheapness' by asking, cheap for whom, which aspects of the costs of the reproduction of labour power - maintenance or renewal - are reduced, and, what of the political and economic costs of

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of dependent capitalism". Munck, R, 1984. Op Cit:14.

[33]Burawoy, The Politics of Production, Op Cit:214-5.

[34]Ibid:213.

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[33]Burawoy, The Politics of Production, Op Cit:214-5.

[34]Ibid:213.

reproducing the system in relation to the economic benefits based on the externalisation of renewal?[35]. It also begs the question, what of the social costs of externalising `renewal' functions?

The changing economic and political conditions for the survival of migrant labour as a system, are at the centre of much of the current writings on labour migrancy. Burawoy sets up a thesis in which he postulates that, "when the specific mechanisms that enforce the circulation of labour (between the spheres of maintenance and renewal), restrict its upward mobility, and establish the migrant's powerlessness are relaxed or disappear ... we should then expect the system to fail to reproduce itself"[36]. The evidence suggests however, that this is an unlikely scenario in the short and even medium term. James notes that, "by the early 1990's, only 5 per cent of the african labour force was involved in the emerging alternatives to migrant labour"[37]. By the end of the 1990's, TEBA estimates that only 20 percent of the African workforce will be permanently settled around the mines[38]. Other estimates for the year 2000 predict only 10 percent of the black work force being in family housing[39]. There are other reasons advanced as to why the mining

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[35]Burawoy, Op Cit:141. These issues are by implication, being debated in the context of the need for greater productivity in the mining industry. There was a time when cheap black labour within a migrant framework was in large part, the basis for South Africa being the lowest unit-cost gold producers in the world. With a changed international gold price, as well as changing political technological and economic circumstances, South Africa's gold is no longer `cheap'. While in the past, productivity was largely based on cheap black labour, in the future it is likely to be based on competitive prices and quality. This has implications for the type of workforce needed, and whether labour is perceived as an asset or as a cost. cf. Dirk Hartford's article, "`One Vision' For Mining", Tribute, February 1993, for discussion of these issues.

[36]Burawoy, Op Cit:149.

[37]James, Op Cit:7.

[38]Quoted in James, Op Cit:87.

[39]Crush et al, Op Cit:209.

industry will continue to use foreign labour for the foreseeable future[40]. Firstly, throughout the 1980s, the principle of diversified sourcing guided the recruitment strategies of the Chamber. Secondly, the foreign affairs bureaucracy of the South African state has tended to support the mining industry's arguments for the continued use of foreign workers, given their own perception of the value of political leverage in the region. Thirdly, foreign workers are currently amongst the most skilled and experienced in the mine labour force giving the mining industry little incentive to displace them. Finally, foreign migrants from sources close to the mines, such as Lesotho and the Orange Free State goldfields, are able to engage in `commuter migrancy', a form of migrancy embraced by the industry since the seventies[41]. These financial and structural constraints on the mining industry and the state, as well as, the vested interests of post-colonial states in the region will ensure the continued reproduction of migrant labour markets for the foreseeable future[42]. Thus, while alternatives to migrancy are being debated by mine management, and, being placed on the collective bargaining agenda by the NUM, while the `colour bar' has been officially abandoned[43], and while the NUM is increasingly asserting its right to joint control over the working and living conditions of its constituency, the evidence suggests that rather than failing to reproduce itself, migrancy as a system is reproducing itself under different conditions. James, uses the term `stabilized migrancy' to describe these changes, while Crush et al, prefer the term `pseudo-stabilization', arguing that while workers do not receive the benefits of full stabilisation,

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[40]The above arguments are set out in, Crush, J, "The Chains of Migrancy and the Southern African Labour Commission", Migrant Labour Project, Working Paper Series. University of Cape Town/ Queen's University, Canada.

[41]Ibid:60-2.

[42]These issues are discussed in detail in James, W, 1992. Op Cit; Crush et al, 1991. Op Cit.

[43]The colour bar was officially abandoned in 1987-8. See, Crush et al, Op Cit:99.

management receives the benefit of greater skill and productivity of its workforce[44]. Perhaps the greatest change in the system of labour migrancy over the last two decades is the trend towards `career migrancy' and the increasing differentiation of the labour force - the transformation of the functions of migrancy from `the generation of labour supplies' to the `production of certain types of labour power'. Crush et al predict a three-way differentiation of the labour force based on current trends. "The first group will be a growing proportion of stabilized, skilled production workers, artisans, and supervisors living in owner-occupied housing on mine properties or in neighbouring townships"[45]; A second and much larger group will be, "commuter migrants, living while at work in the compounds but commuting on a regular monthly or weekly basis from family homes in adjacent resettlement areas, rural reserves, or foreign countries"[46]. The third group will, "more closely resemble traditional labour migrants: long-distance, allottable, contract labour from mainly foreign, but some local, sources"[47]. Underpinning all these changes is the notion of the `career' miner who spends ever longer periods of time in mine contracts with the same employer thus upgrading skills and productivity. The role of the computer in recruiting is central to this process. The modus operandi is no longer the recruitment of workers from long and desperate queues at various TEBA depots scattered throughout the region, but rehiring, selectively if need be, from an existing data-base. The `computerized migrant' thus embodies some features of traditional oscillating migrancy and other features of stabilised, proletarian employment. If this trend is indeed the future scenario for the mining industry, the implications for workers who become disabled are not insignificant. New patterns

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[44]James, 1992, Op Cit; Crush, Jeeves, Yudelman, 1991, Op Cit.

[45]Crush et al, Op Cit:208.

[46]Ibid:209.

[47]Ibid.

of labour power reproduction must inevitably replace the old.

The above theoretical discussion enables one to ask important and neglected sociological questions in relation to labour migrancy, occupational disability and its consequences. What are the implications for rural migrants and their dependents of a disruption or severance in the employment relationship as a result of injury? To what extent does the industry continue to provide `maintenance' for its disabled workforce, and moreover, go beyond these functions? What of the capacity of rural communities to provide the functions of `renewal' for disabled migrants? Finally, what are the implications of changes in the nature of migrancy for disabled migrants and their families?

Despite the plethora of studies on migrant labour, there has been no attempt to consider its relationship to the legacy of disease and disablement experienced by migrant communities, nor to consider the implications of changes in labour migrancy to a study of industrial disability. Part of migrant labour's `unique story', has been the devastating impact of injury and disease on the lives of workers and their families as a result of dangerous and hazardous work processes. The effects of mine labour have been felt in households, where previously healthy young men have had their strength and earning capacity diminished by the ravages of occupational diseases, like silicosis and tuberculosis, or through the disabling effects of serious injury. Despite the ubiquitousness of such scenarios throughout the regions where mining has drawn its labour, the body of literature on work, labour migrancy and occupational health and safety has lagged way behind the more general literature on migrant labour. This thesis aims to go some way towards filling in this gap by focusing on the social consequences of industrial accidents for migrant workers from Lesotho, and considering some possible scenarios for the future situation of disabled mineworkers in a changing political and labour framework.

In a more general sense, the effects of the migrant labour system on the health and well-being of migrant families, have been the subject of a number of sociological works[48]. Francis Wilson's (1972) study on migrant labour in South Africa summarized some of the adverse social consequences of the life-style associated with the migrant labour and compound system: family break-ups, prostitution, homosexuality, alcoholism, violence, corruption, venereal disease, tuberculosis, malnutrition and beri-beri[49]. Studies such as the above have focused on the deleterious effects of oscillating migration on the structure of family life and on the domestic economy. More specifically, low wages, hazardous work practices, and, poor living conditions in the compounds have been linked to the poor health profile of migrants, and their families in rural areas.

The economics and politics of industrialisation and its relationship to the history of tuberculosis in South Africa, formed the focus of Randall Packard's comprehensive study[50]. He argued that the South African experience with tuberculosis must be seen as a product of a particularly pathological intersection of political, economic, and biological processes.

The persistence of the institution of migrant labour and the hostel system prompted a recent edition of the South African

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[48]I refer here in particular, to the studies conducted by Francis Wilson, many of which concentrate on migrancy and poverty. See for example, Wilson, F, and Westcott, G, ed. 1978. Economics of Health in South Africa, University of Cape Town/ (SALDRU); Wilson, F, 1972. Migrant Labour, Johannesburg, SACC/SPRO-CAS; Wilson, F, ed. 1984. Carnegie Enquiry into Poverty and Development in Southern Africa, Cape Town/SALDRU. See also, Phimister, I, 1976. "African Labour Conditions and Health in the Southern Rhodesian Mining Industry, 1898-1953,Part Three:Health". Central African Journal of Medicine.

[49]Quoted in an editorial in the South African Medical Journal, entitled, "Hostels, Health and the Nation", vol 79, (12), 15 June 1991:691.

[50]Packard, R, 1989. White Plague, Black Labour:Tuberculosis and the Political Economy of Health and Disease in South Africa, Pietermaritzburg, University of Natal Press.

Medical Journal to focus on 'Hostels, Health and the Nation'[51]. While their focus was on hostels erected by local authorities in the Western Cape, the research on hostel dwellers in Cape Town constituted some of the first detailed epidemiological work on the health status of this category of the population. A range of health indicators were studied including, diabetes, hypertension, tuberculosis, diet, alcohol and tobacco consumption. The key social factor under consideration was the effect of mobility on disease prevalence. While the sociological aspects of epidemiology have traditionally been a neglected area, the sociological literature in its turn, has made little reference to the relationship between migrant labour, occupational health and safety and its impact on the lives of workers.

This gap in the literature has to do, in large [illegible] the fact that dominant institutions and groups ha[illegible]en [illegible] key focus of attention in studies looking at the hi[illegible]ry of mining capital in the development of South African society[52]. Yet as Elaine Katz points out, in her pioneering historical study on the history of silicosis on the Witwatersrand gold mines, how can one fully understand the nature of relationships between mining capital, the state and labour, which fail to mention the connection of occupational diseases, like silicosis, to the nature of production, industry and state response and worker militancy?[53]. The body of literature on South Africa's mining heritage, has left huge gaps in our knowledge of the consequences of occupational issues for large segments of society. A small number of historical studies of South Africa's mining heritage

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[51]South African Medical Journal, vol 79, (12), 15 June 1991:691.

[52]I refer here, in particular, to two seminal studies on mining in South Africa; Frederick Johnstone's, 1976, Op Cit; and Rob Davies', 1979, Op Cit.

[53]Katz, E, 1990. The White Death:Silicosis (miners' phthisis) on the Witwatersrand Gold Mines 1886-1910. Dissertation submitted to the University of the Witwatersrand for a doctorate in Philosophy, 1990.

however, have chosen as their focus, occupational health. Much of the thrust of these historical studies has been in looking at the expendability of workers' lives in relation to the development of mining capitalism.

The health of African mineworkers between the years 1902 and 1930 was the subject of Julie Baker's study of the economics and politics of disease on the South African gold mines[54]. She provided a comprehensive analysis of industrial health policies on the Witwatersrand and their impact on the lives of black miners, and, also identified the key factors which influenced the pace of health reform. According to Baker, reforms were especially evident during periods when the availability of sufficient black workers was threatened[55]. Reforms were also a product of the scientific and medical advances made at the time. A central tenet of her argument was that the mines' health system depended on the repatriation of incapacitated workers as a cheap solution to chronic illness.

Kennedy's, A Tale of Two Mining Cities, included a chapter on industrial disease - with a focus on phthisis - which revealed many parallels between the mining industries of the Witwatersrand and the Broken Hill region of Australia[56]. According to Kennedy, "the subject of phthisis aroused [keen interest] in both South Africa and Australia, and [led to] close and fruitful collaboration between medical investigations, trade unions, labour parties, and to a lesser extent the governments of the two British dominions"[57]. Elaine Katz's study, refutes much of

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[54]Baker, Julie, 1989. The Silent Crisis:Black Labour, Disease and the Economics and Politics of Disease on the South African Gold Mines 1902-1930. Doctoral Dissertation, Queens University, Kingston.

[55]Ibid:2.

[56]Kennedy, B, 1984. A Tale of Two Mining Cities, Johannesburg, AD.Donker (pty) Ltd.

[57]Kennedy, B, 1984. Op Cit:49.

Kennedy's optimism, regarding the efforts by mine medical and state public authorities to combat the disease.

A historical materialistic interpretation that paid close attention to the link between metalliferous mining and lung disease was provided by Burke and Richardson[58]. They focused on the particular virulence of miners' phthisis in both Cornwall and the Transvaal in relation to, the similar geological deposits, similar production processes, and a migrant workforce, which produced considerable mortality in both areas. Their argument was that the extent and nature of phthisis was related to more particular factors than the existence of quartz bearing reef per se. "There is very strong evidence", they argue, "that in both areas the prevalence of the disease is intimately and inextricably related to changes in the production process. These changes are in their turn related to the constraints imposed upon mining for profit under differing conditions of capitalist production"[59].

Other studies, such as Van Onselen's Chibaro, made reference to miners' phthisis, in commenting on death and disease in the southern Rhodesian mining industry[60]. The author noted the widespread practice of discharging workers with the disease "so that they would not infect the underground workings"[61]. The human toll in death and disablement from safety and health conditions on the mines was also noted by Simons[62].

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[58]Burke, G, and Richardson, P, 1979. "The Migration of Miner's Phthisis between Cornwall and the Transvaal, 1876-1918", in Bozzoli, B, ed. Labour, Townships and Protest:Studies in the Social History of the Witwatersrand, Ravan Press, Johannesburg.

[59]Ibid:226.

[60]Van Onselen, C, 1976. Chibaro:African Mine Labour in Southern Rhodesia 1900-1933. Op Cit.

[61]Ibid:49.

[62]Simons, HJ, 1961. "Death in South African Mines", Africa South, vol 5 (4).

While substantial improvements in health policy on the mines have taken place since these earlier historical studies, and, while the conditions of labour migrancy are themselves changing, changes to date have been far from uniform in their effects on rural communities. Further, despite relative improvements in mineworkers' living and working conditions since the mid-to late seventies, of continuing concern is the health implication of labour stabilization for migrant workers and their families. The lengthening of employment periods, argue Crush, Jeeves and Yudelman, has caused the incidence of alcoholism, sexually transmitted diseases, and occupational diseases, such as tuberculosis to surge[63]. Studies on migrancy and occupational health and safety in the contemporary period remain a relatively neglected area. The problems of disablement for workers in rural communities however, continue to be obscured by the persistence of a labour system which geographically separates home from work, urban from rural[64], and, which requires that workers return to their rural homes when they are no longer employed on the mines.

Within this migrant realm, families perform the key role of `carers' and provide the social security net for the disabled, thus absorbing much of the social costs of disability. While this function of migrancy has become part of the `conventional wisdom' for both employers and migrant families, the capacity of the rural areas to continue providing this function, particularly in the case of workers with serious disabilities, is questionable under certain circumstances. Firstly, in countries like Mozambique and Angola (and increasingly in violence-torn

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[63]Crush et al, Op Cit.

[64]The terms `urban' and `rural' are often referred to as `first' vs `third' world. I use the latter terms with caution, for they suggest lines of demarcation that are neater than reality would have it. Nevertheless, urban areas generally have greater access to infrastructure - health care, transport, shops and other amenities, and improved employment opportunities. For a study of people with spinal cord injury in an urban area, Soweto, see Cock, J, 1989. "The Hidden Consequences of State Violence:Spinal Cord Injuries in Soweto", Social Science and Medicine, vol 29 (10).

Natal/Kwazulu), which have been ravaged by civil war and desperate poverty, it is not often feasible to send a para- or quadriplegic home. Some of these workers have lost their families and consequently are compelled to live at mine hospitals or mine rehabilitation centres. Other situations where the disabled miner's personal circumstances are such that there is no-one to perform the role of `carer' at home, is where a wife has deserted because of the strains imposed by her husband's disability, or where the wife, parents or any other family member, is too ill, too old or simply unable to perform this function. The geographical nature of the home environment is also relevant to the ability of a seriously disabled migrant to return home[65]. The capacity of a given rural area, community or family, to accommodate the needs of workers with, particularly serious, disabilities is a socio-environmental factor which demands localised and individual attention. This is only possible if a well-functioning follow-up system, as part of the mining industry's rehabilitation programme, is in place. This expanded conceptualisation of rehabilitation broadens the focus on occupational disability from the workplace to encompass issues of rural development.

It is generally accepted, that the burden of disability is greatest in rural areas, or perhaps more accurately, in areas characterised as `underdeveloped', as opposed to, `developed[66]'. Poverty and lack of basic services increases the susceptibility of people to disease and disablement. Lesotho is particularly vulnerable to `disability', being both underdeveloped and heavily reliant on mine labour (a particularly hazardous industry) for

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[65]These scenarios are described by Stan Maher in the article, "A Hard Road to Travel". Mining Survey, No.2:36-43, 1990. Chamber of Mines.

[66]cf. Rowland, W, 1986. "Equalization of Opportunities". Paper presented at the Year of Disabled People, National Symposium, Bloemfontein; For the specific problems of rehabilitation in rural areas see, Bush Telegraph, Newsletter for Rehabilitation Workers in Rural Areas. Disabled People South Africa (DPSA).

the livelihood of a significant number of its adult males and their dependants[67]. Not surprisingly, the single biggest cause of injury amongst men of working age in Lesotho is injuries from mine accidents[68]. As a rehabilitation consultant from the International Labour Organisation in Lesotho commented, "Lesotho ranks as one of the world's least developed countries. Most of the people subsist on agriculture, but many of the men go to work in the gold and coal mines of the Republic of South Africa. Given this setting, not only does Lesotho have a disproportionately high incidence of disability, but it also lacks the resources to provide comprehensive and effective rehabilitation services"[69]. The precise numbers of workers with permanent disability from Lesotho is not publically known[70]. However, given the large numbers of Basotho mineworkers employed, it can be assumed that a significant number of workers experience some form of permanent disability each year. Moreover, given estimated dependency ratio's on migrant worker remittances, estimated at between 8 and 10 per migrant worker's earnings[71], the effects of occupational injury, where it results in termination or reduction in income, are profound for its impact on rural impoverishment. This problem was sufficiently apparent to prompt the Lesotho government in the mid-eighties to appoint a rehabilitation specialist from the

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[67]The numbers of Basotho mineworkers engaged on the mines in 1990, 1991 and 1992 respectively (ie. the number of contracts issued) were, 99 707, 93 897 and 93 512. Personal communication with TEBA, Lesotho.

[68]Personal communication with Mike Davies, rehabilitation consultant for the International Labour Organisation (ILO) in Lesotho.

[69]Mike Davies, 1984. "We Will Do It Ourselves", unpublished memorandum presented to Department of Social Welfare, Maseru, Lesotho.

[70]TEBA Maseru was unable to provide this information to the author. The figures could however, be estimated by computing the numbers of Basotho mineworkers drawing monthly pensions, and likewise, the numbers granted lump sum payments.

[71]Estimates provided by Dr Isak Fourie of the Chamber's Medical Division at, Sociology of Work Programme (SWOP) Breakfast Research Seminar, Wits University, February 26, 1993.

International Labour Organisation, to facilitate a comprehensive programme for the vocational rehabilitation of disabled persons in rural areas. A s r.es of training programmes were designed to facilitate the reintegration of people with disabilities (mainly ex-mineworkers) into a productive place in society. The `rehabilitation learning elements' covered the following areas: non-institutional rehabilitation, self-employment of disabled people, co-operatives, formal sector employment, community attitudes, and income-generating activities[72]. The purpose of the ILO intervention was to assess the productive potential of rural resources in providing a livelihood for disabled persons and their dependents[73]. The importance of focusing on the rural experience of disability is precisely to illustrate the effect of disablement on migrant communities. The literature on labour migrancy, through omission, has underplayed the struggles and strategies of workers with disabilities who are confined to rural areas.

A growing, if not abundant, body of literature in South Africa has been emerging on occupational safety and health and its relationship to work. These studies, rooted within a labour process approach, drew their inspiration from the work of Braverman and others who returned to detailed studies of work - both the nature of production and the relationships that structured it - in challenging, what Thompson has described, as `the drift from the labour process'[74]. The impetus for this renewed focus on work was a result of both the scale and the nature of workplace conflict which gripped the European working

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[72]cf.ILO, Project LES/84/MO1/FIN; Maseru, Lesotho.

[73]The ILO project was too premature to assess at the time the study's fieldwork took place. The rehabilitation consultant has since vacated his post in Lesotho. The key question is whether the rehabilitation project has been sustained by the relevant departments of the Lesotho government at a planning and co-ordinating level, and likewise, at a grassroots level by field workers and disabled people in their own communities.

[74]Thompson, P, 1983:67. The Nature of Work - An Introduction to Debates on the Labour Process. The Macmillan Press.

class from the sixties onwards. The importance of Braverman's work was in the linking of specific and detailed features of changes in the labour process in contemporary capitalism to shifts in class location. "For the debate started", as noted by Thomps .., "not so much about changes in the labour process, but about the extent of a new working class"[75]. Significantly, the preoccupations and demands of the `new working class', were "often of a qualitative nature and showed a marked shift toward issues that went beyond wages"[76]. Labour process studies were also noted for coexisting with, and, stimulating studies of particular issues or industries. This facilitated a focus on, or ngst other issues, occupational health and safety. With studies that scrutinized the social organisation of the labour process, workers' lives, in a `hidden abode of production', began to be revealed[77]. Differentiation within the working class, and, the emergent bargaining power of workers as a result of changing technology and new social locations within the labour process, were also explained. Further, in the `new labour studies' workers, as opposed to capital, were given pride of place in shaping the process of class struggle.

Similarly, in South Africa it was the rapid rise of the labour movement from the early seventies onwards that stimulated a reconceptualisation of the world of work[78]. Eddie Webster identifies elements of this process of reconceptualisation[79].

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[75]Ibid:69.

[76]Ibid.

[77]cf. Edwards, R, 1979. Contested Terrain. New , Basic Books Inc.

[78]Three useful texts on the rise of labour during this period are, Steve Friedman's, Building Tomorrow Today, Johannesburg, Ravan Press, 1987; Jeremy Baskin's, Striking Back - A History of COSATU, Johannesburg, Ravan Press, 1991, and, The Independent Trade Unions:1974-1984, ed, by Johann Maree, Johannesburg, Ravan Press, 1987.

[79]Webster, E, "Taking Labour Seriously:Sociology and Labour in South Africa", SA Sociological Review, (4) 1:50-72.

Studies returned to Marx's `hidden abode of production' - the organisation of work itself[80]; they also moved beyond the potential `economism of labour process studies' by extending their research agenda to encompass analyses of culture and working life[81]; and importantly, they captured the experiences of working life by focusing on workers as a `totality', with lives outside of the workplace[82]. A central shift in this reconceptualisation of work, has been the role of the worker, both individually and collectively, in shaping the conditions of his/her existence. An offshoot of studies in the labour process tradition have been those described as `the new labour studies'[83]. One of the hallmarks of the latter, has been the growing relationship between academics and the labour movement -

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[80]cf. Eddie Webster's study of the labour process in the foundries. Webster, E, 1985. Cast in a Racial Mould. Johannesburg, Ravan Press.

[81]Coplan, D, 1982. "The Emergence of an African Working Class Culture" in S. Marks and R. Rathbone eds. Industrialisation and Social Change in South Africa. Longmans; for a popular account of working life see, Luli Callinicos' 1987, Working Life: Factories, townships and popular culture on the Rand, 1886-1940. Johannesburg, Ravan Press.

[82]Much of the research generated by the History Workshop at the University of the Witwatersrand falls into this tradition. It uses primarily oral history as its method to capture the lived experiences of South Africans whose voices would normally not be heard. A recent example, is Belinda Bozzoli's, The Women of Phokeng:Consciousness, Life Strategy and Migrancy in South Africa,1900-83, Johannesburg, Ravan Press, 1992. One of the earliest sociology theses at the University of the Witwatersrand to utilize this method and break the dominance of studies which focused on powerful institutions and groups was that of Paul Stewart's 1981 honours dissertation, appropriately entitled, "A Worker has a Human Face". Similarly, the autobiography of Mandlenkosi Makhoba is an exercise in asserting the importance for the sociological endeavour of placing workers in their total context. cf. Mandlenkosi Makhoba, 1984. The sun shall rise for the workers:The story of Mandlenkosi Makhoba. Johannesburg, Ravan Worker Series.

[83]cf. Webster's article, "Taking Labour Seriously:Sociology and Labour in South Africa". Op Cit. Also, the preface to Toward Safer Underground Gold Mining, University of the Witwatersrand, 1985.

'a process of critical engagement' - which by focusing on the social issues of the day, generated studies with implications for social policy[84].

The focus on occupational health and its relationship to work is an area characteristic of a more recent period in South Africa's labour trajectory. As a subject which is both under-researched and has profound implications for social policy, it has lent itself to the interaction between academics and trade unions. The growth of the independent trade union movement has seen the development of collaborative research on aspects of health and safety. For example, union-commissioned studies in the period 1984-5 included, surveys into accidents, noise-induced hearing loss, and heat stress on the mines (NUM); silicosis in foundries, lead poisoning among transport workers (GWU); occupational asthma amongst grain workers (FCWU); and byssinosis and hazards of dyestuffs in textile factories (NUTW)[85].

Particularly since the 1980's, studies rooted in a labour process approach, began to inquire into the relationship between the organisation of production, the relationships that structured it and hazardous conditions and work practices. This body of literature has been vitally important in challenging, amongst other things, the widespread view of accidents as being the result of individual workers' negligence, apathy, or, as being an inevitable consequence of work[86]. A study of the labour

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[84]The relationship of research to social policy and its implications for change in the field of occupational health and safety are discussed by Professor Tony Davies in his inaugural lecture entitled, A Time to Speak, Witwatersrand University Press, Johannesburg, 1988.

[85]Leger, JP, Maller, J, Myers, J, "Trade Union Initiatives in Health and Safety". South African Review 3, Johannesburg, Ravan Press, 1986:81.

[86]International studies that have linked the organisation of work under capitalism to issues of health and safety include the work of Vincento Navarro, who have provided an analytical framework for understanding the nature of health in society and its relationship to the means of production. See, Navarro, V,

process and trade unionism in South African foundries[87], led to important work on the relationship of foundry exposure and respiratory disease. The research on foundry work revealed cases of silicosis among deceased members of the Iron Moulders Society of South Africa through the Union's death benefit fund[88]. It was found that certain age classes of iron moulders were at increased risk of respiratory disease and lung cancer when compared with the general population[89]. Studies of other industries in the metal, brick, textile and milling sectors have also linked the nature of work to occupational disease[90]. These studies have taken both case-study and epidemiological approaches to their subject, but all have pointed to the fundamentally social nature of work.

Leger's prolific research into the social organisation of work and occupational safety demonstrates the application of studies in the labour process tradition to the mining industry in South

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1982. "The Labour Process and Health:A historical materialist interpretation. International Journal of Health Services, 12(1); Other important international studies include, Nichols, P, and Armstrong, P, 1973. Safety or Profit - Industrial Accidents and the Conventional Wisdom. Falling Wall Press; Berman, D, 1978. Death on the Job:Occupational Health and Safety Struggles in the United States. Monthly Review Press; Doyal, L, 1981. The Political Economy of Health, London, Pluto Press.

[87]See, Webster, E, 1985. Cast in a Racial Mould. Op Cit.

[88]cf. Sitas, R, Douglas, A, Webster, E, 1989. "Respiratory disease mortality patterns among South African iron moulders". British Journal of Industrial Medicine, 46:310-315.

[89]Ibid:314.

[90]For example, Maller, J, 1983. Health and Safety for Workers:A Study of Conditions in the Metal Industry in the Vaal Triangle, BA (Hons), University of the Witwatersrand; Myers, J, 1987. The health effects of working in the brick industry: A respiratory epidemiological study in the South African occupational health context, MD thesis, University of Cape Town; White, N, 1985. An investigation into byssinosis among South African textile workers. MD thesis, University of Cape Town; Fonn, S et al, 1987. "Respiratory health survey of a Johannesburg grain mill workforce", Chest, 91,299.

Africa[91]. The historical structuring of work along racial lines has meant that vast numbers of low paid, largely unskilled black migrant workers have been employed alongside higher paid and skilled white workers and supervisors. This racial division of labour has mitigated against safe working practices. According to Leger, safety was compromised for essentially two reasons. First, the fact that the white miner whose earnings were dependant on maximum production through a system of bonuses was compelled to increase the work pressure underground; Second, the fact that the black team leader was performing the work of the white miner, in a de facto sense, without having received the necessary training and remuneration, nor having the authority to order workers out of a potentially unsafe situation. In addition, Leger's work encapsulates key characteristics of 'the new labour studies'. Firstly, as collaborative work between engineers and sociologists[92]; secondly, as research commissioned by a trade union[93], and thirdly, as inquiry which places great emphasis on the worker's role, through experience, subjective perception and involvement, in safety matters[94]. Leger's work focuses on the underground world of mineworkers in relation to safety. Moodie's research, on the other hand, locates the mine worker in his social world - underground, in the compound and in interpersonal

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[91]cf. Leger, JP, 1986. "Safety and the Organisation of Work in South African Gold Mines:A Crisis of Control". International Labour Review 125, 591-603; Leger, JP, 1985. Towards Safer Underground Gold Mining. Op Cit.

[92]Leger, JP, 1985. Op Cit.

[93]Ibid. See also, Leger, JP, 1986. A Thousand Ways to Die. National Union of Mineworkers/Learn and Teach Publications.

[94]Leger, JP, Mothibeli, M, 1989. Participation in South African Mining Safety: A Postal Survey of Black Migrant Workers' Organisations and Management. Working Paper, International Migration for Employment. International Labour Office. Also, Leger, Jean-Patrick, 1992. Talking Rocks - An Investigation of the Pit Sense of Rockfall Accidents Amongst Underground Gold Miners. Doctoral Dissertation, University of the Witwatersrand, Johannesburg.

relationships[95]. While studies such as Legers' and Moodies' have contributed much towards our understanding of the experience of working life for mineworkers, a neglected dimension of that experience belongs to those workers who have to live out the rest of their lives, together with their families, with the consequences of workplace accidents. Despite the large numbers of migrant workers who experience some form of work-related disability, there is yet to emerge a body of literature which focuses on the impact of disabling conditions, whether from disease or injury, on migrant communities. Studies of safety and health in the labour process tradition have tended to stop short of entering the domain of the community or household to investigate the struggles and strategies of workers with disabilities.

The impact of injury for migrant workers can only be appreciated with reference to the centrality of migration to the mines of South Africa for the livelihood of workers and their dependents, and, the consequent dependence of labour supplying states in the region. Government departments, such as Health and Labour in Lesotho, whilst concerned about the numbers of people who become disabled each year as a result of mining injuries, are limited, although not entirely passive, in the extent to which they can pressurize the Chamber to make interventions in Lesotho[96]. Their structurally vulnerable position was explained by a senior official of the Department of Labour when he expressed the

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[95]Dunbar Moodie (with Vivienne Ndatshe), forthcoming. Going for Gold:Workers' Lives on the South African Gold Mines.

[96]The situation is also fraught with other dynamics. For example, in 1982, the Chamber donated a sizeable sum of money to the Lesotho government for the purpose of building a rehabilitation centre there. Due to internecine conflict between departments over its administration and control, the money was mismanaged. As a result the Chamber is loathe to fund initiatives not under its direct control. This illustrates amongst other things, the dangers of `top-down' intervention with little grassroots accountability.

dilemma in the following terms[97]. Firstly, that by and large, workers who become disabled from mining injuries are "better off" than the disabled in Lesotho, in that most have access to a compensation pension and free medical treatment on the mines. Secondly, that Lesotho does not want to jeopardize relations with the industry in a time of contracting recruitment. For labour migrancy, in addition to its destructive impact, performs a vital role in preserving a sizeable number of rural households by the transfer of income to the countryside, and by allowing 'career miners' to invest in their rural homesteads[98]. This process is not without its contradictions. While wages and conditions for mineworkers since the mid-seventies have improved, dependency on wage labour has kept most workers tied to oscillating migration. Thus the capacity of the rural areas to provide a productive base has diminished.

The implications of removing the mining wage has been noted in the context of changing patterns of recruitment[99], and more recently, in the context of the downscaling of the mining industry[100]. For workers who become disabled, wage loss is coupled with the extra dependency imposed by living with a disability. In the context of an impoverished community, workers in receipt of a monthly compensation pension are regarded as well-off. While this may be a valid perception for members of

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[97]The above-mentioned official requested anonymity, but this sentiment appeared to be fairly widespread.

[98]Spiegel, A, 1980. "Changing Patterns of Migrant Labour and Rural Differentiation in Lesotho". Social Dynamics, 6:1-13.

[99]Thabane, M, Guy, J, 1984. "Unemployment and Casual Labour in Maseru:The Impact of Changing Employment Strategies on Migrant Labourers in Lesotho", Carnegie Conference Paper, No. 124, University of Cape Town, 13-19 April. Also, Cobbe, J, 1986. "Consequences for Lesotho of Changing South African Labour Demand", African Affairs, vol 85:23-48.

[100]Seidman, G, 1993. "If Harmony closes, will the last person to leave please turn out the lights? The social impact of downscaling in the go. lfields region", presentation to the Sociology of Work Program seminar, University of the Witwatersrand, 26 March.

such a community, it rests on an invalid premise for at least two reasons. Firstly, due to dependency ratios on migrant worker remittances, reduced income in the form of a compensation pension, affects the maintenance of a signi: cant number of people in the local community, adversely. Secondly, what is at issue here is the worker's lost earnings and diminished working capacity as a result of a workplace injury, and, the fact that workers have given up their common law right of action in return for a guaranteed payment - `the historic compromise'[101]. Workers' compensation is thus not a welfare remedy but a `right' which the worker has traded for a measure of guaranteed protection. In reality, disabled workers occupy a peculiar position in relation to other public programmes for income maintenance. As Weiler points out, "workers' compensation occupies an intermediate position between two main legal models for reimbursing lost income: tort liability and social welfare"[102]. Unlike tort remedy, workers' compensation does not aim at full redress for damages inflicted on the worker by the injury. However, by contrast with systems of social welfare (old age pensions, unemployment insurance etc.) workers' compensation does aim to replace the bulk of the prior income lost by the injured worker[103]. The explanation for this stance is the historic trade-off or `compromise' referred to above. The importance then of follow-up studies that focus on the wider impact of disability, apart from the intrinsic value of documenting these consequences, is that they scrutinize the

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[101]See for example, Weiler, PC, 1980. Reshaping Workers' Compensation for Ontario. A Report submitted to Robert G Elgie, Minister of Labour, Nov, 1980.

[102]Ibid:13.

[103]The South African compensation dispensation makes no claims to replacing the `bulk' of a workers' previous income. The new draft bill - The Injured Employees Compensation Draft Bill, 1997 - states the nature of the `historic compromise' explicitly. "In exchange for a guaranteed payment, ie. without expensive court hearings, the insurance is not for the full loss sustained as a result of an accident or an occupational disease, but for partial compensation".

ability of workers' compensation to deal adequately with the complex social, vocational and economic issues raised by permanent disability.

In the international literature on industrial disability there is evidence of a number of large scale follow-up studies which have traced the post-accident experiences of disabled workers[104]. In the United States, studies began as early as the first decade of the twentieth century. These inquiries took place in the context of the excesses of capitalist exploitation and control, the extremely risky nature of the work process, the lack of social protection and of workforces made up primarily of unskilled and semi-skilled immigrant workers. These early studies were a dramatic indictment against the court liability system which preceded workers' compensation. Based on empirical data about earnings history pre- and post injury, they provided both quantitative and qualitative accounts of families, "gradually and cruelly sliding into poverty"[105]. In addition, they helped spur public criticism and legislative efforts to reform the court liability system and to gain worker and union support for the pending compensation bill. These sociological studies did not end with the passing of compensation legislation in the various states, but continued as a means of evaluating the legislation, highlighting its problems and proposing changes to its structure and content.

The basis of workers' compensation legislation universally is that it involves workers giving up their common law right to litigate for losses they receive due to occupational injuries (including pain and suffering), in exchange for some measure of protection against income loss. But just how much protection

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[104]An overview of the American literature in this regard is provided in a comprehensive study by Ginnold, RE, 1976. A follow-up study of permanent disability under Wisconsin Workers' Compensation. Washington, DC:US Department of Labour (NTIS PB273784)

[105]Ibid:55.

does workers' compensation offer in terms of income replacement, and, in the more fundamental aim of rehabilitation?

Ginnold, who investigated 700 workers with a permanent partial disability in Wisconsin, found that compensation replaced less than a third of expected lifetime earnings. More specifically, permanent earnings losses varied directly with severity of injury, ranging from losses of 8% for injuries rated below 10%, to 29% losses for injuries over 20%. While over 90% of the severe cases interviewed returned to work - 70% with the same employer - over one third left within a year due to the injury[106]. Studies on the scale of Ginnold's Wisconsin survey, were made possible by the computerization of personal injury and other relevant data, and, access to such records by researchers.

Not all studies of injured workers found a correlation between severity of injury and income loss. Some studies reported a minority of persons with low degrees of impairment suffering from severe social and vocational disadvantage[107]. Australian studies of injured immigrant workers discussed the significant incidence of "chronic invalidism" (occurring often in workers with relatively minor disabilities) following work accidents[108].

The importance of these follow-up studies is that they reflect the theoretical underpinnings of workers' compensation. They also illustrate the fact that there is no necessary relation between severity of injury and income loss, or, rehabilitation outcome.

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[106] Ibid.

[107] Harris, 1971, cited in Bury, MR, 1979. "Disablement in Society:Towards an Integrated Perspective". International Journal of Rehabilitation Research, 2:33-40.

[108] Stagoll, B, 1980. "The Accident Victim Syndrome: Work-Injuries, Migrant Families and the Creation of Invalidism". Proceedings of the 38th Annual Conference and 1st International Meeting of the American Association of Marriage and Family Therapy, Toronto, 6-9 Nov: Rickarby, GA, 1979. "Compensation Neurosis and the Psycho-Social Requirements of the Family". British Journal of Medical Psychology (52).

In South Africa, while follow-up studies of disabled workers are scant, the system of workmen's compensation has not escaped scrutiny. Critiques of compensation have varied in focus. Budlender (1979) and Rosengarten (1983) have considered the question of compensation in relation to issues of labour power reproduction in South Africa[109]. Leger and Arkles (1989) have looked at the specific problems of compensation for migrant workers in the mining industry[110]. Benjamin (1992) and Richer (1992) have identified the need for reforms that would enable participation of the representatives of labour and capital in the direction, monitoring and administration of the workers' compensation scheme[111]. The specific problems pertaining to procedure, practice and adequacy of occupational disease compensation (generally considered more problematic than that for accidents), has formed part of the growing critical literature on compensation in South Africa[112]. Specific attention has also been given to the inadequacy of compensation for permanent

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[109]Rosengarten, D, 1983. Workers' Compensation - South Africa, A Case-Study, BA. Honours Dissertation, University of the Witwatersrand; Budlender, D, 1979. Labour Legislation in South Africa 1924-1945, MA Thesis, University of Cape Town.

[110]Leger, JP, Arkles RS, 1989. Permanent disability in black mineworkers: A critical analysis", S Afr Med J, vol 76:557 - 561.

[111]Benjamin, P, 1992. The Reform of the Workmen's Compensation Act:The Beginning of Democratic Social Security? working paper 16, Centre for Applied Legal Studies, University of the Witwatersrand. Richer, P, 1992. From Autocracy to Co-Determination - Can Workers' Compensation Make the Leap? Bilaterism Project. Paper Presented at the Conference on the Reform of Workmen's Compensation Legislation in South Africa, Eskom Training Centre, Midrand, 26-28 March, 1992.

[112]Bachmann, M, 1988. "Compensation for Occupational Lung Diseases", ASSA conference paper, University of Durban-Westville; Myers, J, Garish, D, Cornell, J, 1987. "Compensation for Occupational Diseases in the RSA". South African Medical Journal, vol 71; Goodman, K, 1992. "Procedural Aspects of Compensation: Occupational Diseases", paper presented to the Conference on the Reform of Workmen's Compensation Legislation in South Africa, Eskom training centre, Midrand, 26-28 March 1992; Rees, D, 1992. "Evaluating the Schedule of Occupational Diseases", paper presented to the above conference.

partial disability[113].

In South Africa small follow-up studies of workers who are disabled have begun to emerge[114]. A study on occupational lung disease and pulmonary tuberculosis in the eastern Transvaal, highlighted not only the devastating effects for workers and their families of this disabling condition, but also the inability of services in those areas to cope with such problems[115]. A particularly disturbing finding of this study, was that the uniform application of legislation relating to compensation for occupational diseases was not consistently applied. A recently published book, Studded with Diamonds and Paved with Gold, focused on the human consequences of industrial accidents and disease by taking the reader into the homes of dying former asbestos miners, as well as, that of the wife and children of a miner killed in the Kinross disaster[116].

What studies such as the above make clear, and what the results of this thesis' findings corroborate, is that the effects of hazardous workplace activities have far reaching consequences into rural areas from which migrant workers are recruited. These consequences have been largely obscured and exacerbated by the system of migrant labour, which in the industry's eyes, absolved them of the responsibility for the welfare of the old, sick or

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[113]Arkles, S, 1992. "Workmen's Compensation under Scrutiny". The Innes Labour Brief, Vol 3 (4):30-38. Also, Benjamin, P, 1991. "Compensation for Accidents at Work and Occupational Diseases". Labour Law Briefs, vol 4(11).

[114]For example, Arkles, RS, 1985. Op Cit; Arkles, RS, Leger JP, 1987. "Permanent Disability in Black Mineworkers 2: Case-Studies". Association for Sociology in Southern Africa Annual Congress, University of Durban-Westville, 4-6 July.

[115]Davies, JCA, 1992. Occupational Lung Disease and Pulmonary Tuberculosis at Tintswalo Hospital and in the Eastern Transvaal Lowveld. NCOH Internal Report No.1.

[116]Flynn, L, 1992. Studded with Diamonds and Paved with Gold. London, Bloomsbury.

injured. The European workers with phthisis in Elaine Katz's historical study, like their African counterparts in Chibaro, were left to die at home. As the results of this study will show, the economic and social burdens of occupational disability are still being felt by large numbers of migrant workers and their families well into the nineties. What is evident, is that without an adequate system of rehabilitation and follow-up in rural areas, workers with disabilities slip through the system and are `lost' to the rural areas, where over time the full weight of their problems unfold. A sociology of occupational disability acknowledges the social and vocational environment of a disabled worker. This dimension should be taken into account as part of the industry's medical and social services, and further, should be considered by systems of workers' compensation.

This study however, does not only illustrate continuities with the past in the experiences of workers with disabilities. Important changes have also been identified. The NUM is increasingly focusing on occupational disability as a legitimate workplace demand, and extending the focus of collective bargaining to encompass issues of the `post-employment' contract. Mine management, in its turn, is finding it increasingly difficult, in a changing economic and political environment, to ignore greater responsibility for disabled mineworkers. One of the most significant developments in rehabilitation in recent years, is the appreciation by a growing number of management personnel, that the rural areas can no longer be ignored in the mines' approach to rehabilitation. This development is an important shift in perception, as it begins to acknowledge the worker as a `totality', with a vital relationship to the family and community. It also reflects a pragmatic shift, in that the industry is finally acknowledging the inability of the rural areas to provide, even a supplementary form of income, for migrants and their families.

An important element in this social process of change is the circulation of previously `hidden' knowledge within a contested arena. The potential for the generation of knowledge to translate into its useful application - through the vehicle of powerful players - is an illustration of how contested ideas and values can become part of the process of social transformation in society.

Over the years, the migrant labour system has ensured that workers with disabilities have been `hidden from view and obscured in history'[117]. It is hoped that this study, by bringing into view some of these `hidden' consequences, will not only provoke debate on a more adequate resolution of problems, but will find expression in the concrete struggles to improve the quality of life of those workers - disabled migrants - and their families, who have paid a high price in the interests of mining production.

[117]I borrow this phrase from Wilmot James who uses it to discuss the position of mineworkers generally. It seems to me to have special resonance for workers who have been disabled in the industry. See, James, W, 1992, Op Cit:9.

CHAPTER TWO - LEGISLATING THE CONSEQUENCES OF OCCUPATIONAL DISABILITY: WORKERS' COMPENSATION UNDER SCRUTINY

The area of workers' compensation in South Africa, particularly its historical genesis, is noteworthy for the lack of attention it has received. Much of the impetus for the recent interest in workers' compensation, arose out of a return to studies of the workplace in the seventies and eighties, and the growing relationship between academics, professionals and the labour movement. As a `measure taken to repair the harm' inherent in the production process, workers' compensation is in many senses, the reproductive side of capital's productive coin[118]. Many of the writings on compensation took as their starting point the debates around `safety vs profit'[119], by focusing on the expendability of workers' lives, particularly those of black workers, to South African capitalism[120]. Historically, the situation has been exacerbated for workers by the migrant labour system, "because it relied not on the capacity of a fully developed proleteriat to reproduce itself, but on a flow of migrant labour created within a regional economic system. As long as the flow of cheap labour continued, there was little stimulus to pay compensation, and as long as there was no compensation there was little incentive for any co-ordinated attempt to reduce disease in the compounds or accidents underground"[121]. It has been argued that while health and safety and workers' compensation do form

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[118]Rosengarten, D, 1983. Workers' Compensation - South Africa:A Case Study. DSG/Critical Health, Dissertation Series.

[119]See for example, Nichols and Armstrong, 1973. Safety or Profit - Industrial Accidents and the Conventional Wisdom, Falling Wal Press, Bristol.

[120]In the historical context, this point is graphically illustrated by van Onselen's estimation of compensation for death between the years 1900 and 1933. "Death cost the industry a maximum of 42 000 pounds, as compared to 89 million pounds worth of gold produced between those years". cf. Chibaro, Op Cit:62-3.

[121]Ibid:60.

separate sites of struggle, they are conceptually linked[122]. This is because substantial improvements in health and safety are more likely to occur when the cost of accidents (financially and in terms of expanded responsibility), become insignificant in relation to the cost of such accidents. This process of linking struggle around safety to struggles around compensation, necessitates a critique of the adequacy of compensation legislation in relation to the complex issues raised by permanent disability.

As stated in the introduction, workers' compensation entailed a 'historic compromise' whereby workers gave up their common law right to litigate for full damages (in the event of employer negligence) in return for a guaranteed payment. An injured worker thus, "does not enjoy his form of compensation as a matter of grace. He has been required to give up a common-law right of action enjoyed by everyone else"[123]. In this sense, there is a case for substantial redress for income losses. As a 'right' which the worker has traded, workers' compensation can be seen as a legitimate workplace demand, as well as, a 'reproductive' issue.

Workers' compensation, like that of health and safety, is central to the struggle between labour and capital[124]. Historical materialist analyses of society, point to the state, its institutions and more specifically, the role of legislation, as being an expression of dominant class interests. Within this broad paradigm, theoretical approaches range from those that view

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[122]Rosengarten, D, 1983. Op Cit; Budlender, D, 1979. Op Cit.

[123]Weiler, PC, 1980. Op Cit:15.

[124]Rosengarten's argument is that with the introduction of machinery, "workers lost control over the production process, and rather than controlling the means of production, workers became increasingly controlled by the means of production. Having lost control over the means of production, workers also lost the ability to prevent such accidents". Rosengarten, D, Op Cit:10.

the state's primary function as being a tool of the dominant classes (the instrumentalist thesis), to those that view the state as a factor of cohesion in the social formation as a whole[125]. Theories that posit the state and management's interests as identical, or which perceive the law as an instrument of capitalist domination, underplay the "fundamentally social process" of the interaction between the different parties, namely, management, workers and the state[126]. With this conceptualisation, the notion of `struggl ' becomes a key factor in shaping the form and content of the law. For workers, this is achieved through the political role of labour, and the union's use of collective bargaining to push forward the boundaries of the law. Despite the importance therefore, of legislation to the capital-wage relation in society, it is, as Myers and Steinberg point out, "important not to fetishize the law which is just one aspect of a complex equation"[127]. For industrial accidents, this `equation' encompasses the relevant legislation - the Workmen's Compensation Act and those sections of the Labour Relations Act pertaining to `dismissal for incapacity' - and collective bargaining. Since compensation legislation does not address the vocational and employment needs of disabled workers, organised labour in the mining industry has found it necessary to place these issues on the collective bargaining agenda. Collective bargaining procedures and the political process can therefore be utilized to expand the limits of the law. In this process, the social, political and industrial relations context is central.

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[125]Bob Jessop, in The Capitalist State, critically evaluates Marxist theories of the state, arguing that concepts such as class struggle, state apparatus, state power and class interests are best explained as "resulting from the complex synthesis of multiple determinations". See, Jessop, B, 1982:249. The Capitalist State, Martin Robertson, Oxford.

[126]The `social process' of regulation is discussed in Macun's 1989 study, The Regulation of Health and Safety in South Africa's Manufacturing Industry. Master of Arts thesis, University of Cape Town.

[127]Myers, J, Steinberg, M, 1984. "Health and Safety: An Emerging Issue on the Shop Floor". South African Review 2, Johannesburg, Ravan Press:149.

The earliest legislation on health and safety in South Africa occurred in the mining industry. This was a response to a number of factors: the dangers of mining, the central importance of mining to the economy and the specific forms of organisation in the Industry[128]. As early as 1894 the Rand Mutual Assurance company was started. In addition to accidents, the problem of silicosis or miners' phthisis on the Witwatersrand gold mines was so severe that during the period 1902 to 1925 alone, silicosis was the subject of nine legislative acts, six commissions of enquiry and ten parliamentary select committees[129]. In 1911, the Miners' Phthisis Act provided for compulsory compensation for the disease. The first Workmen's Compensation Act in South Africa was passed in 1914. Between then and the 1941 amendment (the form of the Act we know today), workers' compensation changed from a choice between a common law claim or workmen's compensation, to compulsory insurance by registered private companies (enacted in the 1934 amendment), to a state-administered fund to which all employers would contribute (the 1941 amendment). Black workers were not included in the 1914 Act but granted compensation, meagre as it was, under the provisions of the Native Labour Regulations Act of 1911. In the 1934 amendment to the WCA, black workers were included but in a separate section of the Act, where differential rates and conditions were laid down. This included medical aid rates, where fees for 'native workmen' were half of those prescribed[130]. An interplay of factors resulted in the

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[128]Budlender deals with these issues in her study of labour legislation between the years 1924 to 1945. Her chapter on industrial health, traces, amongst other things, the development of workers' compensation in South Africa, and examines the political and social factors which shaped its form and content. Budlender, D, 1979. Op Cit.

[129]Katz, E, 1990. Op Cit:17. Burke and Richardson also noted the alarmingly high incidence of mortality from phthisis. For example, the Transvaal Mining Regulations Commission in 1910 reported that between 1905-7, phthisis accounted for 43.1 per cent of all deaths of white mining males over 20 years of age.cf. "The Migration of Miners' Phthisis between Cornwall and the Transvaal 1876-1918", Op Cit.

[130]Budlender, D, 1979. Op Cit:219.

1941 amendment to the WCA. Sections of government were aware of the inadequate material assistance provided to, especially low wage earners; labour organisations lobbied for better material protection of injured workmen, and industrial capital was unhappy about the relatively high premiums charged by private insurance companies. In addition, the political and social circumstances of world war II, meant that the government was more sensitive to the needs of workmen in an attempt to gather support for the war effort, and to ensure stability in society. Further, they appreciated the need to appease the frustrations of black workers, who were increasingly needed to fill semi-and skilled jobs[131]. The 1941 amendment, instituted a state scheme and improved the level of benefits for all groups of workers. Discrimination however, persisted, but in a more subtle form. While benefits were not based on any overt reference to race (as in the Occupational Diseases in Mines and Works Act - ODMWA) compensation was to be calculated according to a percentage of wage levels. Due to the racial division of labour in society, lower paid workers, invariably black workers, received smaller amounts for the same injuries as their white counterparts.

The political role of labour in relation to the dominant classes in society was a factor in shaping the outcome of legislation. Budlender's historical study of workers' compensation shows how concessions eventually granted to white workers under workmen's compensation were an expression of their political power and their relationship to the social order of the day[132]. The legislation was passed and amended at times of crisis. For example, "1914, promised in 1924 with the PACT [government], 1934 after the Depression, and 1941 in the middle of the war"[133]. In arguing that workers' compensation be seen as an expression of both the political and economic clout of certain sections of the

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[131]cf. Rosengarten, Op Cit:chapter five; and, Budlender, Op Cit, chapter seven.

[132]Budlender, Op Cit.

[133]Ibid:243.

working class to the economy, as well as, an expression of the dominance of the capitalist class, Budlender provides a useful theoretical approach, somewhat broader than Rosengartens' more economistic one. While he does not discount the political forces at play, his central theoretical argument in explaining why workers' compensation benefits both capital and the state, points to workers' compensation as contributing to the reproduction of the working class as a whole, and therefore to continued capital accumulation. But disabled workers are not a productive section of the workforce per se - unless rehabilitated accordingly - and even there, there are limits to rehabilitation's efficacy. So additional factors must be at play in explaining why compensation was granted, and, improved at different historical moments. Both Budlender and Rosengarten's studies on workers' compensation provide broad theoretical frameworks in which to locate workers' compensation. However, such broad sweeps, useful as they are in one sense, leave huge gaps in our understanding of the historical process. In addition to representatives of powerful corporate interests, the voices of workers, in private and collective struggle, and the deliberations of government officials, such as 'Native Affairs' commissioners, suggest that workers' compensation had a more complex trajectory than these published studies would suggest[134]. While the scope of this thesis precludes a historical focus, it is instructive to consider some of the historical questions posed in illustrating the resonance of distant themes and concerns to workers' compensation today.

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[134]The voices of workers and government officials are glimpsed in fragments of information from such disparate sources as government commissions, worker publications and parliamentary debates. See for example, the Report of the Native Grievances Inquiry:1913-14. Cape Town, government printers, 1914; Crawford, Archibald, Miners' Phthisis in South Africa: A Damning Indictment of Capitalism. Pamphlet by the President of the General Workers' Union with introduction by W.H. Morgan, Organising Secretary Transvaal Miners' Association. The Limit Printing and Publishing Co., Tudor Street, E.C. Date Unknown.

As early as 1913, the issue of workers' compensation was noted as a major grievance of black mineworkers[135]. The 1913 white mineworkers strike had a profound impact on black workers who used the occasion to raise their own grievances. This caused some alarm amongst government officials, who together with mine owners regarded strikes by white workers as catalysts for african unrest[136]. Government officials were sufficiently alarmed by the situation to appoint the Chief Magistrate of Johannesburg, H O Buckle, to inquire into the grievances of black mineworkers[137]. An entire chapter of the report was devoted to 'complaints as to compensation'. The inquiry posed three questions: how far is the provision of compensation really an equivalent for the financial loss which the labourer has suffered? How does it compare with the provision made for the European in similar circumstances? In cases of total incapacitation or death, does it supply reasonable livelihood for the labourer and those dependent upon him? After conducting his investigation Buckle concluded, "the compensation for injury given to the native labourer is not an equivalent for his probable loss; it is, except in the case of temporary sickness [where workers would be returning to work][138], markedly less than that provided for the European, regard being had to their respective earning power; and it is not, in the case of Cape Colony Natives, sufficient to support the dependents of a native killed at his work. In these circumstances, the complaint

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[135]Miners' phthisis was always included as a separate sub-section of grievances relating to compensation, but for the purposes of this study, I will limit my discussion to compensation for industrial accidents.

[136]Allen, V, 1992. The History of Black Mineworkers in South Africa Volume 1, Op Cit:272.

[137]The Buckle commission was entitled the Report of the Native Grievances Inquiry:1913-1914. Government Printer, Pretoria.

[138]In this respect, ie. with reference to temporary disability, where workers would be returning to work, arguments like Rosengarten's, namely, that the function of compensation is to ensure the reproduction of the working classes, seem very convincing.

as to its inadequacy seems to me well founded. I do not see why natives should not be compensated upon the same basis as Europeans, ie, probable loss of earning power"[139]. Buckle also made the insightful comment that `an annuity would benefit the incapacitated native (sic) more than a lump sum', a practice that only became operative in June 1977. The minutes of evidence provided to the Buckle Commission are equally fascinating in their enumeration of issues which have remained critical to contemporary concerns in compensation[140]. The question as to the arbitrariness of figures for compensation was raised; the `indefensible' figure of 10 pounds for death; and of the usefulness of maintaining the distinction between partial and total incapacitation in the case of black (ie. unskilled) workers. In defining the former as loss of a trade, and the latter as loss of any earning power whatsoever, there was recognition of the differential impact of an injury on white and black miners respectively. The former was regarded as having a skill or `trade', while for the latter, it was acknowledged that `a native's trade is practically always physical labour'[141]. Implicit in these comments was the recognition of the differential treatment of the labour force on the grounds of race, the especially harsh impact of work accidents for manual, mainly unskilled labourers, and the difficulties of compensation in the event of permanent partial disablement. Three decades later, in a statement submitted to the Witwatersrand Gold Mines Native Wages Commission by the African Mine Workers Union in 1943, the issue of compensation and mine injuries reared its head

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[139]Report of the Native Grievances Inquiry:1913-14. Op Cit:48:paragraph 384.

[140]South Africa Native Grievances Commission: Minutes of Evidence 1914. Government Printer, Cape Town. Stanley Pritchard, Native Affairs Commissioner at the time, displayed remarkable sympathy to the plight of Black mine workers injured on the mines in his evidence before the Commission.

[141]Ibid:58.

again[142]. The Commission noted that despite the fact that there are roughly ten times more Africans on the mines than there are Europeans, and, that Africans are more frequently involved in accidents, between 1919 and 1940, Europeans received 19 903 005 pounds in compensation while Africans received 1 335 729 pounds[143]. They also disputed the claims by the mining industry that they provide employment for the men, saying that this practice was not widespread. "Men who are disabled on the mines are often sent back to the Reserve and told to wait until the NRC contacts them to return to work. They wait a very long time without hearing from the mines. These men do not always get taken back"[144]. Four decades later, compensation for occupational diseases was the subject of the Nieuwenhuizen Commission of Inquiry[145]. The main thrust of the Commission's recommendations were to end the system of overt racial discrimination in the Occupational Diseases and Mines and Works Act (no.78 of 1973) with respect to both the scope and nature of benefits provided to black and white workers respectively. The Commission argued the benefits of a uniform system of compensation for all occupational diseases (both mining and non-mining) under the aegis of the department of Manpower in a single Act. Despite acceptance into a Government White Paper the following year, the recommendations of the Nieuwenhuizen commission were shelved. While the historical evidence questions the monolithic nature of dominant interests in relation to workers' compensation, ultimately, it was the political and economic power of mining capital, and the formal powerlessness of black mineworkers in relation to their white counterparts that kept the issue of

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[142]See appendix II: Statement submitted to the Witwatersrand Gold Mines Native Wages Commission, by the African Mine Workers Union in, Vic Allen, 1992. Op Cit:464-5.

[143]Ibid:464.

[144]Ibid:465.

[145]cf. Report of the Commission of Inquiry into Compensation for Occupational Diseases in the Republic of South Africa. Government Printer, Pretoria, 1981.

equity and improved benefits in workers' compensation off the statute books[146]. Black worker organisations had reason for scepticism as to the outcome of, even relatively sympathetic, government commissions of inquiry. As the statement by the AMWU in 1943 observed. "We wish to point out that this Commission [The Witwatersrand Gold Mines Native Wages Commission] cannot go beyond making recommendations, and our experience of commissions has been that their recommendations are frequently shelved or ignored. For example, a careful comparison of the complaints made before the Native Grievances Enquiry of 1914 [the Buckle Report] with present day conditions will reveal the startling fact that very little has changed"[147]. Workers' struggles over compensation have continued over the years, but the possibilities for organised black labour to effect legislative reform over the nature and scope of benefits will only arise with provision for proportional representation in the compensation legislation itself. In this sense, the political role of black labour within the context of the transition to democracy, is crucial to the outcome of future compensation struggles.

Currently, the legislation regarding compensation generally (the WCA), and compensation for occupational diseases in the mining industry (the ODMWA) is being redrafted[148]. Compensation legislation in South Africa has been characterised by a

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[146]The power relations between black and white workers were to alter dramatically during this decade - the eighties. See for example, part 11 of Wilmot James' book - The Ascendance of African Workers - Op Cit:90-143; Also, Crush, J, 1989. "Migrancy and Militance:The Case of the National Union of Mineworkers of South Africa". African Affairs, 88:5-24. The changing balance of power on the mines between black and white workers, which preceded the dramatic organisational events of the eighties, was noted by Mike Kirkwood in "The Mineworker's Struggle", South African Labour Bulletin, 1(8):1973.

[147]Witwatersrand Gold Mines Native Wages Commission, Op Cit:428.

[148]cf. The Injured Employees Draft Bill, 1993. Government Gazette, no. 14471, 11 December, 1992; Bill on Amendments to the Occupational Diseases in Mines and Works Act, 1993. Government Gazette, no. 14367, 6 November 1992.

separation between the mining industry and other sectors of the economy for occupational diseases, the racism still prevalent in occupational disease compensation on the mines, and, the lack of tripartite, consultative mechanisms in the administration of compensation[149]. Further, safety and prevention have been separated from treatment and compensation. In the mining industry, the former is covered by the Minerals Act 50 of 1991[150], while the latter is covered by the Occupational Diseases in Mines and Works Act, 78 of 1973, and the Workmen's Compensation Act 30, of 1941, for mineworkers disabled due to injury. In non-mining industries, safety and prevention is covered by the Machinery and Occupational Safety Act, 6 of 1983[151]; while the Workmens' Compensation Act 30 of 1941 covers treatment and compensation for temporary and permanent disablement.

The underlying philosophy of the legislation covering safety and health (which is increasingly being embraced), is the principle of self-regulation. This shift in industry became apparent in the period following the reforms of the Wiehahn Commission of Inquiry into labour legislation. The MOS Act, for example, signalled a significant departure from the legislation that preceded it, namely the Factories Act, 22 of 1941. The latter Act sought to regulate by imposing and monitoring detailed rules by state agencies. By contrast, the MOS Act placed increased emphasis on

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[149]cf. Occupational Health and Safety and Workmens' Compensation, No.6, bilateralism project, University of the Witwatersrand, September 1992.

[150]This replaced the Mines and Works Act, 25 of 1956.

[151]The MOS Act is being replaced by a new Act. The Occupational Safety and Health Draft Bill, Government Gazette, 11 May 1992, incorporates safety and health (ie.physical safety, hygiene and occupational medicine) into one piece of legislation under the jurisdiction of the department of Manpower. Formerly, physical safety and hygiene was the responsibility of the department of Manpower, while occupational medicine was the concern of the department of Health. The rationalisation of safety and health into one Act, and under the aegis of one Government department was urged as early as 1976 by the Erasmus Commission of Inquiry into Occupational Health and Safety.

the provision of worker and employer involvement in health and safety, albeit flawed, as a result of limited worker access to information, management's continued prerogative to elect worker safety representatives, and, to control safety and health generally[152]. The proposed Occupational Safety and Health Act (the Draft Bill on Safety and Health), carries forward the spirit of self-regulation by, amongst other measures, extending the scope and functions of worker elected safety representatives. It also incorporates the employees' 'right to know' into the legislation[153]. The Minerals Act 50 of 1991, which replaced the Mines and Works Act 22 of 1956 also embraces self-regulation, by strengthening the monitoring mechanisms on the mines, without concomitant attention being given to the role of the mines' inspectorate. While systems of self-regulation are increasingly becoming a part of South Africa's industrial relations context, it has been pointed out that self-regulation can only function optimally under certain conditions[154]. Firstly, the establishment of structures that are accountable to, and representative of their constituencies; and secondly, the creation of an industrial environment which facilitates meaningful participation of workers and their unions through education, access to information and decision-making. In the South African context, as Macun and Myers point out, a number of factors have mitigated against effective self-regulation. These include, the legacy of apartheid and the paternalistic managerial style characterised by much of South African industry; and a reluctance on the part of unions with strong traditions of shop-

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[152]Substantial criticisms of the MOS Act and its functioning have been made. See for example, Myers, J, Steinberg, M, 1983. "Health and Safety Organisation:A Perspective on the Machinery and Occupational Safety Act". South African Labour Bulletin, vol 8/9.

[153]The Occupational Safety and Health Draft Bill is discussed in, Arkles, S, 1992. "Legislating a New Framework". The Innes Labour Brief, vol 3 (4):24-29.

[154]Macun, I, Myers, J, 1991. "The Future of Occupational Health and Safety Regulation in South Africa". Industrial Relations Journal of South Africa, vol 11 (3):11-21.

floor bargaining to participate in structures, such as the ones set up by MOSA, which were out of their control[155]. The continued absence of a political dispensation acceptable to the majority of the population, and one in which Labour's interests are represented, is a further factor mitigating against the creation of an industrial climate conducive to effective self-regulation.

Nevertheless, the role of labour market institutions to the negotiation of labour policies has increasingly become a feature of industrial relations in South Africa[156]. ACOS - the Advisory Committee on Occupational Safety (non-mining sector); the Mine Safety Committee and the Advisory Committee on Occupational Diseases, were set up to advise the relevant Ministers. A National Safety and Health Council will be established to replace ACOS once the Occupational Safety and Health Act (OSHA) replaces the MOS Act. These consultative bodies have been inherently flawed by the lack of proportional representation regarding their constituencies and their limited advisory role (the relevant Ministers are under no obligation to accept advice or table recommendations before Parliament). Further, their functioning and acceptability is intricately bound up with national bilateral and tripartite initiatives currently taking place between representatives of labour and capital, as well as the department of Manpower, viz. the National Economic Forum, the National Manpower Commission and the COSATU-SACCOLA charter[157]. As noted by Van Holdt, "the signing of the Laboria Minute in 1990 resulted in ambitious proposals from COSATU for transforming the NMC from

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[155]Ibid:17-18.

[156]These are discussed in The Bilateralism Review, vol 1,(1) 1992 and vol 1(2) 1992. Faculty of Management, University of the Witwatersrand.

[157]COSATU withdrew from the NMC in 1988, following a complaint on the 1988 Amendments to the Labour Relations Act (LRA). In August 1992, an agreement was reached regarding the restructuring of the NMC by the Minister of Manpower and representatives of capital and labour, including COSATU.

a toothless advisory body of government appointees, into a tripartite negotiating forum with powers to place legislation before parliament"[158]. The Mining Summit established in 1991, provided a bi-partite forum for the negotiation of a planned down-scaling of the crisis in the gold mining industry. This interventionist role, in the rapidly transforming industrial relations context, is a decisive change of direction for labour from its more defensive past. Current political and industrial restructuring has provided the unions with the opportunity to reassess their relationship with state and management forums. The possibility now exists for Labour to influence the terms of its involvement more favourably. Clearly, the success or otherwise of restructuring at the national level will impact on structures and initiatives in occupational health and safety. This is particularly pertinent to workers' compensation, which has operated in an autocratic manner, with state policy formulation being concluded without reference to those affected by the policy[159]. Unlike most other labour laws, the Workmen's Compensation Act does not create an advisory council to advise the Minister on matters of policy and to perform other functions in terms of the Act[160]. Apart from objections against a decision on benefits (which are heard by a representative of the Commissioner sitting with employer and trade union assessors) there is no bi-partite employer and trade union involvement. The insurance nature of the activities of the Workmen's Compensation Commissioner, and, the fact that workers are not contributors to the Workmen's Compensation fund, have been the two arguments justifying the lack of institutional mechanisms comprising the two industrial relations parties in the area of workers' compensation in South Africa[161]. However, what these arguments

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[158]Von Holdt, K, 1992. "What is the Future of Labour?" South African Labour Bulletin, vol 16 (8):30.

[159]Richer, P, 1992. From Autocracy to Co-Determination - can workers' compensation make the leap? Op Cit.

[160]Benjamin, Paul, 1992. Op Cit:8-9.

[161]Richer, P, 1992. Op Cit:2.

fail to point out, is that employers enjoy protection from 'fault' litigation as a result of workers' compensation. Thus, "without joint control of decisions, this removal of the common law right favours employers[162]. The lack of representative structures in South Africa's system of workers' compensation is unlikely to continue, for as Benjamin points out, "in the current context of restructuring and the move to democratise workplace activities it seems inappropriate that labour, capital and other interested groups do not have any influence or determination on the way the Act is administered and the benefits paid"[163]. It is not just the presence of structures however, but how representative they are of their constituency that is important. This will ultimately be a test of their effectiveness in that underlying power relationships between the parties are at issue here.

The new Injured Employees Draft Bill, 1993 has already been criticised on the above points, for while the Bill proposes the establishment of a Compensation Board, on which "employers' organisations, trade unions, the state and the Medical Association of South Africa will be represented", representations are not proportionately weighted and the Board's functions are limited to an advisory role[164]. Apart from a number of significant amendments to compensation for occupational diseases - expanding the list of compensable diseases contained in the second schedule, establishing regional medical advisory panels to assist with diagnosis, and calculating benefits on 'wage at diagnosis' as opposed to 'wage at time of last exposure' - compensation for industrial injuries remains unchanged. In fact, the Bill intends to limit the number of people entitled to

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[162]Ibid:2-3.

[163]Benjamin, Paul, 1992. Op Cit:9.

[164]Seminar on the proposed Injured Employees Compensation Draft Bill, 1993, held at COSATU house, 16 February, 1993. The purpose of the seminar was to scrutinize the proposed new Bill for the purpose of submitting detailed comments by the labour movement and other interested parties to the Commissioner.

compensation by changing the definition of a "dependant", from those "wholly and partly dependant" on a deceased worker in the current WCA, to only those "wholly dependant" on a worker who has died. In the new Compensation Draft Bill, the level of benefits, the problem of inflation, the method of disability assessment, the issue of vocational training and the employment rights of disabled workers remain unaddressed.

While the above discussion has placed workers' compensation in its historical and industrial relations context, the following section will look at the theoretical underpinnings of the Workmen's Compensation Act and its functioning. By way of clarification, it is necessary to point to the distinction between social legislation[165] and social welfare legislation. The former, refers to those aspects of labour law pertaining to health and safety and workmen's compensation, while the latter refers to a non-contributory state social security system. This includes pensions and grants for the elderly, disabled and blind people, as well as grants for family and child care. The social security system in South Africa, such as it exists, has been criticized for its racial inequality in favour of white welfare, underspending on welfare relative to other countries, a bias toward urban welfare, and unplanned provision of services[166]. In addition, fragmentation and corruption, particularly in the `homelands', has bedeviled the system. While no doubt, any new government in South Africa will be required to debate the scope

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[165]Social legislation includes such areas of labour law as basic conditions of employment, wage-regulation and unemployment insurance. Other areas of labour law which regulate the capital-labour relation, include the contract of employment, collective bargaining, unfair labour practices, discipline and dismissals, retrenchments, dispute resolution, strikes and lock-outs. See, Rycroft, A, and Jordaan, B, 1990. A Guide to South African Labour Law, Juta and Co.

[166]Francie Lund provides an incisive overview of the proposed changes to the social welfare system in, "`Reshaping Old Designs', South African Welfare into the Nineties", in Glen Moss and Ingrid Obery ed., South African Review 6 - From `Red Friday' to Codesa. Johannesburg, Ravan Press, 1992.

and limits of a restructured welfare system, for the moment, social security benefits such as workmens' compensation, remain part of a separate body of legislation. Further, as Bachmann points out, "the importance of compensation for injured workers is inversely related to the availability [and adequacy] of other forms of social security"[167]. Ultimately, the key policy question that would need to be addressed, would be to assess the relative advantages and disadvantages of maintaining separate schemes for occupational disablement, as opposed to a general insurance scheme for all disabilities, irrespective of cause[168]. Since the focus of this study is on industrial accidents, it is the Workmen's Compensation Act, 30 of 1941 that is the subject of critical analysis. Regrettably, since the Injured Employees' Compensation Draft Bill, 1993 offers little improvement to compensation for industrial accidents, workers' compensation remains as critical an issue as it has always been.

In the introduction, it was stated that the importance of follow-up studies that looked, amongst other issues, at the socio-economic impact of permanent disability, is that they reflect the theoretical underpinnings of workers' compensation legislation. In providing a longer term view of the impact of industrial disability, they enable us to assess the ability of the legislation to deal adequately with the problems raised by industrial disability, and, provide some insights into how the

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[167]Bachmann, M, 1988. Compensation for Occupational Lung Diseases. Paper presented at Association for Sociology in Southern Africa (ASSA) Conference, University of Durban-Westville.

[168]Terence Ison, a specialist in Canadian personal injury law strongly supports a universal plan for disablement. His arguments are set out in, Ison, T, 1992. "A Universal Plan of Compensation for Disablement". Paper presented to Conference on the Reform of Workmen's Compensation in South Africa, Eskom Training Centre, Midrand, 26-28 March, 1992. By contrast, the advantages of maintaining a separate programme of insurance for occupational disablement are discussed briefly by Paul Weiler in the introduction to his report entitled, Protecting the Worker from Disability:Challenges for the Eighties. A Report submitted to the Minister of Labour, Ontario, April 1983.

legislation might better serve the needs of workers (and their dependants) who have suffered a work-related accident or disease.

South Africa's Workmen's Compensation Act 30 of 1941 (the WCA) provides for the financial compensation of workers injured in accidents arising out of and in the course of their employment. It also provides for those workers who suffer from scheduled occupational diseases[169]. Where a worker dies as a result of a workplace accident or occupational disease, benefits are paid to his or her dependants. Workers' compensation has delivered benefits to both employers and workers, in that the former is protected from expensive civil damages claims, and the latter from the cost and uncertainty of proving their entitlement to compensation. Nevertheless, in light of the `historic compromise', on which systems of workers' compensation are based, it is important to assess the nature of the recompense provided to workers in evaluating the adequacy of workers' compensation.

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[169]While the focus of this study is on compensation for occupational injuries, it is worth noting that compensation for occupational diseases involves a number of additional and complex issues. The two major reasons for this are firstly, the problem of causation - establishing the occupational origin of the disease, and, the limited nature of the second schedule of the WCA (although the Injured Employees Compensation Draft Bill, 1993 proposes to expand the second schedule considerably). Secondly, due to the long latency periods of most occupational diseases and the difficulty of tracing past places of employment, occupational disease claims are fraught with administrative complexity. In the case of the Occupational Diseases in Mines and Works Act (ODMWA), compensation payments are still racially based, with black workers receiving lumpsums far below their white counterparts. The ODMWA also does not make provision for pensions, but provides lumpsums only. This Act is, as mentioned earlier, being redrafted. Two useful papers on compensation for occupational diseases, presented at the Conference on the Reform of Workmen's Compensation Legislation in South Africa, Eskom Training Centre, Midrand, 26-28 March are: Goodman, Kim, 1992. Procedural Aspects of Compensation:Occupational Diseases; and, Rees, David, 1992. Evaluating the Schedule of Occupational Diseases. See also, Bachmann, Max, 1988. Compensation for Occupational Lung Diseases, Op Cit.

There are three broad areas of concern when looking at workers' compensation. The first involves the issue of monetary benefits. The second is concerned with rehabilitation and employment of workers with a disability. Finally, there is the question of statutory structures or forums for the participation of representatives of labour and capital around areas of concern.

The importance of exposing the underpinnings of systems of workers' compensation, is in evaluating their adequacy as `measurement tools' for disability determination. Three basic theories in workers' compensation laws have been outlined[170]. Firstly, the `actual loss of earnings' theory which determines what earnings the person would have enjoyed had he/she not suffered the incapacity. This can be calculated by comparing what the person earned before the accident to that after rehabilitation. Secondly, the `loss of earning capacity' theory which requires an estimate of the extent to which a person's future earning capacity has been affected or destroyed by the disability. A variety of factors, for example, the nature of the incapacity, the person's occupational history, age, sex, educational level and ability to work, need to be taken into account. Unlike the first theory, actual loss of earnings may or may not come into the equation. Thirdly, the `impairment of the whole man' theory which addresses itself solely to a person's functional or anatomic limitations or loss. Age, occupation, educational background or earnings need not be considered. The various approaches can, of course, be used in combination to determine disability.

The South African workers' compensation system - the WCA - is modelled on the third approach described above, colloquially referred to as the `meatchart' approach. In calculating compensation under this approach, a schedule of impairments, the `meatchart', is used as a guide. Compensation is based on a percentage of the wage the worker earned at the time of the

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[170]Palmer, G, 1979. Compensation for Incapacity. Oxford University Press:218.

accident, and, the extent of impairment as defined by the WCA. The latter is found in the first schedule of the Act, which allocates a percentage of physical disability to particular injuries (see appendix 3). If a worker is totally disabled (100%) as in the case of spinal paralysis, a pension equal to three quarters of the worker's former monthly earnings is paid. If partial disability is greater than 30 per cent, the worker is paid a pension that is proportionately reduced. If the injury is rated as less than or equal to 30 percent, a lump sum is paid[171].

The limitations of this approach stem first and foremost from the ambiguity in the WCA as to the definition of "disablement". The Act defines disablement as, `disablement for employment or permanent injury or serious disfigurement'. While the Act uses these definitions interchangeably, in reality, `disablement for employment' is not synonymous with `permanent injury' or `serious disfigurement'. A permanent injury may or may not cause income loss and/or may or may not cause a diminished quality of life, unrelated to income loss. Implicit in these comments is the distinction between economic and non-economic loss caused by a given impairment. The `meat chart' approach is limited for the following reasons: it focuses on the physical impairment of the worker only and takes no account of the worker's actual loss of earnings, or loss of future earning capacity. It ignores the fact that the same physical injury in different persons can result in radically different losses in earnings. It also exposes the essentially arbitrary nature of the percentages in the first schedule. Ultimately, the significance of findings illustrating the lack of a direct relationship between severity of injury and income loss is that it brings into question the ability of basic criteria for permanent partial disability benefits to adequately account for the ways in which a specific injury can affect the real life situation of different workers. It also demonstrates

[171]The payment of pensions for black workers were introduced in June 1977. Prior to this, lumpsums, irrespective of severity of injury, were paid.

that compensation without re-employment cannot solve the intractable economic, social and psychological difficulties often raised by permanent disability - however minor the impairment.

The problem of permanent partial disability is particularly acute in contexts, like southern Africa, where workers rely on their physical capabilities for a living, and are otherwise poorly skilled or educated. Any permanent physical injury has the potential to significantly reduce options for employment. Consider the following scenario. A white collar worker who loses a leg is assessed at 70 percent according to the `meat chart'. Owing to the worker's skill and position, he will more than likely carry on working. A manual worker however, who loses four fingers in an accident and is assessed as having a disability of 40 percent, is likely to encounter difficulty in finding alternative employment. The loss of earnings will thus be greater (in relative terms) for the manual worker with the disability rating of 40 percent, than for the white collar worker with a 70 percent disability rating. The above example, highlights the inadequacy of a compensation system based solely on functional impairment with no regard for the relationship between the physical impairment and the worker's social and vocational environment.

There are two provisions for `additional' compensation, ie. over and above that described above. Firstly, in the case of permanently disabled workers under the age of 26, the Act provides for the possible loss of future earnings, albeit in a limited form. The Act appears to recognise the fact that large numbers of young workers experience accidents, and that such `novices' may be earning extremely low wages at the time of their accidents. Section 42 of the WCA provides for increased compensation based on probable future earnings for these workers. This section was not generally applied by Rand Mutual until 1987

when the issue was raised by the National Union of Mineworkers[172].

Secondly, if negligence on the part of the employer can be proved, a disabled worker may receive additional compensation. This provision is contained in section 43 of the WCA. The wider application of this section, some commentators believe, would considerably improve safety at the workplace in that employers would have to bear the increased costs of negligence[173]. However, claims for compensation under section 43 are not widespread for the following reasons. The provisions of section 43 are not well known; the Act itself does not seek to publicise this provision; the dependants of workers killed are usually ignorant of the circumstances that caused the death of their family member; and not all workers are able to turn to a trade union for legal and financial assistance. In reality, it is major mine disasters, such as Kinross and Hlobane, that lend themselves to the application of this section of the Act. While claims for additional compensation under section 43 are underutilised, it does serve to highlight the limited nature of the ordinary compensation benefits. While the amount is lower than that which may have been received in a civil claim, it does place the worker in the position he or she would have been in had the accident not occurred, ie. compensation for pecuniary losses.

Additional compensation may also be received if, in the opinion of the Commissioner, the extremely specialized skill of a worker will have unusually serious consequences as a result of the injury (section 39(5) of the Act). This provision is in reality seldom applied and has not been interpreted to cover the

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[172]Workmen's Compensation Commissioner to NUM, correspondence dated 7 December 1987, a1/4/42; Workmen's Compensation Commissioner to Rand Mutual, correspondence dated 7 December 1987, a1/4/42. Quoted in Leger JP, Arkles, RS, 1989. Op Cit:560.

[173]See for example, Benjamin, P, 1987. "Additional Compensation for Accidents at Work:An Under-Utilised Remedy". Industrial Law Journal, vol 8.

situation of manual workers described earlier. Yet a semi- or unskilled labourer with multiple finger injuries may no longer be able to perform manual work and becomes effectively 100 per cent disabled for employment. While a partially impaired worker receives a lump sum, or monthly pension of between 23 and 75 per cent of his or her monthly earnings, disablement for employment may be total.

Rand Mutual (the insurance company for members of the Chamber) pay `family allowances' to workers with a hundred percent disability, who are supporting a wife and more than two children. The amount increases with the number of dependents but does not exceed the wage the worker earned at the time of the accident. `Constant attendant allowances' (equal to 10% of the compensation pension), are paid to workers whose disability is so severe, that they require the constant assistance of a helper to perform the necessary activities of life.

It is argued that the Workmen's Compensation Act fails to provide adequate compensation for workers for the following five reasons.

Compensation and wages

Since compensation is based on earnings, wage levels are crucial for determining whether compensation will be adequate to support disabled workers and their families. The National Union of Mineworkers is particularly concerned about the comparatively low wages earned by the majority of mineworkers compared to workers in most other industrial sectors. The argument is two-fold. Firstly, owing to the fact that compensation is based on a percentage of the wage earned at the time of the accident, a worker, no matter how severely disabled, will find his/her monthly income substantially reduced. In effect, most disabled workers would receive compensation payments below poverty datum levels[174]. Secondly, because compensation is based on earnings only, it leads to the situation where two workers with the same

[174]For an illustration of this point, see table 3, in Leger, JP, Arkles, RS, 1989. Op Cit:559.

injury receive vastly different compensation amounts because of the wage they were earning at the time of the accident.

Compensation and inflation

Currently, compensation pensions are neither indexed to inflation nor increased annually. Failure to index pensions to inflation means that the buying power of compensation pensions is systematically eroded. It has been estimated that the buying power of a pension declined by half in only 10 years because of inadequate statutory increases[175]. The South African legislation does make provision for the Commissioner to increase monthly compensation payments periodically but it does not specify how frequently. The erosion of compensation pensions as a result of inflation deprives workers of benefits they are entitled to receive. What needs analysis however, "is the impact that inflation-indexed pensions would have on employer's contributions and the resources of the accident fund"[176].

Compensation and migrant workers

The administrative functioning of compensation payments is essentially geared towards a settled urban workforce. Despite the TEBA network in rural areas where most workers collect their compensation pensions (payments are also paid into bank accounts), migrant workers may experience difficulties, when their homes are at a distance or separated by difficult terrain from payment centres; this may mean that the costs incurred in collecting compensation can be a substantial proportion of the monthly payment, where payments are not made directly to the disabled worker by the compensation fund but by a third agency, such as a foreign state; this can lead to delays and even misappropriation of payments[177]. In addition, the issue of

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[175]Ibid, fig.2.

[176]Benjamin, P, 1992:22. Op Cit.

[177]See for example, De Vletter, F, 1985. The Rights and Welfare of Migrant Workers:Scope and Limits of Joint Action by Southern African Migrant-Sending Countries (MIG WP.23).

compulsory deferred pay has always been a source of anger and frustration for mineworkers. In Lesotho for example, efforts by the government in the mid-seventies to increase the rates of compulsory deferred pay, which would be paid into the state bank, led to widespread rioting and the desertion of 15,000 Basotho miners[178].

Disability versus impairment

The South African WCA relies on the physical impairment of the worker only in calculating disability. The legislation makes no distinction between impairment and disability. While much debate exists in the literature on disability around the definition of such terms, in this context I make the following distinction[179]. Impairment refers to the physical injury while disability refers to the impact of the physical injury on the person's ability to function, and, in particular, to work. The breakdown of the injury-rating schedule of the WCA into categories of impairment according to severity of injury - the `meatchart'- raises a number of important considerations. Firstly, can it be assumed that a worker with a `small' impairment will suffer a `small' amount of earnings loss, and that the converse holds true? Secondly, what is the relationship between the severity of the injury and employment status after the injury? These issues have been raised earlier, where it was argued, that for manual workers, even relatively low degrees of impairment may result in total disablement for employment, or in extreme social and vocational disadvantage. Further, the ambiguity in the definition of disablement as discussed, fails to acknowledge the differential complexity of determining vocational, as opposed to physical, disability. The former, is a more complicated procedure in that reduced earning capacity, or loss of earnings, may or may

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Geneva:ILO:5-6.

[178] Crush,J, Jeeves,A, Yudelman,D, 1991. Op Cit:123.

[179] For some debate around these definitions, see Michael Bury, 1979. "Disablement in Society:Towards an Integrated Perspective". International Journal of Rehabilitation Research, vol 2:33-40.

not be attributable to the impairment itself, but may have to do with other factors, such as the general economic climate, unemployment and skill levels.

Disability and employment

Due to the problems described above, the issue of employment following a disabling injury is crucial if workers are to avoid substantial income loss. This is particularly the case for permanent partial disability where, in the absence of a job, workers may have to rely on extremely low pension payments. Despite the Act's explicit aim to provide, "not for the full loss sustained as a result of an accident or an occupational disease, but for partial compensation"[180], the Workmen's Compensation Act offers no protection against dismissal of injured workers. This applies to both workers who suffer a temporary disability and then return to work, and to workers who suffer a permanent disability. Since no protection against dismissal is offered to disabled workers under the Workmen's Compensation Act, disabled mineworkers have to resort to the principles and practices of the Labour Relations Act, 28 of 1956 (as amended). In South Africa, the law recognises `incapacity' as a valid grounds for dismissal. However, the industrial court requires that procedural requirements are in place to determine the substantive and procedural fairness of the dismissal. Under the Labour Relations Act, the dismissal of a disabled worker can be rendered procedurally unfair if an employer fails to take appropriate steps to secure alternative employment for the employee. The employer is not obliged to create a job for the employee as such, but to offer a job where there is employment of the kind within the capacity of the employee to do[181]. However, the question is whether the court will challenge an employer's statement that he or she has looked for, but failed to find, alternative employment. The NUM's experience with this has been that, "in

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[180]Injured Employees Compensation Draft Bill. Op Cit:2.

[181]Van Niekerk, A, 1991. "Dismissal for Incapacity", Contemporary Labour Law, vol 1 (5).

effect, this procedure enables employers to dismiss ill or injured workers following adherence to a `fair' procedure which would include consideration of future employment"[182].

For migrant workers in rural areas, the problem of unemployment is particularly acute. The dependence of Basotho's on mine labour is compounded by the state of dependency which often accompanies a physical disability. Low formal education levels of most migrant mineworkers (3 - 5 years of schooling) further limit the options for employment. Thus, employment on the mines, or skills training for alternative or self-employment, is crucial.

The fundamental flaw in the South African Workmen's Compensation Act is its narrow focus on physical impairment as the sole criterion for determining disability, and hence compensation benefits. This is compounded by the assessment of benefits as a percentage of wage levels only. This, and the fact that no provision is made in the Act for retraining and employment of disabled workers suggests that the `historic compromise' in workers' compensation is weighted far too heavily in the direction of employers' interests. On average, employers spend roughly one per cent of their wage bill on compensation[183]. This varies according to how dangerous the industry is, with more hazardous industries contributing a higher percentage. As the results of this study will show, workers and their families pay a high price in social and financial losses. A more sociological approach, one that attempts to take cognizance of a worker's personal, social and particularly, vocational circumstances, would provide a more just legislative dispensation.

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[182]Hermanus, May, 1992. Testing the Limits of the Compensation System, paper presented at the Conference on the Reform of Workmen's Compensation held at the Eskom training centre, Midrand, 26-28 March.

[183]Benjamin, Op Cit:24.

Systems of compensation elsewhere have been beset by similar limitations. For example, the Ontario system in Canada used to be based on a similar system to the South African one, in that compensation was calculated on a fixed schedule or `meat chart' (focusing on physical impairment) and was subject to similar criticisms. The Ontario legislation is worth looking at in some detail, as it was replaced with a new system that attempted to provide a more sociologically sensitive compensation framework for dealing with the complexities of occupational disability.

In 1913 Chief Justice William Merideth published a report setting out a number of basic principles on which the system of workers' compensation in Canada is based[184]. The five `Merideth principles' were, no-fault coverage, collective liability for employers, a guaranteed benefit for workers irrespective of the individual circumstances of employers or insurers, the granting of quasi-judicial authority to independent boards for final determination on all matters pertaining to workers compensation law, and, the question of judicial review of compensation matters by the court[185].

For much of the history of workers' compensation in Canada, in serious cases of permanent disability, compensation consisted of a pension payable for life and measured by reference to the degree of impairment. In this respect, the system of compensation was similar in structure to the system in South Africa, whereby workers with a disability rating over a certain prescribed severity are entitled to a monthly pension, irrespective of their

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[184]The report was titled, Laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily. Written by the Honourable Sir William Ralph Meredith, C.J.O., Commissioner, it was presented to his Honour Sir John Morison Gibson, Lieutenant-Governor of the Province of Ontario, dated at Osgoode Hall, Toronto, 31 October, 1913.

[185]Canadian Labour Congress (CLC) National Policy Position Paper on Workers' Compensation in Canada, June 1989.

employment status[186]. However, new systems have been introduced in the various Canadian provinces which have subsequently generated much debate and controversy. Before looking critically at the new scheme for Ontario, it is useful to consider the thinking behind their change of system.

Weiler sets out the analytical principles of any permanent partial disability case[187]. Firstly, that an employee suffers a work-related injury (or disease); secondly, that this injury produces an enduring physical or mental impairment; thirdly, that the physical impairment imposes a functional disability on the employee, a limit on his ability to perform a role, whether the limit be physical, mental or emotional in nature; fourthly, that the disability may affect either (or both) working or non-working roles; and lastly, that the occupational disability generates a loss of earnings[188].

Following these principles, it was clear that the `old' system was plagued by a number of contradictions. For example, a person could be injured at work but not suffer any permanent impairment; a person may have suffered a permanent impairment (loss of a finger) which did not affect him in any way; even if there was a functional disability, it may not have significantly affected the worker's ability to do the job (eg. loss of a hand by a non-manual worker); or may not have affected his earnings profile,

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[186]Historically, workers' compensation in South Africa was so unsatisfactory to organised workers (in this context `white' workers), that one of the six points on which the PACT government was formed was the promise of a new compensation Bill. Organised workers favoured a state scheme along Canadian/Australian lines and it was in this form that the Cresswell Bill was actually drafted. cf. Budlender, D, 1979. Op Cit.

[187]Paul Weiler, a leading Canadian labour lawyer, was commissioned by the government to set out the basis for a new system. cf. Weiler, PC, 1980. "Reshaping Workers' Compensation for Ontario". Op Cit.

[188]Ibid:52.

if the worker could be moved (with or without retraining) to another job; or a person may have suffered a permanent injury that affected the worker's non-working role, but not their working role. The above scenarios highlight the fact that, precisely the same physical injury in different persons can produce radically different losses in earnings as a result of a number of contingencies: the personal characteristics of an injured worker (age, education, skills); economic conditions (conditions in the labour market); and the social environment (attitudes towards disabled workers[189].

The clinical rating system ie. the `meatchart', was as Weiler points out, "presumably founded on the premise that, within the relatively narrow spectrum of occupations then covered by the programme, there was a rough correlation between the degree of physical impairment and the extent of earnings loss"[190]. Although as he correctly observes, "this was never documented, and as the historical review of literature on follow-up studies of permanent disability show, the claim is spurious"[191]. The result of this system of `average rough justice' is that the basic criterion for permanent partial disability benefits currently ignores the diverse ways in which a specific physical trauma can impact on the real life situation of different workers. Weiler's argument is that since there is no necessary correlation between a particular physical impairment and its impact upon the worker's earnings, the notion of `average justice' based on a presumed relationship between the degree of physical injury and the percentage of wages lost cannot continue to be the rationale for the system. The compensation framework must therefore attempt to move beyond a clinical rating system of physical impairment alone.

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[189] ibid.

[190] Ibid:53.

[191] Ibid.

The principle that is in place in Ontario now is one of a dual method of compensation. One, is compensation for the disability itself, whereby workers with a permanent injury are guaranteed a lumpsum payment. This amount is determined by the severity of the injury only, and not related to factors like the worker's pre-injury earnings or post-injury loss of earnings. These benefits referred to as compensation for non-economic loss (NEL) are an acknowledgement of the diminished quality of life suffered by persons with a disablement. Secondly, there is compensation for loss of earnings, where workers may receive a pension to compensate for their loss of earning capacity. These benefits are referred to as compensation for future economic loss (FEL). Both types of compensation (ie. NEL and FEL benefits) are indexed to the rate of inflation as measured by yearly changes in the consumer price index. While payment for benefits under non-economic loss are guaranteed, this is not the case for benefits under future economic loss. The Board states that workers are eligible for a FEL benefit if their impairments cause them to have a loss of earnings capacity or an economic loss in the future[192]. However in practice, it is not always easy to disentangle precisely which factor, namely, the disability itself, the general economic climate, the employee or employer's attitude to the worker's job, is responsible for a worker's future economic losses.

Further, the measurement of lost earning capacity is prone to subjective and often controversial estimation as the Board attempts to determine the extent of the workers earning capacity with reference, in many cases, to what are essentially hypothetical job categories. This process known as `deeming' focuses on what work the person is capable of doing and takes the earnings of that job as the workers earning capacity. This occurs whether such employment is in fact available or not. The system

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[192]The exact nature of the benefits provided under the Workers' Compensation Act are outlined in the publication, Workers' Compensation Board (WCB) of Ontario, Policy Report, Vol. 4(5).

is thus structured to give the Board a large measure of administrative discretion. 'Deeming' is the Board's determination, and it is this factor that is responsible for creating a climate of objections and appeals. Where the worker is entitled to a pension, it is calculated as the difference between what the worker earned prior to the accident against the worker's post-accident earning capacity.

The Canadian legislation goes beyond a focus on monetary benefits. The right to vocational training and employment has been incorporated into the compensation legislation[193]. In Ontario for example, the emphasis on vocational training is such that the Workers' Compensation Amendment Act, 1989 (Bill 162) establishes many of the features of the vocational rehabilitation strategy as matters of legal obligation rather than as matters of policy of the Workers' Compensation Board[194]. The goal of vocational rehabilitation set by the Workers' Compensation Board is defined as, "minimizing the impact of work-related injuries and diseases by helping injured workers re-establish an earnings profile comparable to what they have had, but for the injury"[195]. The vocational rehabilitation strategy makes it obligatory for employers and employees to participate in any

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[193]This is true of the Australian workers' compensation legislation whereby provision is made for rehabilitation programmes to be established by employers, vocational re-education provided by th Workers' Compensation Board, and for rehabilitation counsellors. cf. Workers Compensation Act 1987 No. 70. New South Wales, Government Publication; In the State of Victoria, The Obligations and Duties of the Victorian Accident Rehabilitation Council are laid out in Part 6 of the Accident Compensation Act, Acts 1985 No. 10191, Victorian Government Publication, Australia

[194]cf. Report to the Board of Directors on the Vocational Rehabilitation Strategy, August 22, 1989.

[195]Policy Report, Workers' Compensation Board of Ontario, vol. 4(4): August 1991.

programmes[196].

It has been argued that there is no prospect of a statutory "right" to continuing employment existing concurrently with a realistic right to compensation[197]. This applies to compensation systems where economic loss is compensated because, where a fully rehabilitated worker returns to work, the compensation fund's obligation to pay compensation is reduced. For a system of vocational rehabilitation to work effectively, employment equity legislation requiring employers to employ injured workers needs to be in place[198]. "If, however, rehabilitated workers are not able to obtain suitable employment the fund will have to meet a double financial liability - vocational rehabilitation and compensation[199]". The tension in the system exists because it is designed to compensate only those whose economic loss is shown to be attributable to the disability itself. In practice however, the employment of permanently disabled workers is fraught with a number of potentially complex problems. While the system works well for some, it fails to address a number of problems, which has resulted in many workers emerging as the primary losers.

Critics of the system in Ontario, and others' like it, argue that in essence, what is happening is that the enactment of a statutory "right" to continuing employment is part of a trade-off

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[196]It is worth noting that vocational rehabilitation is also provided to surviving spouses and that home modifications for homebound employment may be provided to totally and permanently impaired workers, when it is medically and vocationally appropriate.

[197]Ison, T, 1990. "Rights to Employment Under the Workers' Compensation Acts and Other Statutes", Osgoode Hall Law Journal, vol 28 (4):839-858.

[198]Benjamin, P, 1992. Op Cit:24.

[199]Ibid:24.

for a reduction in compensation rights[200]. The argument that it is in fact counter-productive to confer a "right" to employment in a Workers' Compensation Act is worth looking at more closely[201]. Ison's argument is three-fold[202]. One is what he terms, the `fragility of the right'. Secondly, the `right's' impact on compensation, and thirdly, its impact on board rehabilitation programmes.

The `fragility of the right' is based on the fact that `the right to employment' is not for a lifetime but usually lasts around one or two years. This is bearing in mind that the statutory "right" is only relevant in situations where the employer would otherwise not want to continue employing the disabled worker. Problems arise when the employees' right to employment takes place in the context of an adversarial relationship between him or her and the employer. In this situation, it is more than likely that either the disabled worker will be `forced' to resign or the employer will terminate the employment contract giving reasons other than the disability for the dismissal. Under these circumstances, if the worker were to apply for further compensation benefits (ie.

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[200]Terence Ison, one of Canada's foremost legal experts on personal injury law, is one of the major critics of the current system in Ontario. The Canadian Labour Congress (CLC) put out a policy paper in which they argued that the move by Boards away from permanent pensions towards the "actual wage loss" system has meant a tangible erosion in benefits. Ison's argument is that a preferable situation exists in British Columbia, where an injured worker is entitled to compensation calculated either on the severity of his or her injury or, if it is more favourable, his or her loss of earning capacity.

[201]The argument here is about the statutory right to employment in a workers' compensation act. However, it does not mean that the right to continuing employment could not be incorporated under other statutes, or, in the case of organised workers, under collective bargaining agreements.

[202]His argument is set out in an article entitled, "Rights to Employment Under the Workers' Compensation Acts and Other Statutes", Osgoode Hall Law Journal, vol 28 (4):1990. His report entitled, On the Report Entitled `Reshaping Workers' Compensation In Ontario' by Paul C. Weiler, Toronto, February 1981, also contains this perspective.

for future loss of earnings) and rehabilitation assistance, the outcome would depend on enquiries and subjective value judgements about the behaviour over time of the worker and the employer. In the meantime, the refusal of the worker to exercise his `right to employment' are grounds for the termination of compensation benefits (those relating to Future Economic Loss - FEL). Further, the existence of the right to continuing employment may have the effect of diverting the worker and others, such as the rehabilitation counsellor, from considering whether retraining or other skill developments may have placed the worker in a better position in the open labour market. Workers can be caught in a `catch 22' situation where they may accept unsuitable employment, risking further disablement, for fear of declining an offer of employment and jeopardising their chances to future compensation benefits, should they need to terminate the employment.

The Canadian Labour Congress (CLC) is also of the position that the determination of "suitable employment" in workers' compensation systems is a subjective and controversial process[203]. It is this element, namely subjectivity, that lends itself to controversial judgements being made and hence to the danger of litigation creeping back into the compensation system. In this respect, it is argued that a fixed formula for determining compensation has distinct advantages in that it rules out this element of subjectivity. If, argues Ison, "the pensions were being assessed under the former system by an inappropriate formula [ie. a purely clinical rating], a more just solution could have been found in a new formula for their calculation"[204]. The CLC argue that the current system threatens the soundness of Meredith's basic principles, in that legitimate compensation entitlement (the `historic compromise') threatens to give way to tort liability in the courts.

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[203]This argument is outlined in their policy paper on Workers' Compensation in Canada, Op Cit, 1989.

[204]Ison, T, 1990. Op Cit:846.

The impact of the "right" on rehabilitation at places of employment is described by critics of the current system as operating in many instances as a form of "directed labour". It generates a "regime of social control over injured workers" in that the "right" also means that workers lose their "right" not to go back and then jeopardise their entitlement to compensation for future economic loss. "When the statutory "right" to continuing employment is coupled with the abolition of pensions and a reversion to the actual loss of earnings method of calculating benefits for permanent disability, "rehabilitation" is bound to become a euphemism for benefit control"[205].

Given the problems described above, it is argued that a fixed pension, calculated through a blended formula that incorporates projected loss of earnings together with the degree of physical impairment would provide a more just solution. Further, the need for extensive safeguards to accompany the legal right of employment following injury has been stated by the Canadian Labour Congress. "It should be a right or an option available to workers by choice, not an imposed obligation; it should not be the occasion for workers to be forced to return to work, nor for the rightful level of benefit to be denied or prematurely terminated"[206]. This position attempts to reconcile realistic, but adequate compensation with protection from dismissal as a result of work injuries.

An innovation of the Canadian system is that the principle of representation is upheld in the operation of workers' compensation. In a number of Canadian provinces the Workers' Compensation Board is a crown corporation, a para-statal body controlled by a governing board, with equal numbers of representatives of Labour and Capital, with a chair appointed by

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[205]Ibid:850.

[206]Canadian Labour Congress National Policy Position Paper on Workers' Compensation in Canada, June 1989:36.

the Government[207]. In certain other provinces, such as British Columbia, representatives of public interest groupings, such as injured workers, are also represented on the governing board. The involvement of the state is minimal and only really comes into operation where labour and capital reach deadlock on issues relating to the operation of workers' compensation. Otherwise, it is the governing board which determines what benefits are paid and what level of assessments on employers should be levied. Provision is also made for workers who do not have access to formal organisation, or, who are self-employed. The Workers' Compensation Board funds an independent Office of the Worker Advisor who represents employees in appeal and review proceedings. Employers are also assisted with an Office of the Employer Advisor to advise Employers on the Act.

The Ontario example, gives much food for thought to critics of the South African system. The Canadian legislation goes way beyond our system in a number of ways. Firstly, it recognises the importance of going beyond a focus on monetary benefits by incorporating the right of disabled workers to vocational training and employment. Secondly, it acknowledges in principle, the distinction between economic and non-economic losses (although the manner in which this is determined is problematic). Thirdly, it gives the various constituencies, including non-unionised workers and disability rights groups, entry to the system through representation and access to information.

However, in practice, the problems generated by the method of disability determination and benefit entitlement in the refurbished Ontario system, should not be discounted by the constituency seeking major changes to the South African WCA. Further, the extent of applicability of the Canadian system needs to be considered in relation to the particularities of the southern African context.

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[207]Benjamin, Paul, 1992. Op Cit:11.

Firstly, if the office of the Workmen's Compensation Commissioner in South Africa is currently experiencing administrative and procedural problems with a much more streamlined and limited system, it is inconceivable that it could take on the type of tasks assigned to the Ontario Workers' Compensation Board. The logistics of assessing each case on its personal merits, in the context of the current economic climate, as well as, of the vast numbers of migrant workers, would create a massive backlog in the system. The suggestion that a new, but nevertheless `fixed' formula that takes loss of earnings plus physical impairment into account, seems to have distinct advantages over systems that involve purely subjective judgements for their determination[208].

Secondly, while some critics of the Canadian system have argued that improved compensation benefits, and not mandatory employment, should be the focus of any improvements to compensation legislation, there are distinct limits on the practical applicability of this argument to the South African situation. Firstly, it would appear that in general, the age profile of workers injured in industry differs between the two countries. In South Africa, the average age of injury for workers in the mining industry is mid-thirties. In Canada, a common scenario is a bad back case, where typically "the worker may be someone who is middle aged, perhaps 48 years old, and who has worked for the last 30 years in heavy industry[209]". While the latter may be gearing up for retirement, the former are too young to contemplate not working, both from a financial and psychological point of view. Secondly, workers in Canada, apart from compensation, can draw on a range of social security

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[208]Of course, the method of calculating earnings loss within a fixed formula system would involve the `subjective' determinations of a number of, hopefully well-appraised, `experts'. Nevertheless, the element of subjectivity would not be applied in every individual case.

[209]Ison, T, 1988. Bad Backs and Compensation Systems, Paper for Conference on Lower Back Pain in Industry", Vancouver, April 11.

benefits to assist them in alleviating some of the burdens imposed by a disability. In southern Africa, this option is not available, and thus employment is crucial for the continued survival of workers and their dependents. Thirdly, `first world' conditions in Canada provide a more enabling environment, in terms of access to facilities and opportunities than the `third world' context in which migrant workers live. Capital accrued by Canadian workers may be productively put to use, whereas in the local context, access to markets, transport, goods and services would more than likely impose insurmountable difficulties on workers seeking to use their capital for income generation, unless they were assisted in their ventures. While workers in South Africa do not have access to other social security benefits, and while wages for mine workers are extremely low in comparison to their Northern counterparts (thus making the likelihood of accrued savings non-existent), employment after injury is a critical factor. While no doubt, many workers would trade re-employment for higher compensation levels (and the chance to choose what they would like to do wi' their money), the reality is that compensation benefits (based as they are on wages) are unlikely to improve substantially in the foreseeable future. Limited financial resources will no doubt continue to plague any compensation system in a future government. Under these circumstances, employment after injury is a necessity to avoid substantial income loss. The critical dilemma in the South African context today however, is whether workers with disabilities can expect continued `rights' to employment in a context where `able-bodied' workers in their thousands (who are not receiving pensions) are being retrenched. This leads me to the conclusion, that the thrust of current industrial and state interventions should be focused on massive programmes of vocational skills training and assistance, to equip retrenched workers, including those with disabilities, for alternative jobs in industry (where they are available) and particularly, for income-generation in rural areas.

The publication of the Injured Employees Compensation Draft Bill, 1993 in the Government Gazette for comment, invites the opportunity for some of the problems raised in this chapter to be placed on the agenda for the nineties. Given the shortcomings of the Draft Bill described earlier, the Bill is likely to be rejected by COSATU and mass campaigns organised, as happened with the 1988 LRA amendments. Despite the limitations of the proposed Compensation Board in the new Bill, the likely outcome is that the scope and functions of a Compensation Board will be one of the key issues debated by the National Manpower Commission[210].

In this sense, the political power of organised (black) Labour has an opportunity to ensure more adequate representation of their interests in the redrafting of compensation legislation. Despite this greater role played by labour, as always, the central issue with workers' compensation will be the economic considerations of influential sections of capital, and the political implications, for both the state and capital, of granting `too many concessions' to labourers[211].

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[210]This issue was raised in an interview with COSATU's, Jay Naidoo. cf. "Working to strike a balance", Interview by Mike Siluma with Jay Naidoo, COSATU general secretary. The Star, Wednesday February 17, 1993.

[211]The annual turnover in the accident fund is between R300 million and R400 million. For 1989/90, the amount was R317 million. Personal communication with office of the Workmen's Compensation Commissioner. Sizeable excess sums are thus invested each year. This begs the question as to why the level of benefits in workers' compensation is not increased. It would appear that economic considerations may not be the determining factor here, but that the `political' and ideological objections of powerful sections of industry may be more influential in this regard.

CHAPTER THREE - METHODOLOGY AND METHODS[212]

The process of conducting research is itself a story. It is as important as any research `findings', for it is the very problems posed, theoretical framework utilized, methodological procedure/s chosen, interpretation of data made and policy recommendations prioritized, that constitute the "whole system of inquiry[213]". Ratcliffe and Gonzales-del-Valle make a useful distinction between method and methodology. "`Method'", they argue, "denotes a scientific procedure; it is the specification of the steps to be taken in a given order to gather or treat data". `Methodology' on the other hand, "has to do with the epistemological and theoretical underpinnings of the methods applied in the various scientific disciplines - it is the theory of method"[214]. This seems a particularly useful distinction for it implies that research which uses methodology without method, or, conversely, that uses method without methodology, has distinct limitations. The former implies a lack of rigour in the process of research inquiry while the latter evokes the charge of positivism or empiricism. Of the latter, it has been pointed out that, "the traditional historiography of scientific practice, emphasises the importance of scientific practice, which emphasizes the importance of separating fact from value in its tempts to separate truth from error. And, it is this set of paradigmatic assumptions that provide the basis for the conceptualization of rigour in research that currently prevails"[215]. What is problematic is when the dominant community chooses to denounce as irrelevant research which does not conform to this

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[212]I am indebted to Dr Malcolm Steinberg, formerly head of the Epidemiology Unit at the NCOH, for his input in this chapter.

[213]These issues are explored in detail in the following article. Ratcliffe, J, Gonzalez-del-Valle, A, 1988. "Rigor in Health-Related Research:Toward an Expanded Conceptualization". International Journal of Health Services, vol 18 (3).

[214]Ibid:375.

[215]Ibid:362-3.

interpretation of `science'. The obsession with scientific proof leads to a fetishization of method as opposed to a consideration of methodology as a whole.

An opposing position is one that argues that empirical data only becomes meaningful by virtue of its interpretation. In this paradigm, "the guarantor of validity is the intense conflict that exposes to public view and choice the assumptions underlying the different interpretations of the same data"[216]. The framework of thought that structures the entire research process, including the methods used, needs to be brought to the surface in order to facilitate interpretation and scrutinisation of the research as a whole. The `value-critical' approach to research posits that real rigour is achieved when values and the scientific enterprise become explicitly linked. The hallmark of this paradigm is to make explicit each element of the research process. The research process is thus more than merely a set of methods for gathering and `treating' data. It comprises a whole series of interconnected choices which reflect the subjective orientations of the researcher as much as the pursuit of `truth'.

It was the above considerations that guided the methodological choices employed in this study. A number of different but complementary methods for generating knowledge about the social consequences of industrial disability were used. Information from disabled mineworkers was obtained with the use of an interview schedule (appendix 2) designed to elicit both quantitative and qualitative understandings of the impact of disability in a rural migrant community. The interview schedule thus had a dual purpose: to fulfil the functions of social survey research as well as a more biographical approach to the subjects interviewed. Through the use of fixed or closed-ended questions administered to 64 disabled mineworkers, a `generalised' picture of the social consequences of disability in a rural migrant context was obtained. This approach explored the descriptive and analytic

[216]Ibid:377.

potential of the use of the survey technique. The descriptive component of the survey was considered important, inter alia, for exposing the magnitude of the problem and for elucidating what may at first glance seem obvious, but what is in fact, a social reality often denied or neglected[217]. The analytic potential of the survey enabled relationships between variables to be explored, thereby facilitating understanding, explanation and hypothesis testing. By looking at the relationship for example, between severity of injury and employment status following injury, the ability of the criteria for assessing permanent total, and particularly, permanent partial disability, could be critically evaluated.

There was also a conscious methodological rationale for a focus on a more biographical approach in the study. Through a series of case-studies, disabled workers in their social context could be heard. This was felt to be vitally important since disabled migrant workers in rural areas have few channels through which to express themselves. Their feelings, perceptions and recommendations have formed a vital component of the study's understanding of the problem of occupational disability and provided a compelling vision for meaningful change. The five workers chosen for their biographies were chosen not for their `generalisability' as such, but precisely to highlight different dimensions of a more general problem. Thus, while the methods employed to provide a quantitative picture of the `burden' of occupational disability in rural areas can be seen as `generalisable' in the `extrapolation from sample to population', the biographical series of individual workers' experience can be seen as providing `generalities through the particular'. This `second mode of generalisation' according to Burawoy, is "the extension from the micro context to the totality which shapes

[217]Bulmer quotes Peter Worsley on this point, namely, the benefits of social survey research in highlighting social problems that may appear obvious, but which are "very often denied or neglected". See, Bulmer, M,ed., Sociological Research Methods. Macmillan Publishers, 1977.

it"[218]. The use of a single methodological procedure, the interview schedule, to elucidate both quantitative and qualitative dimensions of a single problem, starts to break down the widespread perception of the enormous gulf between these two methodological emphases. The unifying factor between them is the interplay of guiding theoretical concepts, enquiry (choice of focus and questions/areas) and empirical data. With this perspective, the question as to whether problems of concept formation in qualitative research differ markedly from those in quantitative social research is posed[219].

A further research strategy in this study was the use of interviews with `key players' involved in occupational disability on the mines. The information on the NUM's safety and organisational strategy was obtained from interviews with Ms May Hermanus (the co-ordinator of the NUM's Safety and Health Department from July 1988 to February 1992) in September 1992; and Mr Marcel Golding, the NUM's assistant general secretary, in November 1992. Interviews with representatives from mine management were held with Dr Isak Fourie, Medical Advisor to the Chamber of Mines in November 1992, and, in March 1993, with Mr Kevin Cotterell, Jim Latham and Alan Smith, TEBA's organisation and methods manager, development advisor and administrative manager, respectively. The importance of these interviews, apart from elucidating current developments around occupational disability in the industry, is in revealing how the different players perceive the problem and its solutions.

A particularly interesting dimension of the research strategy, was the process by which the field sample was drawn and disabled mineworkers located. This was a particular innovation of the study, since access to a `conventional' sampling universe was unavailable. Alternative methods of sampling were thus explored

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[218]Burawoy, M, 1985. Op Cit:18.

[219]This question is posed by Martin Bulmer in his book, Sociological Research Methods, Op Cit:241. The chapter on interpretive procedures is particularly useful to this debate.

for a rural southern African context. The remainder of this chapter will provide a discussion and evaluation of these methods.

The problems of availability and access to data sources were central to the choice of this study's design. Firstly, social researchers cannot take for granted that access to company records and documents, or those of government, are open for public scrutiny. Issues of access are as much a reflection of societal power as they are of `sensitive' material. Initially, it was envisaged that the personal injury records of the Rand Mutual Assurance Company (the insurance company that administers compensation for all members of the Chamber, as well as a number of other Mines and Works) could be used as a [illegible] universe, from which a random sample of disabled [illegible] could be drawn. However, it was soon discovered that the Chamber of Mines' reputation, of having one of the most restrictive archival policies in the world, was not without foundation[220].

Secondly, computerised data banks recording relevant personal details for all categories of disabled workers were incomplete at the time that access was being requested. At that stage, data on the spinal injured only, was in the process of being computerised. Prior to that, information was kept on file.

The extensive application on a massive scale of the computer in the mining industry has however been in use since the beginning of the seventies. This has been in the context of the industry's moves towards labour stabilisation, in what Crush, Jeeves and Yudelman have described as `computerised migrancy'[221]. They argue that the role of the computer in the modernisation of South African migrancy has been crucial in its transformation, and,

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[220]See for example, Charles Van Onselen's observations in the preface to, Studies in the Social and Economic History of the Witwatersrand 1886-1914 1 New Babylon, Johannesburg:1982, Ravan Press.

[221]Crush, Jeeves and Yudelman, 1991. Op Cit:28-31.

that it surpasses the degree of control and regulation of direct coercion in recruitment. The establishment of a data base for the industry's disabled was not embraced with such urgency. Yet, such a move could have facilitated and streamlined effective follow-up programmes for migrant workers dispersed throughout the subcontinent, as well as, provided a means of evaluating rehabilitation programmes in the industry. The advantages of large scale data banks, is that they allow for detailed analyses of different variables. For example, Ginnold's study of Wisconsin workers injured on the job used income tax records and personal and injury data from workers' compensation records to develop a measure of earnings loss[222]. This was then analysed in terms of age, sex, severity of injury and other variables. From that list it was then possible to sample the more serious cases for indepth telephone interviews.

Apart from problems of access and availability of traditional sampling frames, more unconventional sampling methods are often better suited to descriptive and exploratory studies of people with a `rare' condition in the population[223]. In addition, they have the advantage of involving members of the community, to a greater or lesser degree, in the research endeavour. The lack of reliable statistics and other relevant data about disability in rural areas has prompted a number of studies to explore different ways of approaching fieldwork. In these studies, a key component of th research procedure has been the community participation, vital to the success of the research itself. For example, with community participation at both an official and local level, the prevalence, nature and severity of disability in Tiyani, Gazankulu was estimated by means of a pre-tested standardised questionnaire administered to the total residenc population of

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[222]Ginnold, RE, 1976. Op Cit.

[223]Kalton and Anderson present a variety of methods for sampling `rare' populations in their paper, "Sampling Rare Populations", J.R.Statist.Soc. 1986, A 149, Part 1:65-82.

6968 individuals[224]. McLaren's study provided a rigorous and comprehensive overview of the prevalence of reported motor disability, as well as, the impact of disability and handicap, particularly amongst rural, black women in KwaZulu[225]. This was achieved, together with members of the community, despite the difficulty of `measuring' disability in rural areas and the paucity of available data. A third study, which looked at the impact of environmental asbestos exposure in a rural community in Lebowa was carried out in conjunction with members of the community who were provided with the necessary training[226]. The first part of the study involved a house-to-house survey to obtain basic census data on the community, which was subsequently followed by taking blood, urine and radiographic samples to determine asbestos damage.

The main concern of this study was in answering the question, "what happens to disabled mine workers once they return to their rural homes?". The primary consideration was thus finding a way to tap into existing community networks to locate a sample of disabled mineworkers. What follows is a description of that process and the issues and concerns that it raised.

Sampling

The initial consideration in designing a sample for a `rare' condition in the population (such as physical disability) is whether a sampling frame (or sampling universe) exists for that population. If a sampling frame exists, is available for sample

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[224]Anderson, GM, 1991. Prevalence, Nature and Severity of Disability in Tiyani. M.Sc.(Med). University of the Witwatersrand.

[225]McLaren, PA, 1990. The Prevalence of Reported Motor Disability and Confirmed Motor Impairment and the Impact of Disability and Handicap in a Rural Community in Kwazulu, South Africa. Doctor of Philosophy, University of the Witwatersrand.

[226]Mabiletja, Z, Felix, M, Roodt, L, 1989. Participatory Research, Community Action - the Mafefe Experience. Paper presented to the Association of Southern African Sociologists, University of the Witwatersrand, July, 1989.

selection, and is considered adequate, the sample may be selected from it using standard methods and the sampling problems are reduced to the usual ones encountered in surveying any population[227]. Where this is not the case, alternative methods of sampling `rare' populations have to be found.

In this study, an approach was developed based on the principles of what is known as multiplicity sampling or `networking'. The essential problem with sampling a `rare' population is that many contacts are required to identify the sample members with the rare condition. Of crucial importance is the ability of members of the network to provide the necessary information. They need to give accurate information on whether those linked to them have the `rare' condition as well as being able to provide a means of locating those individuals. Using this approach, it became evident that a well-defined geographical area was needed. Lesotho was chosen for three main reasons. Firstly, it is the second single largest labour supplier to the South African mines and the single largest foreign labour supplier[228]. Secondly, the visual evidence of disability amongst males in Lesotho's rural villages became apparent to the author during a number of field trips. This impression was confirmed by local members of the community who stated that hardly a cluster of villages did not have at least one, if not more men (old and young), without some evidence of a mining injury. The question was how to utilise community networks to get to this group of people. Thirdly, related to the above point, and perhaps most importantly in terms of the method, preliminary investigations revealed the pervasiveness of the church and system of chieftainship as important social, religious

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[227]Kalton, G, Anderson, D, 1986. Ibid:65.

[228]Approximately 130 000 Basotho mineworkers were employed during the period in which the study was carried out. TEBA Records, 1987, Socio-Economic Indicators of Lesotho, Bureau of Statistics, Lesotho. The numbers of Basotho miners employed has since dropped to 93 512 for 1992. Personal communication with TEBA, Lesotho, Op Cit.

and local administrative networks in the rural areas[229]. Fourthly, Lesotho's proximity to Johannesburg (where the researcher was based) made it feasible to conduct fieldwork there.

Given the available resources (not to mention the mountainous terrain) it was clearly not feasible to undertake a study of the whole of Lesotho. After consultation with the Bureau of Statistics in Lesotho (responsible for the analysis of census data) it was decided to limit the study to Mafeteng, one of Lesotho's ten districts for the following reasons. Of all the districts in Lesotho, Mafeteng is one of the more densely populated; it is in the lowlands of the country. Further, it has the highest percentage of arable land in the country. The first two reasons would maximise the chances of the method working while the last reason would maximise the potential for self-employment through agriculture and related activities. Mafeteng was considered by the Bureau to be representative of any of the low lying districts in the country[230].

Gaining Access

The first step was getting permission from the research committee of the Ministry of Health in Lesotho to conduct research there. After presentation of a protocol and lengthy discussion, permission was granted. The Christian Council of Lesotho (CCL - the umbrella body of all the Churches in Lesotho) was also consulted for formal approval. This was crucial as the churches were envisaged as being a central feature of the network. Likewise, the system of chieftainship in Lesotho would be essential to the functioning of the network. Once district

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[229]During the research for my honours thesis in 1984, priests were used as a means of locating men in wheelchairs. See, Arkles, RS, 1985. Op Cit. Similarly, in 1987, a pilot study to the NCOH survey, utilised priests and chiefs for the same purpose. See, Arkles, RS and Leger, JP, 1988. Op Cit.

[230]Population Census 1986 - preliminary results, published by the Bureau of Statistics, Maseru, January 1987.

Mafeteng was chosen as the study area, the District Secretary was consulted. It is to his office, namely, the Ministry of the Interior, that the chiefs are accountable. The parish priests of each major denomination were also consulted to discuss the relevance and feasibility of the study. So too, the Migrant Labour Project (a project of the CCL). The District Secretary undertook to notify the principal chiefs in the district requesting their presence together with sub-chiefs, priests and teachers from the district to attend a workshop. A total of 115 people attended the meeting, held on a Saturday morning. At the workshop, which was co-hosted by the Migrant Labour Project and chaired by the District Secretary, the rationale for the study was presented and people were given the opportunity to ask questions and make comments. It was agreed at the meeting that the project should go ahead.

Using "Networking" to Generate a Sampling Frame

The next step was explaining and discussing the methodology. Each person was presented with a kit or package containing the following: a series of graphics illustrating the types of physical disabilities required for the study, as well as a one page survey sheet requesting basic information about each person (see appendix 1). At the meeting, members of the network felt that basic information should be collected about all physically disabled adults in the district, irrespective of cause of disability. The members of the network, that is priests, chiefs and teachers were requested to fill in a survey sheet for each physically disabled adult they came across/knew about in their own area. It was agreed that a period of two months would suffice for data collection. Stage one of the fieldwork, was thus the compilation of a list of names and addresses of physically disabled adults in district Mafeteng, from which mineworkers injured after 1970 could be identified. Stage two of the fieldwork involved the interviewing itself. The inclusion criteria for those being interviewed were, that disabled adults (males) were injured in mine accidents, that the accident had occurred from 1970 until the present, and that interviewees had

a disability rating of greater than 8% according to the WCA's 'meatchart' (i.e. greater than the loss of a finger).

Working from the original list or sampling frame we grouped together the areas in which disabled miners were identified[231]. We visited the chiefs of those areas and arranged to return on a specified day. They undertook to call all those individuals who were on the original survey list as well as any other disabled mineworkers who had not been recorded during the initial survey period. It was pointed out that the names and exact location of people who could not get to the chief's place (because of difficulty getting there) should be noted and that we would visit those people at their homes. Disabled mineworkers from our original list who lived in areas far apart from one another were visited and whilst there were asked to tell us of others in their village whose names were not on the original list. A sample size of 100 was originally envisaged as being necessary to capture sufficient variation in responses and to analyse for these. It also stretched the resources available to the maximum. A preliminary examination of the results however, showed less variation than we had expected. We also underestimated the resources needed. We therefore accepted a sample size of 64.

The Interview

Each person was interviewed by means of a structured questionnaire using open and closed questions (see appendix 2). The questionnaire was developed on the basis of, previous case-studies with disabled mineworkers[232]; questionnaires developed in other countries for studies of a similar nature[233], and, in consultation with key people involved in rehabilitation, rural research and social surveys. The questionnaire covered the

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[231] 'We' refers to the fieldwork team, which comprised myself, a research assistant from NCOH, Julie Carlin, and two members of the Mafeteng community, Gerald Motlatsi Hatane and Vitalis Ngoae.

[232] Arkles, RS, 1985. Op Cit.

[233] For example, the study by Ginnold, Op Cit.

following areas: personal details; occupational history; accident and injury details; hospitalisation; vocational training; employment after injury; compensation; income from rural areas; living in rural areas; community participation; contact with employers and /or unions, and recommendations. The questionnaire was piloted in other districts in Lesotho and minor modifications were made. Interviews took on average one and a half hours and were conducted either at the person's home or at the home of one of the local chiefs. We worked in two teams of two: an interviewer and a translator in each team. Local people were used as translators.

Discussion and Evaluation of the Method.

One of the major preoccupations of `scientific' studies is the issue of generalisability[234]. For results to be considered valid, it has to be shown that the principle of generalisability has been adhered to. Simply stated, it means that each and every member interviewed had an equal chance of getting into the study sample. One of the major challenges of using alternative methods, like `networking' and `snowballing', is to incorporate the principle of generalisability into their application. Four major issues are relevant to the method used in this study. Firstly, was the network used to locate individuals complete and/or representative? Secondly, what was the quality of the information collected by the network? Thirdly, was the method given to the network appropriate in terms of the inclusion criteria and information requested on the survey form? Fourthly, were the individuals located for interview a representative sample?

All sub-chiefs, priests and teachers from the di. nt villages of the district were called to the workshop by the District Secretary to whom they are accountable. No specific members of the network were targeted and no incentives were provided. Almost

[234]Earlier in this chapter, I have drawn the reader's attention to Burawoy's observations regarding `generalisability', namely, that surveys are but one means of generating `valid' research.

all the forms filled in by the priests were channelled through their respective parishes (ie. from the different denominations). However, the rest of the survey forms were processed (stamped and sent to us) by the office of the local chief, irrespective of who had actually filled in the form. It was thus difficult to check whether everyone present at the original workshop had personally filled in forms, as the forms were often headed by the name of the chief of a series of villages.

The process relied on the one workshop held to explain what was required of the network. Due to the dispersal of members of the network over an extremely large area which made up the district, no follow-up visits to check quality of the information was possible with the given resources. The supportive role provided to the network relied on correspondence (for example, adequate provision of forms, thank you letters and reminders) which was channelled through the office of the District Secretary. However, since the administrative functions of the district (comprising the villages) is routinely serviced by the offices of the local chiefs, it was not anticipated that major problems would arise. Further, teachers, priests and chiefs are the most literate members of the community, familiar with clerical duties, such as the filling in of forms.

The quality of the information gathered on the survey forms was more reliable for mineworkers than for the general population. This was because disabilities from mining accidents (the result of specific traumatic incidents) lent themselves to more precise descriptions and graphic accounts than did disabilities from other causes. The graphics in the package given to the network were, in fact, drawn from photographs of disabled mineworkers. Most of the non-mining disabilities recorded related to elderly people whose impaired functioning had progressed over the years. Their disabilities were not the result of a specific traumatic injury but rather due to the effects of disease and ageing.
It was found however, that the 'neat' formula for permanent disability, as set out in the first schedule of the Workmen's

Compensation Act (see appendix 3), and which formed the basis of the inclusion criteria, did not always capture the type of disability present. The inclusion criteria only included those disabilities visibly apparent. The network however, extended this criterion to include people whose subjective experience was that of being disabled. Examples included, those people with serious fractures (requiring internal fixation in many cases) that had ostensibly healed but had not resulted in full functional recovery. Only those with fractures, who had been compensated for their injury (ie. `official' acknowledgment of permanent disability), were accepted into the study sample. The fact that the inclusion criteria were sometimes limited in capturing a wider range of disability, was considered an important finding in itself, as it pointed to the limitations of fixed impairment schedules in describing disability.

Regarding representivity, the generation of the sampling frame was run for a limited period of time - two months. The possibility exists therefore for it not to be complete. The question is whether those located by the network differed from those not located? In general, `networking' worked very well, particularly for identifying the more common injuries, such as finger and hand injuries and amputations. The range of injuries in our sample, and the numbers in each category, were consistent with the breakdown of the workmen's compensation statistics into severity of injury (see fig.1, chapter 4). It was to be expected (in terms of numbers) that finger injuries would constitute the majority of permanent disabilities recorded.

Most people with 100% disability (the spinal injured) in the study sample were not located using `networking'. Rather, another `alternative' method for sampling `rare' populations, namely, `snowballing' was found to work more effectively[235]. Networking

[235] `Snowballing' has also been used to locate people with spinal cord injuries in SOWETO. See, Cock, J, 1989. "The Hidden Consequences of State Violence:Spinal Cord Injuries in Soweto", Op Cit.

was therefore not so successful in locating people who were maximally immobile in terms of their disability and/or maximally isolated in terms of both geography and communication. The results would have been biased if the study had been unable to identify those maximally isolated and maximally immobile.

This potential problem became evident during the fieldwork and efforts were made to compensate for this. It was brought to our attention by a local who had heard about the study, that a large number of men in wheelchairs lived in rented houses in the `camp area' or town of Mafeteng itself. Once we had located the first paraplegic, he in turn, referred us to another, who referred us to others in wheelchairs. This process of chain referral is referred to as `snowballing'. While most of the people with 100% disability were located using the `snowball' method, three paraplegics and a double amputee had been located in rural mountain areas using the `networking' method. This would suggest, that despite the remoteness of many of the mountain villages, and, despite the immobility of this group of people, community networks functioned in a cohesive and efficient manner. A possible explanation is discussed by Rothbart et al, in a study using multiplicity sampling to locate Vietnam veterans in the United States[236]. They argue that the larger the size of the local network, the more uniquely effective a multiplicity sample will be. Thus, the key social characteristic influencing the effectiveness of a multiplicity sample is the size and cohesiveness of the local network. The spinal injured in the camp of Mafeteng itself, although a highly visible group, were cut adrift from their traditional local networks when they moved from their homes in the mountains to the local town area. This was confirmed during the interviews when people described the experience of social dislocation that accompanied the move.

[236]Rothbart, GS, Fine, M, Sudman, S, 1982. "On Finding and Interviewing the Needles in the Haystack: The Use of Multiplicity Sampling". Public Opinion Quarterly, 46:408-421.

Recommendations to Those Using Networking

There are a number of considerations which need to be taken into account when considering the use of this method. Firstly, a thorough knowledge of the network that the researcher/s will be working with and how it functions is important. Secondly, adequate resources in terms of personnel, finance and time are all factors which maximise the functioning of the network. Thirdly, as a general principal, it is important that the researchers and the network share perceptions and understanding of inclusion criteria and definitions of health status.

Despite the logistical difficulties of working with this method, the study illustrates that the problems of access and availability of traditional sampling frames does not preclude possibilities for conducting representative and valid research. Further, alternative methods of sampling challenge many of the assumptions inherent in the strict 'scientific' application of research methods. The 'alternative' methods used in this study to reach a sample of disabled mine workers illustrates a broader definition of rigour in social research. Finally, by involving members of the district in the collection of information about people with disabilities, an increasing awareness and sensitivity to the problems experienced by the disabled members of the community, was felt to be an added spin-off of the research endeavour.

CHAPTER FOUR - RESULTS OF THE SURVEY

The survey focused on the socio-economic consequences of disabling injuries for mineworkers living in rural areas. The sample was therefore skewed towards men who had been involved in accidents which had left them with a permanent injury, and, who were no longer employed on the mines but living at their homes in rural Lesotho. There were however, five men in the sample who were still employed on the mines but home on leave for an extended period when data collection and interviewing took place. The importance of a rural sample is that a picture is presented of the longer-term impact of occupational disability for migrants (and their families) in rural areas.

i. demographic features

The study group comprised 64 workers who had sustained a permanent injury from an accident on the mines. The disability profile of these men is shown in figure 1.

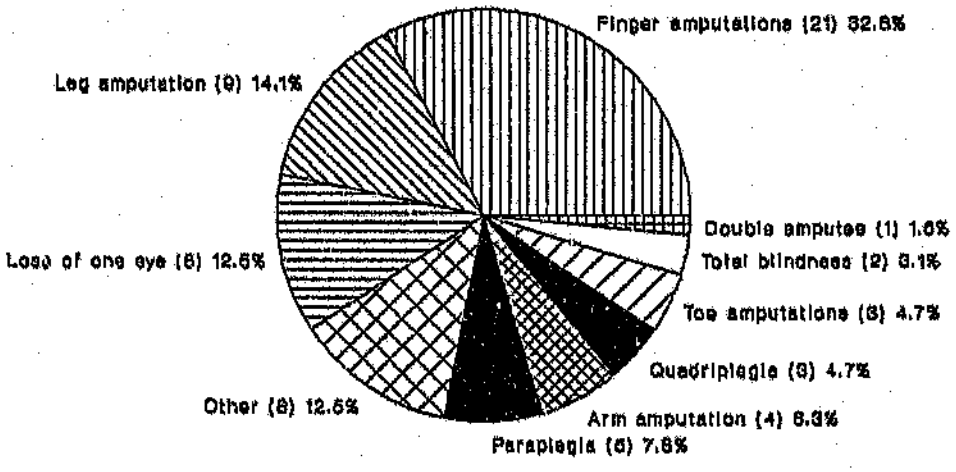


Fig.1 Disability profile of study group

Finger injuries accounted for almost a third (32.8%) of the total sample, while spinal and "other" injuries each accounted for 12.5%. "Other" disabilities included serious fractures that required internal fixation; a spinal cord injury that resulted in weakness of the lower limbs; two cases of nerve damage resulting in lameness of the hand and leg, respectively; and a serious head injury which caused speech and memory loss for a few months after the accident.

The mean age at the time of interview was 44 years, ranging from 22 to 67 years. The majority of respondents (83%) were married and had the support, to varying degrees, of family life. This support was both emotional and financial. In order to compensate for the family breadwinner's loss of earnings, many of the wives engaged in informal sector activities, such as selling prepared foodstuffs and brewing beer. Nevertheless, disabled miners remained the primary breadwinners in the family and were relied upon for the maintenance of their dependents. This responsibility was substantial as most respondents (66%) had five or more dependents. The number of dependents ranged from zero to seventeen.

The extremely low educational levels of most migrant workers is reflected in the study sample[237]. Education ranged from 29 people (45%) with no schooling, to 7 people (11%) with 6 to 8 years of schooling. Seventy seven percent of the group had 0 to 3 years of education. This had negative implications for workers'

[237]Extremely low levels of education have been noted for rural migrants to the mines cf. de Vletter, F, 1987. "Foreign Labour on the South African Gold Mines:New Insights on an Old Problem". International Labour Review,126:199-218. It should however, be pointed out that as part of efforts towards 'stabilisation' and a more selective approach to recruitment, the educational profile of the mine workforce is changing. Better educated workers are being recruited by the mines. Dunbar Moodie (1992:10 forthcoming) notes, "A rapid rise in mine wages along with substantial restructuring of the South African economy, [has] led to a sh ft from a largely illiterate peasant workforce, to one which includes numerous better educated, proletarian (if often still migrant) workers".

knowledge of their rights after an accident at work[238].

ii. occupational history

The occupational histories of the respondents highlight the extreme dependence of men of working age from Lesotho on the South African mines for labour. Fifty six people (88%) had never been employed outside the mining industry. Five people (8%) had at some time before the accident been self-employed, selling agricultural produce.

Wage levels at the time of injury varied enormously due to the wide range of years in which people were injured (1970 to 1988). Table 1 shows this variation both between and within the range of years given.

Table 1: wage (per month) at time of accident

year injured	wage (rands) mean	range
1970 - 73	27	11 - 60
1974 - 77	163	18 - 600
1978 - 81	211	15 - 600
1982 - 85	301	54 - 540
1986+	432	160 -1260

In addition to the basic wage, 43 people (67%) received bonus payments (for overtime and extra production). Of these, 49% received bonuses that comprised amounts of 30% or less of their wage; twenty seven percent received 31 to 100% of their wage, while 24% received bonuses that were greater than their basic wage.

[238]Similarly, a study conducted by the Chamber of Mines research organisation found that only 30% of the subjects interviewed had heard about workers' compensation prior to receiving it. cf. Mclaren, E, 1982. "Attitudes of Black Mineworkers to Medical Treatment and Financial Compensation for Injuries Incurred at Work". Internal Report No. (HRL 5/82).

One third of the group was earning extra money (in addition to their mining wage) whilst employed on the mines. The average amount was R313 per month but most people earned approximately R200 per month. It should be borne in mind that this represents earning potential through informal sector activities and is not necessarily a regular monthly income as such. Although the range of years of injury is a confounding factor, in that earning potential varied according to year of employment on the mine, these figures do indicate that a sizeable proportion of mineworkers augment their mining wage with income from informal sector activities. Thus, for disabled miners who are repatriated the mining wage is not the only form of income lost.

iii. accident and injury details

Almost an equal number of people in the sample were injured in the 1970's as in the 1980's. The majority of respondents (75%) were injured on gold mines. This was followed by 18.7% on coal mines, 4.6% on platinum mines, and 1 person (1.5%) on an asbestos mine. Figure 2 (page 94) shows the types of accidents that resulted in permanent disability. All those with spinal injuries in the sample were injured in 'falls of ground' accidents. This finding is consistent with the general trend. For example, in a survey of spinal injuries over a 28 month period at the Ernest Oppenheimer Hospital (which serves mainly Anglo American Mines in the Welkom region), rockfalls were found to be the single biggest cause of spinal injuries. In that study, they contributed 74% of spinal injury aetiology[239].

[239]Allin, P, 1989. "The Epidemiology of Spinal Injury in a Gold Mining Population". Journal of the Mine Medical Officers' Association of South Africa, Vol 64 (435):19-22.

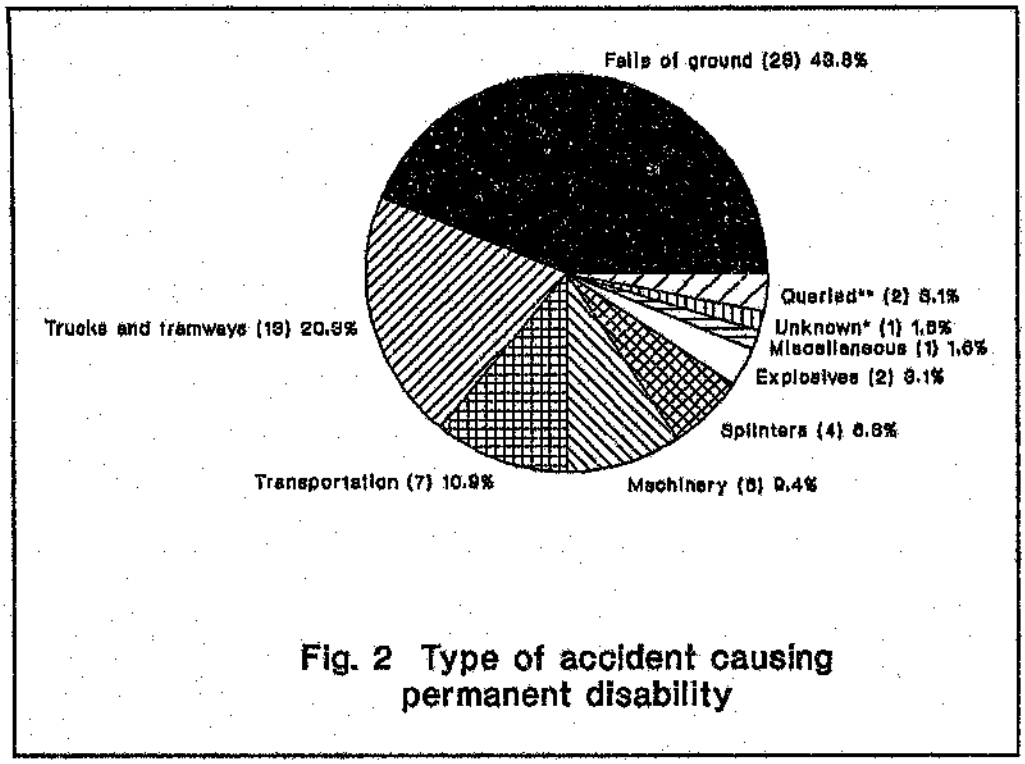


Fig. 2 Type of accident causing permanent disability

* type of accident could not be recalled;
** permanent disability (blindness in both cases) not considered to be as a result of an 'accident' by mine medical authorities.

Age at the time of injury ranged from 20 to 56; the average age was 34 years. This was consistent with the findings of the Ernest Oppenheimer Hospital survey cited above. In their study, the mean age of patients with work-related injury was 34 years, with a range from 19 to 55 years[240].

Twenty percent of the study sample were 26 years or younger at the time of the accident. Young men were often not established in terms of financial security, status in their own communities, or marriage. The impact of wage loss was particularly severe for these workers, many of whom were novices, employed in the lower paying job grades on the mines. The implications of Rand Mutual's exemption from paying additional benefits to workers under the age of 26 (section 42 of the WCA) until 1987, will be

[240]Ibid.

illustrated in Motlatsi's story in chapter five.

iv. hospitalisation

After their accidents all respondents were hospitalised. Most spent just over 3 and a half months in hospital although the average hospital stay was 4 and a half months. Table 2 summarises this data. Just under 20% of the group returned to hospital for a second period, while one person returned for a third time.

Table 2: hospitalisation

	n	time spent in hospital average	range
first visit	64	4.5 mnths	>1 wk - 2yrs+6mnths
second visit	12	4.5 mnths	2 wks - 1yr +5mnths
third visit	1	4 wks	

Less than a third of respondents received visits from family members whilst hospitalised. The visits of family members of the three quadriplegics were organised by the mines. The others were organised personally by the visitor, or by a friend or relative from home. Most people received their first visit from family members around one month after the accident occurred. The maximum time before a visit was 8 months; the minimum was 1 day (wife on mine at time of accident). The average period was 7 weeks after the accident. Severity of injury and length of hospital stay are two important factors when looking at the importance of family visits. Amongst those who did not receive family visits were three paraplegics; a double amputee; two people with serious leg fractures (resulting in hospital stays of two and a half and one and a half years, respectively); and two people with serious hand injuries (both spent one year in hospital). Table 3 (page 96) lists the reasons why 69% of respondents did not receive family visits whilst hospitalised.

Table 3: reasons for no family visits during hospitalisation

reasons	no.	%
no money for transport	11	25
personal and health-related	11	25
family not aware of accident	7	16
mine too far	6	14
passport problems	5	11
unknown	4	9
total	44	100

Despite the lengthy periods spent in hospital for most respondents, only half the group received money due to them (accident leave pay and temporary disability payments) during this time. A similar finding emerged from a Chamber of Mines study on the attitudes of black mineworkers to medical treatment and financial compensation for injuries incurred at work. Only 25 of the 54 men granted sick leave by the mines were paid for the period of sick leave[241]. This, despite the fact that the WCA stipulates that periodical payments be made `during the period of temporary total disablement', and, that `periodical payments ...be made at such times and at such intervals (but not at intervals of longer than one month) as the Commissioner may determine'[242].

A question posed in the study was whether re-employment status on the mine after injury was affected by where people went immediately after hospitalisation. An interesting trend begins to emerge from the results (figure 3, page 97), although the numbers are too small for any definitive conclusions. It does

[241]See, Molaren, E, 1982. Op Cit.

[242]Workmens' Compensation Act with Regulations, no. 30, 1941: sections 38 1(b) and 38 (3).

appear, however, that those who returned to the mines immediately after injury had a better chance of securing employment than those who returned to Lesotho. Those who were sent for further medical treatment, or for specialized rehabilitation, appeared to have the least chance of securing a job on the mine.

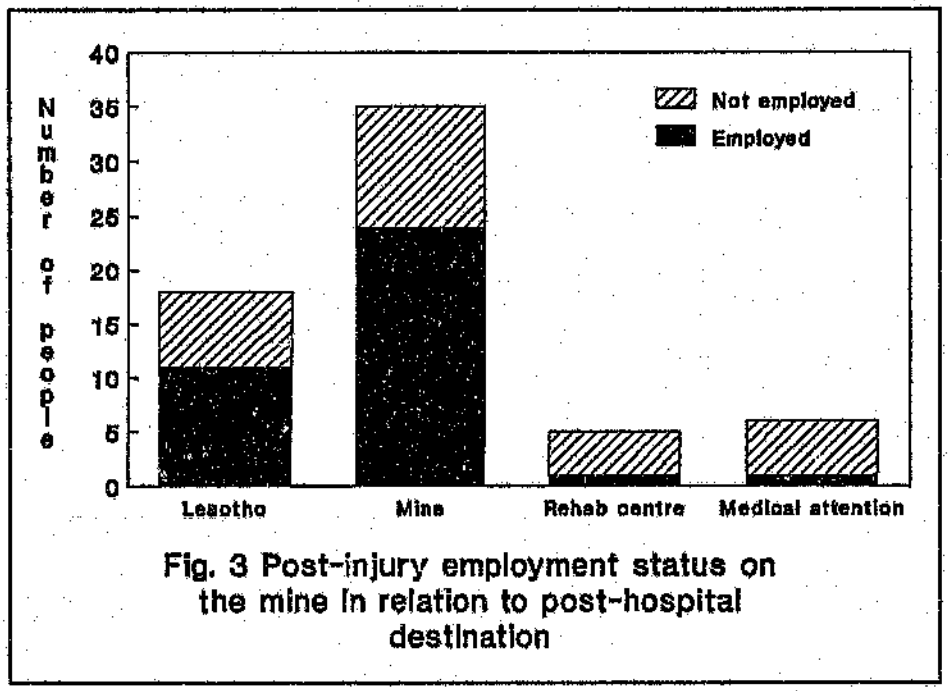


Fig. 3 Post-injury employment status on the mine in relation to post-hospital destination

v. employment after injury

Thirty seven disabled miners (58%) returned to work on the mines after their accidents. Table 4 (page 98) shows re-employment status by type of injury. There was no relationship between age at time of injury (or year of injury) and subsequent employment on the mines. While in general, the number of workers repatriated after injury during the eighties declined fairly considerably, eight of the 14 people injured between 1986 and 1988 in this sample, were not re-employed on the mines[243].

[243]Repatriations of Black Goldminers for the period 1980 - 1987 are shown in table IV in Leger,JP, Arkles, RS, 1989:560, Op Cit.

Table 4: employment status by type of injury

injury	no. employed on mine: yes	total
arm amputation	4	4
leg amputation	5	9
double amputee	0	1
spinal cord	2	8
blindness	1	2
one eye blind	5	8
finger amputations	15	21
toe amputations	3	3
other	2	8
total	37	64

The lack of any pattern with regard to employment on the mines following a disabling work accident, suggests that the employment prospects of a disabled worker depends on the specific circumstances of a particular mine - its economic viability, the availability of alternative jobs for the disabled, and the concern and involvement of mine management. This ad hoc approach to the employment of disabled workers is inevitable given the lack of any legal requirement for the employment of disabled workers. Further, the financial vulnerability of many mines has resulted in employment for the disabled taking a back seat to the negotiation of retrenchment packages for able-bodied workers.

Of the 37 who returned to work on the mines, most (41%) were re-employed for one year or less. Five were still employed but were home on leave at the time of interviewing. Figure 4 (page 99) shows duration of employment after injury.

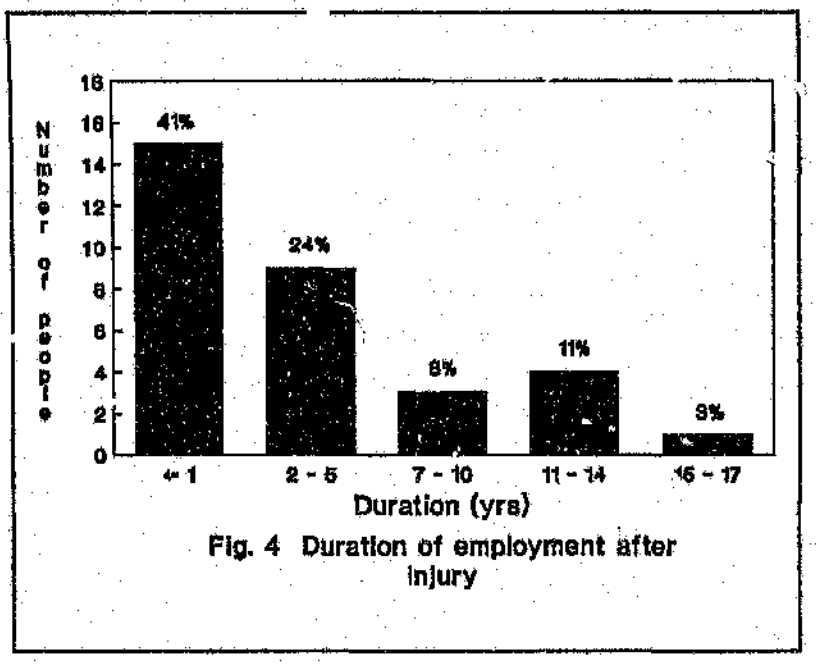


Fig. 4 Duration of employment after injury

The fact that 41% of those employed were employed for one year or less suggests that figures for repatriation can be a misleading indicator of the employment status of a disabled worker. Since 1986, when a security-of-employment agreement was reached in the NUM-Chamber of Mines wage negotiations, Chamber members undertook to employ all injured workers at a rate equal to their previous earnings for six months after they had returned to work. There is however, no legal requirement in the Workmen's Compensation Act for the re-employment of workers who are disabled. Thus the future employment of disabled workers cannot be guaranteed.

The majority (57%) of those who were re-employed on the mines were employed in jobs of a lower grade to those held prior to their accident. For 43% of the group however, injuries did not appear to affect their ability to perform the type of job they had been doing at the time of their accident. This could be an incorrect assumption however, as workers may have been placed in work unsuitable for their disability.

Of those employed after injury, 21 (58%) were satisfied with their jobs; 11 (31%) were dissatisfied; and 4 (11%) were partly satisfied. There were two main responses for those who expressed satisfaction. The first was that people were glad to have kept jobs and incomes. The second was that the work was felt to be not too heavy. The main reason for dissatisfaction was the lower wage as a result of transferral to lighter jobs. Other reasons included, that the work was felt to be too heavy and that there had been no training for the job. A number of workers resigned due to dissatisfaction over the type of job and the lower wage. Others resigned because of a desire to be with their families and to try and make a living at their homes. The lack of options however, for employment in rural areas meant that many of these workers found themselves disabled, unemployed and unable to return to the mines at a later date.

Thirty one of the 37 people who were re-employed, left the mines. Figure 5 (page 101) shows the reasons why they left. These findings, as well as findings elsewhere, support the view that the employment of disabled workers is fraught with potential problems. Careful consideration of the available options and their relative advantages and disadvantages is thus required[244].

Vocational skills training, following a disabling work accident, was limited to the spinal injured (with one exception), at specialised rehabilitation units. The types of training received were machine knitting and sewing, leatherwork, wirecabling, making beer cups and shoemaking. Two people received a second period of training, doing carpentry and crocheting. Training took place at the Wenela Rehabilitation Centre, the Ernest Oppenheimer Hospital, and the Ithuseng Rehabilitation Centre. Only two out of the eight who had received training were able to use their acquired skills at a later date - for shoe repairs and for casual self-employment. Skills training was not used because equipment

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[244]cf. Ison, T, 1990. "Rights to Employment Under the Workers' Compensation Acts and Other Statutes", Osgoode Hall Law Journal, vol 28 (4).

or finances were unavailable, or because respondents felt their health was too poor to engage in employment.

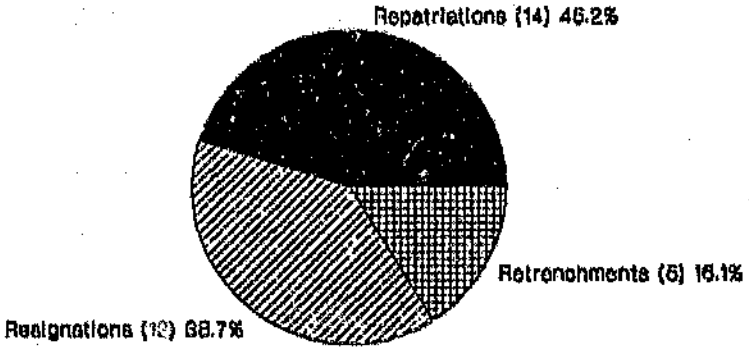


Fig. 5 Reasons for leaving the mine after re-employment

The large numbers of workers with different types of disabilities and the limited options for their employment on the mines (particularly in the case of more seriously disabled workers), points to the need for a different approach to vocational rehabilitation programmes. Disabled migrants in rural areas require skills and resources to assist them with self-employment. The need for this approach has become apparent over the years. As a senior mine medical officer noted, "over the years there has been a swing away from the tendency to retain the paraplegic/ quadriplegic on the mine...emphasis should be given towards meaningful employment as opposed to token jobs"[245]. Further, under these circumstances, "it may be better to provide support

[245]See Boulle, JR, 1989. "The Role of the Mining Industry in the Rehabilitation of Spinal Cord Injuries - Spinal Cord Injuries in the Field", Journal of the Mine Medical Officers' Association of South Africa, 64 (4&5):67.

for the disabled at home, than to encourage the development of a dependant population in the mine hostel"[246].

Forty two percent of the men in the study sample never returned to work on the mines after their accidents. Most of these (62%) were repatriated from the mines straight after hospitalisation. Five (18.5%) had returned home and hoped they could return to the mine sometime in the future. After spending periods of time at home, they found that they were unable to return to the mine through TEBA as they did not have valid re-engagement certificates, were told there were no jobs available, or simply did not have the money for successive trips to the TEBA depots to enquire about employment. Four (14.8%) did not want to return to the mines and one was sent to the Wenela Rehabilitation Centre. The chances of a disabled worker returning to the mine after a lengthy period of time in the rural areas appeared to be extremely limited. This emphasises the importance of arranging employment, where possible, prior to the worker returning home. The advantages of arranging employment with the pre-injury employer after the recuperation period have been noted in studies elsewhere. For example, Ginnold's (1976) study of injured workers in Wisconsin, USA, found that "rehiring by the previous employer was considered very important in rehabilitating the injured worker, since it allowed him to return to a familiar environment with some status, and to escape the possible discrimination of the external hiring procedure"[247]. British studies of severe disability have also argued that the problems of rehabilitation are materially reduced where the employer makes it clear to the injured worker that the job will be kept open for him[248]. Some of the emotional problems of a disabled worker who cannot return to his former occupation have been documented. These are

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[246]Ibid.

[247]Ginnold, RE, 1976:Op Cit.

[248]See for example, Sommerville, JG, 1981. "Employment of the Severely Disabled", in Recent Advances in Occupational Health, ed. JC McDonald. Edinburgh, Churchill Livingston.

described as a decline in the man's image of self-worth, attendant deterioration of family and marital relationships, and economic pressures[249]. In the South African context, the importance of re-training in the workplace, and the success of job-specific rehabilitation programmes, is discussed with reference to disabled employees of the Western Holdings Gold Mine, Welkom during the period from August 1985 to April 1986[250].

With the exception of two paraplegics, the most seriously disabled (three quadriplegics, three paraplegics and a double amputee) did not return to the mines. The double amputee, as well as two of the three paraplegics, all injured in the 1980's, were repatriated. They were told that there were not the necessary facilities for men in wheelchairs on their mines. Two of the three quadriplegics were told they would be called back to their mine as soon as the necessary facilities for men in wheelchairs had been built. All the quadriplegics had been at rehabilitation centres since their discharge from hospital but had returned home during the period when interviewing took place. From the experiences of most of the spinal injured, it was clear that not all mines had the facilities to cope with the special needs of men in wheelchairs, in terms of both living arrangements and employment options. This points to the need for alternative arrangements to be made in cases where a particular mine does not have the facilities to accommodate seriously disabled workers. For example, mining houses could make an arrangement whereby seriously disabled men, such as those in wheelchairs, could be accommodated on a different mine in the same group. It also points to the need for the extension of suitable facilities

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[249]Levine, K, Shieber, A, Benjamin, J and Halmosh, AF, 1988. "Emotional Problems of the Disabled Worker who Cannot Return to his Former Occupation", Journal of Occupational Health and Safety - Australia, New Zealand, 4(4):313-318.

[250]See Glover, BR, 1987. "Rationalisation of Rehabilitation of the Acutely Injured in the Mining Industry", Journal of the Mine Medical Officers' Association of South Africa, vol 63 (433):29-31.

necessary to house and employ seriously disabled men.

It was not only seriously disabled men who did not return to the mines. Just over a third of those with finger injuries did not go back to work. "Other" injuries were another problematic category with respect to rehabilitation and employment. These were mainly people with serious fractures that required internal fixation. Only two of the eight in this category had been employed on the mines after their accidents, and only for one and two months respectively. Of the six who did not go back to the mine, three were dismissed, two resigned, and one had been discharged and tried to go back through TEBA but was not reconsidered. This group had injuries not easily visible but which nevertheless, had not resulted in full functional recovery. This was particularly problematic with regard to most types of underground work. It also affected their capacity to perform heavy, manual labour at home in rural areas. More attention thus needs to be given to skills training and placement in suitable alternative work on the mines for this group of "lesser impaired" workers.

Dependence on mine labour and the limited options for employment in rural areas can be gauged by the fact that only six men found some form of wage employment in Lesotho after the accident. Table 5 (page 105) gives the type of job, the wage per month, the length of time employed, and the type of disability of the person employed. It is evident that only the person with a specific skill, namely the photographer, had a regular and substantial income. Most had been employed on a short-term basis doing contract work for builders. Men with a permanent injury, however minor, could not compete with able-bodied men of working age in a situation where, "the vast majority of Lesotho's workers are exported as migrants to South Africa, or are contained within the enclave as a surplus population [and where], the internal working class (defined as workers actually employed within Lesotho) is

a tiny minority"[251].

Table 5: non-mining employment in Lesotho

job	length of time employed	wages (pm)	type of injury
labourer for construction co.	6 months	R44	amputated finger
taxi driver	3 years	R30	amputated finger
builder for construction co.	6 months	R400	amputated finger
labourer for construction co.	2 months	R80	weak hand/ nerve damage
builder for construction co.	12 months	R60	knee bone removed
photographer	6 years	R400	amputated leg

It has been pointed out that "patients who are disabled and unemployed become disabled and unemployable purely from the passage of time"[252]. The lack of job opportunities for people, particularly the disabled in rural areas, had grave financial implications. Equally pertinent was the effect of unemployment on motivation and morale. For manual workers who relied on their physical capabilities for a living, any physical impairment, however minor, significantly reduced their opportunities for employment. Similar findings emerged in a national survey of impairment and handicap in Great Britain, where a minority of persons with low degrees of impairment were suffering from severe social and vocational disadvantage[253].

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[251]Roger Southall describes the nature of the internal working class in Lesotho in his article, "Trade Unions in Lesotho", South African Labour Bulletin, 10 (3):85-113, 1984.

[252]Sommerville, JG, 1981. Op Cit:237-245.

[253]Harris, 1971, quoted in Bury, MR, Op Cit.

The current employment status of the men in the study group (figure 6) provides a picture of the long-term scenario for disabled migrants in rural areas.

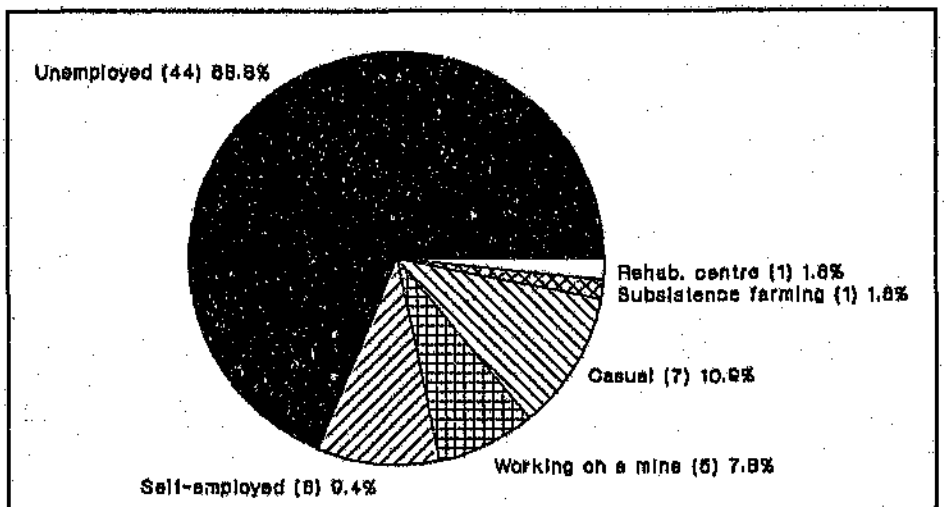


Fig. 6 Current employment status of the study sample

vi. compensation

Twenty four people in the study group received compensation pensions. This means that they were injured after 1 June 1977 and had injuries rated above 30% impairment. The compensation amounts awarded, illustrated the extremely limited nature of the protection provided against income loss. Wage loss varied substantially, according to the person's degree of impairment and the wage earned at the time of the accident. It should be borne in mind however, that wage loss is not necessarily equivalent to income loss. Income from informal sector activities on the mines or from activities performed by migrants at home in rural areas in between mine contracts, is not covered by workers'

compensation. Further, additional expenses incurred by the disabled, such as hired help and transport, are not included in the calculation of compensation[254]. Other factors, such as inflation and transport costs to collect the pension, also eroded the value of compensation pensions. Table 6 shows the compensation pension received, and the percentage of the pension spent on transport to collect it. This is shown in relation to type and year of injury. The actual amounts spent ranged from nil to R65.

Table 6: compensation pensions and percentage of pension spent on collecting it

injury	no.people	year of injury	pension (rands)	% of pension*
quadriplegia	3	1984-87	645-753	0.78 - 1.14
paraplegia	5	1979-86	150-452	0.00 -14.3
double amputee	1	1983	280	4.29
leg amputation	6	1978-86	47 -260	0.00 - 21
arm amputation	1	1980	64	2.34
one eye	2	1978-81	57.6-91	0.00- 6.4
multiple finger amputations	4	1978-87	31 -140	1.4-22.1
other	2	1982-86	80.3-374	0.8- 8.5
total	24			

A quarter of respondents spent between 11% and 22% of their pensions on transport to collect them. Money spent on transport monthly ranged from 0.78% to 22% of pensions. Most, however, (65%) spent between 0.78% and 5% on transport. Most people (71%) used public transport to collect pensions. Other means were hired transport, horses, wheelchairs and walking.

[254]The WCA does make provision for a "Constant Attendance Allowance" (CAA), payable to those employees whose disability is so severe that they cannot perform the essential actions of life without the constant help of another person. The CAA amounts to 10% of the compensation pension.

Since receiving their pensions, 16 people (67%) had had periodic increases. Four of the eight who did not get increases received their first pension payment in 1988, thus it is likely that their increases would have started coming through after the period of interviewing. The other four received increases in 1979, 1982, 1984 and 1987. While two thirds of the group had received periodic increases to their monthly pensions, increases for most, fell far short of the annual inflation rate (estimated to be between 12% and 18% per annum during the 1980's). Further, increases to pensions were extremely erratic in most cases. Elsewhere it has been shown how the buying power of pensions declined by 50% in ten years because of inadequate statutory increases[255]. Some authorities have argued that workers' compensation claimants and pensioners should be entitled to inflation adjustments[256]. Either way, increases need to be made annually and need to be more realistically adjusted to inflationary increases. Table 7 (page 109) shows the increases to monthly pensions. In the first column, the first date corresponds to the year in which the pension started. The year in brackets corresponds to the year of the last pension increase.

Nine (37.5%) out of the 24 people who received pensions experienced delays in getting their monthly pensions. The longest delay for the group as a whole was one year with the average being 81 days. Other difficulties experienced with compensation were related to transport problems collecting the pension (5 cases) and administrative problems with the method of payment (4 cases).

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[255]See, Leger,JP, Arkles,RS, 1989:560. Op Cit.

[256]Weiler, PC, 1980. Op Cit. See also, New South Wales Workers' Compensation Act No. 70 of 1987, Sections 79-92; Sydney:Department of Labour, NSW.

Table 7: periodic increases to compensation payments

yr started (yr ended)	initial pension (rands)	current pension (rands)	no.times increase	average increase (%)	average increase per yr from first to last increase (%)
1981	64.00	130.00	3	28.3	----
1982 (88)	4.00	82.00	4	15.0	10.0
1982 (89)	420.00	500.00	3	6.0	2.6
1983 (87)	31.00	52.50	1	69.4	17.3
1982 (85)	200.00	300.00	1	50.0	16.7
1980 (87)	170.00	00.00	3	26.1	11.2
1978 (87)	50.00	87.93	2	32.6	7.3
1985 (89)	645.00	659.00	2	2.2	0.6
1982 (88)	57.55	'u.00	2	27.1	9.0
1984 (87)	280.00	400.00	1	42.9	14.3
1979 (88)	60.00	89.00	1	48.3	5.3
1983 (86)	80.30	105.00	1	30.8	10.3
1987 (87)	86.00	95.00	1	10.5	10.5
1982 (85)	200.00	220.00	1	10.0	3.3
1986 (89)	452.00	492.00	2	8.9	3.0
1979 (89)	100.00	111.00			

* calculation:

$$\frac{(\text{current pension} - \text{initial pension}) \times 100}{(\text{initial pension})} \Big/ (\text{yr of latest increase} - \text{yr of first increase})$$

Tables 8a, 8b, and 8c, show the extent of income loss as a result of the accident by comparing the compensation pension with the wage the person would be earning, if still employed in that job. ie. the job at the time of the accident. The tables have been separated into three categories; 8a refers to the spinal injured; 8b to amputations and those with loss of sight in one eye, and 8c to finger injuries and "other" injuries. The estimates of wage loss are conservative in that, lowest job grade was taken if there was any doubt as to the person's actual grade; and basic wage only was considered (excludes production or overtime

bonuses). The last column in the table shows compensation as a percentage of the basic wage. As shown, for workers with 100% impairment, compensation replaced between 32 and 100 per cent of the wage earned at the time of injury; for workers with leg and arm amputations, and those who had lost one eye, compensation replaced between 13 and 63 per cent of former earnings; while for workers with finger injuries, compensation replaced between 15 and 59 per cent.

Table 8a: income loss for spinal injured

type of injury	year of injury	current compensation (rands)	current wage for job grade (rands)		%
quadriplegic	1984	659	551		119
quadriplegic	1986	700	688		101
quadriplegic	1987	753	1050		72
paraplegic	1980	300	671		45
paraplegic	1981	220	688		32
paraplegic	1981	300	420		71
paraplegic	1982	500	1050	(76)	48
paraplegic	1986	492	595		83

There are two points worth noting from the table.
Two people with 100% disability, both injured in 1986 received a monthly pension of R700 and R492, respectively. This vast difference in pension is attributable to the different wages they were earning at the time of injury. In such cases, where the nature of the disability imposes certain financial and other burdens, a case should be made for a basic minimum payment for a given injury (a 'floor'), over and above wage-based payments.

Secondly, one paraplegic, injured in 1982, was employed on the mine at the time of interviewing. His total income, ie. compensation and employment taken together, replaced 76% of what he would be earning had he not been injured. The income replacement value of his compensation pension on its own, was 48%.

Table 8b: income loss for amputees and sight impaired

type of injury	year of injury	current compensation (rands)	current wage for job grade (rands)	%
double amputee	1983	400	637	63
leg amputation	1978	87.93	361	24
leg amputation	1978	111	679	16
below knee amputation	1979	89	637	14
below knee amputation	1979	82	637	13
below knee amputation	1983	178	760 (100)	23
below knee amputation	1986	260	637	41
arm amputation	1980	130	637	20
loss of one eye	1979	90.95	637	14
loss of one eye	1981	90	637	14

From this table, it can be seen that the man with a below knee amputation, injured in 1983, fully replaced his income with his pension and reemployment wage. This is compared to a replacement value of 23%, taking compensation only. The estimates of wage loss, giving compensation as a percentage of the current wage for the job (ie. what the person would be earning had he not been injured), is clear evidence that compensation alone cannot redress wage loss after a disabling work accident.

Table 8c: income loss for finger injuries

type of injury	year of injury	current compensation (rands)	current wage for job grade (rands)	%
fingers	1978	52.50	356	15
fingers	1981	140	551	25
fingers/ hand	1986	95	592	16
fingers	1987	100	432	23
fracture	1982	105	619	17
lame leg	1986	373	637	59

The low wage replacement rate of compensation for workers with 'less serious' physical impairments indicates that income loss is more severe for workers with more minor physical impairments, unless they are employed. There is thus, an inverse relationship between severity of injury and income loss. While finger injuries and "other" injuries do not command high percentages in the first schedule, they do in fact, have serious consequences for workers reliant on manual labour, both at the workplace and at their rural homes.

Even where workers are reemployed, financial loss following an accident at work was found to be a problem - although clearly of a different magnitude to those who were unemployed. Research conducted by the Human Resources Laboratory of the Chamber of Mines found that workers complained of suffering financially after their accidents because they had not been paid while on sick leave and/or taken a drop in pay after the accident as a result of losing their old job[257].

[257]Mclaren, RE, 1982. Op Cit:8.

People injured prior to 1 June 1977 and those with an injury rating of less than 30%, received a lumpsum payment as compensation. These ranged from R140 to R3000 (table 9). Most people (43%) spent their lumpsums within three months. Twenty six percent finished theirs in one to three years; two people spent their compensation in six months, and between seven months and one year respectively. For three people lumpsums lasted from 4 to 6 years. Four people still had a portion of their lumpsums at the time of interviewing.

Table 9: compensation lumpsums

injury	no.	years of injury	lumpsums (rands)	period lasted
arm amputation	3	1970 - 78	600 - 2000	<3 mnths - 3 yrs
leg amputation	3	1970 - 72	700 - 1600	< 1 year - 6 yrs
loss of an eye	6	1971 - 84	320 - 1000	<3 mnths - 3 yrs
finger amputations	16	1970 - 88	180 - 3000	<3 mnths - not finished
toe amputations	2	1974 - 86	680 - 1000	<3 mnths - <1 yr
other	5	1972 - 88	140 - 3000	<3 mnths - not finished
total	35			

Most people (24) spent their lumpsums on food, groceries and general household goods. Other common expenses were, livestock (18), building materials (17), clothes (11), and school fees and uniforms (9). Nine people put their money into a bank or credit union. Lumpsums were also spent on lobola, medical and burial expenses, self-employment, ploughing rent, and a feast.

There were many reasons expressed for compensation being inadequate. Of a total of 81 responses (respondents could give more than one reason), 22% stated that compensation was generally insufficient for domestic needs or number of dependents. Nineteen percent had problems renovating or building homes, while 12% specified problems paying school fees and buying books and

uniforms. In 11% of cases people could not afford to buy livestock with their compensation, while 7% were unable to set themselves up in self-employment. Five percent said they couldn't afford clothes or the costs of hiring help. A further 5% stated that, while their basic subsistence needs were met, no other needs could be met. The remaining 15% mentioned medical expenses, lobola, transport costs and rental of rooms (the last applied to people in wheelchairs who moved from the mountains to the town areas) Inflation was also cited as a factor. The above responses lend support to Mclaren's observations on compensation. "There is little doubt", he states, "that compensation awards are used in lieu of lost wages, and for the same purposes that wages are usually used, particularly to support families at home[258]. This 'wage' however, is stretched ever more tightly, as compensation even in the best scenario, is a percentage of the former wage. For workers who received a lump sum only and who are no longer employed, the result is no cash income.

Many of the workers interviewed, when asked why they were no longer working on the mines, stated that they had been told they "were still getting money monthly". Workers were not aware that they were entitled to receive compensation, irrespective of whether they were reemployed or not.

vii. income in rural areas

Land.

Most people, 46 (72%), had land or access to land. Twenty two percent had no land or access to it, while the remainder said they engaged in some form of sharecropping. Land was used to grow crops which were used overwhelmingly for home consumption. Only 10 of the 50 who grew crops sold their produce. This included cabbages, beans, peas, mielies, sorghum, wheat and potatoes. Most people used the money from the sale of produce to buy seeds and fertilizer, uniforms, clothes, household goods and livestock. Other uses included, paying for labour, school fees

[258]Ibid.

and building or repairs to houses. One person deposited his money.

Most people (88%) experienced problems with their crops or produce. The two main problems were natural disasters which accounted for 48% of problems, and the inability to afford insecticides, fertilizers and seeds (29%). Other problems included stealing of crops from fields, fields being far from water, having no animals for ploughing, having poorly cultivated land, having no money to hire a tractor, and lack of means to transport crops. A wheelchair-bound person specified that his wife had to attend to him all the time and therefore could not work properly in their fields.

Livestock.

Most people (75%) owned some livestock. The general trend was that people bought livestock when they had cash, and conversely, sold it when they needed cash. People sold livestock mainly to buy food, clothing and for other domestic problems (61%). Almost a quarter of the study group (24%) sold livestock specifically to pay for children's school fees. Other reasons for selling included, medical expenses, funerals, transport and building materials for the home. Table 10 is an indication of the use of livestock.

Table 10: uses of livestock

	home-use	sales
sheep	11	13
goats	4	9
cattle	21	10
chickens	20	2
horses	12	2
donkeys	9	2
pigs	3	1

Thirty nine of the 48 people who owned livestock responded to a question on problems with their livestock, or animal produce. Almost half (49%) of the group stated that they had problems. The major problem with animals was illness (41%), followed by lack of pastures or overgrazing (18%), and inability to accumulate sufficient livestock (14%). Other problems included, not having good mates for breeding, drought, theft, no-one to herd animals, problems of payment for goods, and difficulties with finding a market.

Seventy percent of the group did not find the output from their land and crop produce, and livestock and animal produce, sufficient for the household. Peoples' problems with land centred around the small crop yield (26%), the badly ploughed fields due to lack of equipment, fertilizer (15%), and insufficient land and overgrazing (11%). Problems with livestock related mainly to the problem of too few animals, and the need to sell livestock for cash. Natural disasters accounted for 13% of problems while 11% of the group specified the lack of a cash income. One person stated that he could not work as hard because of the injury.

The problems experienced with land and crop produce and/or livestock and animal produce indicated that land and livestock, for the majority of people, provided a very basic form of subsistence but was not able to provide an income for the family. Problems with land and livestock were often interlinked. For example, the ability to work the land adequately such as ploughing, was dependant on the availability of livestock. In turn, the quality of the land, such as adequate grazing for animals, affected the wellbeing of livestock. Further, people were unable to accumulate livestock as a form of wealth because they needed to sell it for cash. This was necessary for basic household expenses such as food, clothing and children's school fees.

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Other sources of income.

Table 11 shows the primary and secondary sources of income for the group. Compensation and subsistence farming are clearly the most important primary sources of income for households; subsistence farming is the most important secondary source of income. Compensation payments were not just crucial for the maintenance of seriously disabled miners and their families. While, all those with spinal cord injuries and the double amputees relied on compensation as a primary source of income, 19% of those with finger injuries did too.

Table 11: sources of income in rural areas

	no. responses		
	primary	secondary	total
subsistence farming	20	26	46
compensation money	21	6	27
cash cropping/sales of livestock	8	8	16
other*	5	9	14
cash remittances from migrant workers	7	3	10
cash wages/salaries	3	0	3
business income	0	2	2

*these were mainly casual or piece-jobs.

Fourteen respondents (22%) started income-generating activities after their accidents. These included shoe repairs, radio repairs, bricklaying, liquor brewing, selling prepared foodstuffs, knitting, sewing, farming activities, household repairs, and rental of rooms. Family members also contributed to the household income in the period after the accident by brewing liquor (the most common activity), sewing, knitting and selling clothes, selling prepared foodstuffs, and piece-jobs, such as building and household repairs. A closer look at the nature of these activities however (table 12, page 118), shows that only half of the group's activities generated a regular income.

Almost all respondents experienced problems with income-generating activities. These related mainly to the lack of tools, materials and equipment; transporting of stock and bad terrain (especially in poor weather); lack of sufficient markets for goods; poor financial return; competition; and low skill levels. Some mentioned stiffness, pain and poor health as affecting work capacity. The variety of income-generating activities is shown in the following table.

Table 12: Income-generating activities following injury

activity	amount (rands)	frequency
bricklaying and rental of grinding mill	400	monthly
rental of rooms x 2	40	monthly
shoe repairs	12	monthly
farming	400	annually
farming x 2	3 - 30	daily
farming	5	occasional
liquor brewing	2	monthly
knitting	70	occasional
piece-jobs x 2	40 - 150	occasional
piece-jobs	unknown	occasional
shop	running at loss	

The main problems facing disabled people in their communities were separated for clarity but were clearly interdependent. Unemployment was expressed as the single biggest problem in rural areas, followed by problems associated with dependency. While these problems are experienced by people with disabilities universally, dependency for disabled ex-migrants, was compounded by the overall dependency of Lesotho on the South African mines for the provision of labour. Disabled ex-mineworkers were dependent on the mines on which they were disabled, for their

physical and vocational requirements. This situation was inevitable as mineworkers spent most of their adult lives living and working on the mines, while the productive capacity of their home areas declined.

Figure 7 shows the subjective perceptions of the respondents to the question, "what are the main problems facing people who are disabled in your community?". There were a total of 95 responses.

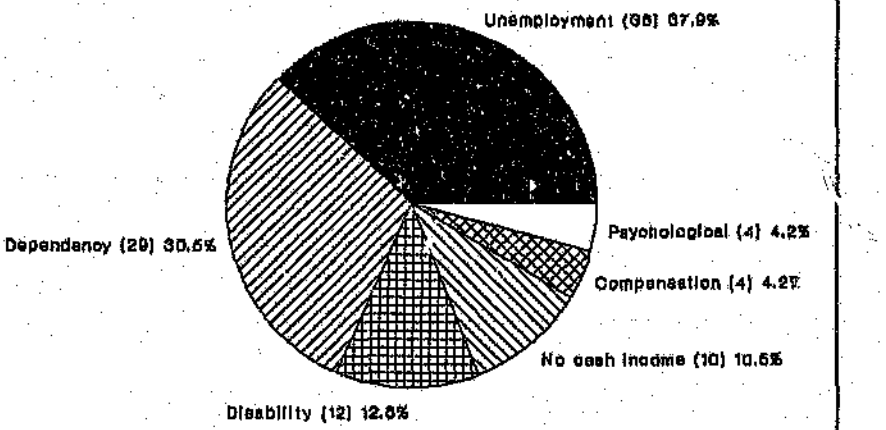


Fig. 7 Main problems facing disabled migrants in their communities

The following areas were covered by the respondents.

Unemployment included dismissals, no opportunities for work, no training for alternatives, and no assistance for self-employment; Dependency included cost and need for hiring help, the need to rent housing (in the case of the spinal injured who had moved to the towns), buying water and paying for the use of others' toilets, and having no land and livestock;

Disability-related included pain and stiffness, heavy work capacity diminished, difficulty with mobility and terrain and with obtaining sites for renting in towns (for wheelchair-bound people), and lack of local facilities and organisations for the disabled;
No cash income included no money for children's schooling, and for transport and medical expenses;
Compensation included delays and administrative problems;
Psychological included depression, wives' deserting, and effect on wider family relationships.

viii. living in the rural areas

The areas in which the respondents lived share many of the features common to other areas from which migrant miners are recruited. These areas are characterised by limited health and welfare infrastructures, and poor transport and sanitation systems. Further, the resources for comprehensive rehabilitation services are lacking[259]. In this context, people with disabilities, especially those confined to wheelchairs, struggle to cope with basic activities vital to their health and well-being.

All the spinal injured had found it necessary to make alterations to their homes or to move to rented accommodation in the town area. In these areas, some complained that they had to pay for the use of others' toilet and water facilities. Not all the paraplegics had a toilet at home or a nearby water supply.

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[259]The relative disadvantages of the rural disabled have been described for `first world' countries, like the United States, where, "due to limited community resources and fewer educational and employment opportunities in rural areas, many rehabilitation clients in these areas can also be classified as economically, educationally, and vocationally disadvantaged". Lam, C, Chan, F, Parker, H, & Carter, S, 1987. "Employment Patterns and Vocational and Psychosocial Service Needs of Rural Rehabilitation Clients in the United States". International Journal of Rehabilitation and Research, 10 (1):69-92.

housing

Eight people (all wheelchair-bound) had experienced difficulties getting into and out of their homes. These difficulties included steps being too steep and ground being uneven. In two cases, houses were rented and therefore alterations to accommodate wheelchairs could not be made. These two paraplegics subsequently built their own homes for ease of movement. The others made alterations such as removal of steps, levelling of ground and widening of doors.

Ten people had moved house since their injury. All but two were wheelchair-bound. People moved to be nearer to town amenities and transport because of bad terrain and because the house or entrance to it was too small to accommodate a wheelchair. One paraplegic moved so that he could be cared for at his parent's home. One man moved to his brother's house because his own had collapsed in a storm.

water and sanitation

Thirty four people (53%) perceived their water supply to be "near"; 8 (13%) "not so far" and 22 (34%) "far". Fifty three percent of people obtained water from a public tap; 23% from a well; 14% from a spring or stream; five percent from a private tap; three percent from a pump; and two percent (1 person) from a private borehole.

Twenty nine people (45%) had a toilet at home. Most of the spinal injured, as well as the double amputee (all of whom were wheelchair-bound), had a toilet at home and a nearby water supply. All the quadriplegics had both a toilet at home and a nearby water supply because they had all moved to rented sites in the town.

work around the home and recreation

More than half the study group (53%) experienced difficulties with work around the home, while 40% of the group experienced problems with recreation. Fifty one percent of these difficulties

related to the diminished capacity for heavy or manual work; 28% referred to a specific skill (work or recreation related) which the person could no longer perform; and 15% of people expressed health related difficulties such as poor concentration, slowness and pain. The remaining six percent were concerned with bad terrain and dependence. These difficulties illustrated one aspect of their diminished quality of life. Their reduced capacity for heavy or manual work meant that, in the context of a rural area, even a relatively minor impairment, for some, was a severe disadvantage.

Twenty one people employed someone to do work for them. Most people hired help for ploughing, herding and building. Other reasons were weeding and general help around the home. In 11 cases cash was paid for this help; in 6 cases help was paid in kind, and in 4 cases, in both cash and kind. The smallest amount paid for a job was R15 and the largest amount R940. The average amount was R242. Payment in kind included food, crops and beer, and livestock.

transport

Transport, particularly for those in wheelchairs, posed a problem. Those living in remote mountain regions had to hire transport which was extremely costly, or had to wait long hours for taxis, many of which were reluctant to stop for men in wheelchairs. Those who used their wheelchairs to go to town often had to pay considerably to get someone to push the wheelchair. A common complaint of these men was that their dependence was exploited by certain members of the community who demanded money for assisting them. In the context of an impoverished community, men in receipt of monthly pensions were regarded as well-off.

Thirty three people (52%) experienced problems with transport. The main problem was expense, followed by boarding buses, and standing for too long. Other problems included, insufficient transport facilities, bad roads, unreliability of hired transport, reckless drivers, and drivers being reluctant to stop

for a disabled person. One person said he needed to be accompanied when travelling which caused a problem for him.

artificial aids

Of the 27 people who used artificial aids, 17 (63%) experienced problems. These were mainly related to artificial limbs, crutches, and wheelchairs. Other problems were experienced with artificial eyes, a rod for a blind person, and special boots. Most problems were related to breakage or wearing out of equipment. Other problems occurred with the use of aids, wheelchair punctures, and, in the case of artificial eyes, painful reactions.

If someone had a problem with his artificial aid, he would return to the mine hospital where his prosthesis or wheelchair would be repaired or replaced. There were, however, a small number of people injured in the seventies whose prostheses were broken and who were not assisted by TEBA officials to return to the mine hospital. These people were unsure of who to turn to in Lesotho for assistance.

hospital attendance

Fourteen people (29%) had been back to the mine hospital for treatment since returning to Lesotho. Those that returned spent between one and 90 days at the hospital, with an average stay of 28 days. One person had been back to hospital three times for 60 days at a time. Reasons for going back to the hospital were mainly to change or fix prostheses, because of pain or swelling on the injured body part; for pressure sores and, in one case, for an operation.

community participation

Half the study group attended church fairly regularly, while 19 people (30%) belonged to a burial society. Two had joined a credit union. Most people (66%) said that they received assistance from community members when needed, while four (6%)

specified that they had to pay for such assistance. Seventy seven percent said that there were people in the community to whom they could talk to about problems or anxieties.

contact with mine and union

Only five people had had some contact with the mine or hospital since being at home in the rural area, excluding those who returned to hospital for medical attention. The majority (48), expressed the desire for contact with the mine. Table 13 shows the kind of contact people desired from the mine, indicating the kinds of problems people were experiencing and their need for assistance in those areas.

Table 13: Nature of contact desired with the mining industry

nature of contact	no. responses	%
employment and training	25	39.7
medical and rehabilitation	11	17.5
financial help	10	15.9
humanitarian	8	12.7
compensation	5	7.9
employment or pension increase	4	6.3
total	63	

Since many of the respondents were injured prior to the formation of the National Union of Mineworkers (NUM), not all had heard of the Union. Forty four people (69%) had heard of the (NUM), while 17 (39%) of these, had had some form of contact with the Union. A quarter of respondents who had heard of the Union thought it could assist them. Most felt they could be assisted with grievances and disputes, such as unfair dismissals and long service pay. Others felt they could be assisted with employment, medical treatment, and burial societies.

effect of accident on peoples' lives

When looking at the effects of the accident on peoples' lives it was clear that respondents were expressing their current concerns. Seen from this perspective, problems for most respondents were not necessarily a direct result of the permanent injury but, rather, the result of the `disabling' environment in which they found themselves. In figure 8, 84 of the most pressing concerns are presented. Respondents could give up to three responses.

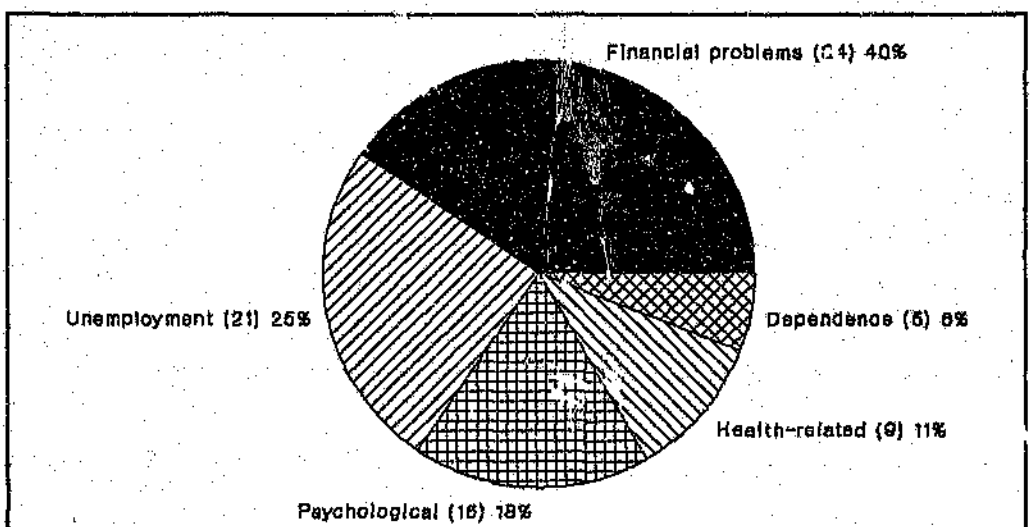


Fig. 8 Effect of accident on peoples' lives

recommendations

Employment was felt to be the most important factor that could improve the quality of peoples' lives (41%). This was not necessarily employment on the mines but at their homes in Lesotho. The desire for employment reflected the need for independence and self-sufficiency.

Compensation was the second most important issue expressed. Twelve people (16%) felt that compensation should be increased and monthly pensions paid to people who had received lumpsums. This was understandable, given the short periods in which lumpsums were depleted. As many of the respondents had not been reemployed on the mines, a number of them felt that they should have the option of re-employment or have their pensions raised[260]. Ten people (13%) wanted some form of financial assistance from the mines. This assistance was mainly to help with schooling of children, and completion of buildings and alterations to houses. A further 13% discussed the need for facilities in Lesotho for disabled people where skills could be taught; for nurses from the mining industry to visit them and for provision of long service money. It was not insignificant that 14% of the group said they had no solutions. This reflected the apathy and depression from which many of the respondents appeared to be suffering. The psychological consequences of permanent impairment were compounded by the 'disabling' environment in which ex-migrants found themselves. Lack of employment, and opportunities for people with disabilities resulted in demotivation which in turn, compounded the social consequences of a permanent injury.

[260]This recommendation is in fact, a tacit recognition of the need for compensation systems to take loss of earning capacity into account. The Ontario legislation (discussed in chapter two), makes provision for two types of compensation. One is compensation for the disability itself (calculated according to a fixed schedule). The other is compensation for future loss of earnings, where it can be shown that a worker is unable to be employed after rehabilitation.

CHAPTER FIVE - BIOGRAPHIES

Industrial accidents impinge on our consciousness from time to time when newspapers report an `event' in which a number of workers have been killed or injured. Regrettably, these are not infrequent occurrences. In 1988, 17 504 workers were granted payment for permanent disability, while Rand Mutual paid out 7 567 of such claims[261]. Not much is known about the struggles and strategies of individual disabled workers living out their lives in remote rural areas. While the similarities of experience for workers with disabilities, because of problems of compensation, unemployment and conditions in rural areas, are more marked than the differences, industrial accidents do impact on workers in different ways. Individual experiences elucidate different angles on the problem which contributes to a broader understanding of the complexities raised by occupational disability.

The life stories of individual disabled workers in this study revealed inspirational coping strategies as well as struggles for daily survival. Visualise the man with severe lower spinal paralysis, who had mustered all the strength in his arms to ride a horse, hoisting himself on and off with a pair of crutches. He could be seen riding over the mountains, crutches under his arm, enjoying a good measure of independence and mobility. Another paraplegic began his daily routine with a series of strengthening exercises performed on a home-made `double-bar'. He could be found outside his hut in the early hours of the morning using his arms to lift himself up and down, with a minimum of assistance from one of the locals. A young amputee, who was injured just prior to the introduction of monthly

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[261] The 1988 figures are the most recent published compens ion statistics. See, **Workmen's Compensation Act 1941:Report on the 1988 Statistics**. Hennies, Government Printers. It should be bo' ie in mind that the majority of these claims are for injuries rated as less than 30 percent. However, as the study has shown, `low' degrees of impairment often result in severe social and vocational disadvantage.

compensation pensions in June 1977, used his 'lumpsum' money to buy himself a second-hand camera. He became the local community portrait photographer until his camera, and his livelihood, was stolen from him six years later.

Tseliso, Petrose, Zakia, Bothata and Motlatsi are a further five of the thousands of workers who are compensated for permanent disability each year. In this chapter, brief biographies of their experiences after the accident are presented. Their life stories throw into sharp relief what the issues in permanent occupational disability are[262].

Tseliso Mareka

Tseliso is a 32 year old miner who spent nine years at Buffelsfontein as a loco driver. He was earning R600 per month at the time of his accident, which occurred in August 1986. While helping to operate the "boesman", a locomotive passed him. There was not enough space to move away and the loco crushed his legs. As a result of the accident he had one leg amputated below the knee. His other leg was badly cut and he walks around with a stick. He spent nine months in hospital during which time his wife as well as his friends working at the mine visited him. After he was discharged from Rand Mutual in Johannesburg he went back to the mine hospital where he stayed for three months. After that time he was told he should go home to Lesotho by the "mabalane" (a clerk).

Home is a village called Matelile in Lesotho where Tseliso lives with his aunt, her two children and his own son, who is still young. His wife passed away two years after the accident. He does not have his own fields but he shares fields with other people. He owns one horse and used to own sheep but sold them to pay for his wife's funeral.

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[262]These biographies or 'case-studies' first appeared in Compensation for Accidents: A Manual for Safety Stewards, National Union of Mineworkers, May 1990, Johannesburg.

When Tseliso was told he should go home they said the doctor would decide whether he could go back to work on the mine. If so, then TEBA in his district would be informed and would notify him. In 1989, three years after his accident, he had still not heard from the mine and was in the process of making enquiries through TEBA about going back to work. He told us, "When I was trying to look for work here at home in Lesotho, people said I must go back to Buffelsfontein where I had the accident because no-one will employ me here with this injury". Although Tseliso was in the process of making enquiries to go back to the mine he was not sure if he would be successful.

Since Tseliso has no job, he supports his family with his monthly compensation. He gets a pension of R260 every month. He told us he is not able to meet his expenses with his compensation. "I can't pay school fees for my niece and nephew; I can't pay transport when I have reason to go anywhere; I can't buy enough food for the family. I borrow money from neighbours when I need money to go into town to buy mieliemeal for the family". His monthly income has dropped from R600 a month (his wage in 1986) to R260 a month (his monthly compensation). He also spends R7.20 each month to fetch his compensation.

As a result of his injury, Tseliso needs to hire help to assist him with heavy work around the home. His injury has caused him difficulties. "When I was building my kraal I had problems because my legs are weak".

If Tseliso cannot go back to the mine he would like to open up a business selling beer but he does not have the capital to set himself up. "The main problem", he said, "is that most of the disabled people here are not working. They don't have enough money to support their families. There are no job opportunities here". He went on to say. "My family is no longer getting enough money. They have to struggle for everything and the members of my family are very sorry about my leg". He thinks his family will live a better life as before if the mine can re-employ him.

He ended by saying. "I would like to urge the authorities of the mines to be aware of people like me who got accidents and not just leave us". He added, "the mines should raise the money every year like the men who are on the mines working". He was referring to the annual wage negotiations and saying that compensation pensions should be increased annually to help keep up with cost of living increases.

Petrose Sechaba

Petrose became a paraplegic when he was 28 years old. He was injured in a rockfall at Elandsrand in April 1986. He had worked as a winchdriver on that mine for seven years before the accident. At that time, he was earning R400 a month and used to receive a monthly bonus of R80.

After his accident, he spent six months at Rand Mutual Hospital in Johannesburg. His family were not able to visit him because they did not have passports. Fortunately he had friends from the mine who visited him. After he left Rand Mutual he went to WENELA Hospital in the Free State where he learnt to do handicrafts, sewing, carpentry and bicycle repairs. He spent one month there and then returned to Rand Mutual, where he had further medical treatment for another month.

Petrose was dismissed from the mine. He told us the reason. "The mine where I was working is a new mine, so they didn't have enough facilities for people like myself. I could see for myself that people like me, also in wheelchairs, did not get tender care there. The hospital advised the mine that I should come home as there is no place for me".

Petrose would like to use the training he learnt at WENELA to employ himself but he does not know how to go about doing it. He also does not feel that well as he is often in pain.

Petrose received his `wages' (temporary disability payments) each month while he was in the hospital. After he was discharged, he received a lump sum of R500 and a pension of R452. That amount increased in 1989 to R492 a month. Petrose's pension is more or less the same as the amount he was earning at the time of his accident. This is because he receives a `family allowance' over and above his compensation[263]. All in all, he supports six people with his compensation. This is the main source of income for the family. His father also has fields on which they grow crops for the family.

Petrose's home is way up one of the mountains and since he is confined to a wheelchair he needs to hire public transport to collect his compensation. This costs him between R50 to R80 every month. In addition, Petros eeds to hire help as he needs assistance with everything he does at home. He pays R40 a month for this.

Although he has his own home where his wife and children live, Petrose left his own family's house and went to live with his parents. He did not want to talk much about this but said that his father decided he should be near him. His parents home is at the top of a mountain in Lesotho. His father had the doors of the hut broadened so that he could go in and out easily with his wheelchair.

The village where Petrose lives is far and inaccessible. He never leaves home except to go very far with hired transport. As a result he feels very isolated. "I would like a different type of wheelchair", he told us, "so that I can go and visit my friends". Because of the rugged terrain, Petrose gets punctures in his wheelchair tyres often. He feels this is a very big problem for people like himself in his community. "I'm speaking

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[263]Family allowances are paid by the Rand Mutual Assurance Company to totally disabled workers (such as those in wheelchairs) who have a wife and more than two children. The amount increases with the number of children, but does not exceed the wage the worker earned at the time of the accident.

on behalf of those using wheelchairs. We need a different type of wheelchair ... a stronger one that we can use without the assistance of anyone else".

This was not the only problem mentione . He told us, "I am unhappy because I can't work. I can't do anything. My family feel very sorry for me. I would like to go back to the mine and work. Otherwise I feel the mines should increase my pension". He also asked, "can the mines employ us like this?"

Zakia Semuli

Zakia is a thirty seven year old miner. He is married and has ten dependents. He started mining in 1974 and worked on a number of mines before joining Harmony where he worked as a machine operator for eight years prior to the accident. At the time of his injury he was earning R460 a month. In addition to his wage, he made an extra R300 selling groceries at the mine.

In 1988 the rocks fell onto his leg while he was working underground. As a result he has a fractured leg with an iron pin from his thigh down to his knee. He walks with a limp as if his one leg is shorter than the other. He had quite a long story to tell us. "After six months I left Harmony mine hospital. I went to Rand Mutual for a week because the mine authorities were not satisfied with my health ... my leg. But I feel the mine actually wanted to retrench a whole lot of people and I was included in that. I complained because I was aware of this. They gave me papers saying they may call me back to the mine in 1991 [three years after his accident]. They've stated the date in the papers when I must go to TEBA and they will take me back".

Since his accident Zakia has not been employed anywhere else and is currently unemployed. He received a lumpsum of R3000 as compensation for his injury. With the money, he bought clothes for his children and his wife, groceries and a stove. The rest he put in fixed deposit in the bank.

At home, Zakia has one field which he uses to grow crops for the family. He owns sheep, donkeys and cattle. He sold one ox for cash, for as he put it, "I'm aware that the climate has changed, so I foresee starvation". The output from his field and his livestock are not enough for the survival of the family.

In order to make some money his wife started selling vetkoeks to school children. She makes R6 a day from this. The family's main source of cash income is the compensation money that has been banked. Otherwise, they rely on their farming activities for food. Zakia outlined the problem to us. "The main problem facing disabled people is that they don't have money. And cash is the only source of life these days". He explained the problem further. "We will need to send the children to school and that will cause us to sell livestock. But now if I sell, I won't be able to plough any fields. I need employment so that my family has a regular cash income". He went on to say, "The accident has affected my family because at the moment I can't do the jobs like I used to do before I had the accident. My family is very sorry because I'll be like this up to my death, and I don't know whether I'll be employed anywhere. Since I was not trained for any kind of jobs, it would be better for me to be employed on that mine or else be retrained for another type of job." He was very insistent. "I would like to have the documents that will allow me to go back to the hospital for check-ups. I'd like to go back to the mine and work immediately".

Bothata Pilanyane

Bothata is a thirty year old miner. He suffered serious finger injuries in an accident at Buffelsfontein. He lives in Lesotho and supports his wife, two sons, a daughter, his brother and his mother.

He was earning R250 at the time of his accident in July 1978. After spending three months in hospital he went back to the mines to work. He worked as a sweeper on the surface for three years

and was getting wages of R180 a month. He was not happy with this because his wages had dropped by a lot each month. He told us why he left that mine. "The manager told me to go home as the disabled would get bonuses. It was not just me who was told, there were many".

Bothata received no money (temporary disability payments) whilst hospitalised. Afterwards, he was given a lumpsum of R1800. In 1983, he started getting R31 a month. Four years later the money was changed to R52.50 a month. Bothata is not sure whether that money is compensation or whether it is `this bonus that we were promised'.

The family survive on the crops they produce, from the compensation money which Bothata says, "is finished too quickly", and, from the small amounts of money they get from liquor brewing. He has to borrow money during the month from friends to buy food. He walks everywhere because he cannot afford to pay for transport. Occasionally he gets involved in piece-jobs. "This is difficult for me", because as he explained, "in the rural areas there is not much that a man like me can do with my fingers". Bothata has almost given up hope of getting a job again. He feels quite desperate to get work, "any work, here at home or on the mine".

Motlatsi Sekoai

Motlatsi was very severely injured when he was 22 years old. While driving a loco he fell off and the loco passed over him. As a result he had to have both his legs amputated - one full leg and one below the knee. The accident happened in 1983 at Bracken mine where he had been working for two years. Motlatsi spent four months at Rand Mutual Hospital in Johannesburg where he received visits from his father and his brother. After he was discharged from the hospital he was taken to Bracken mine. Three weeks later he was dismissed. "They gave me a pension for life [compensation] and said, I should never work in the mines again".

The pension he receives every month is R400. It started at R280 in 1984 and was changed to R400 in 1987. Each month it costs him R12 to go by taxi to collect his compensation. With his compensation, Motlatsi supports eight people, although he lives with his wife and four children.

He told us that all his money goes towards paying people to do jobs for him because he cannot walk. For example, when he hired someone to build him a toilet he had to pay the person R40 each time he came to build. For gardening activities he has to pay hired help R50 each time. Apart from a small garden Motlatsi does not have any fields. He also does not have any livestock. All the family have at home are chickens. He supports his dependents on his compensation payment of R400 each month.

At the hospital Motlatsi was given crutches and artificial legs. He has been confined to his wheelchair however, because he complained that he could not use his artificial limbs properly, that the handle of his crutches come loose and that his prostheses break. In 1987 he went back to Rand Mutual for two weeks to have his artificial limbs repaired.

Apart from physiotherapy, Motlatsi did not receive any vocational skills training from the mine or the hospital. He was very bitter about this and told us he would like contact with the mine so that they can "rehabilitate me and train me for some kind of job". He also mentioned that he would like to get involved in handicrafts and weaving in order to make a living at home but needs financial assistance and skills to do this.

Motlatsi described how his accident has affected his life.
"I can't play soccer or enjoy myself. I can't travel or move around. I can't work... My family life has changed. My wife has extra burdens and she is still very young. I worry about that".

When we left him he asked us why he gets so little compensation. He was confused. He thought the money he gets every month was a

pension from the mine because they dismissed him. He was still expecting to get his compensation.

After interviewing Motlatsi Sekoai at his home, we became extremely concerned with his physical and financial situation. The rehabilitation he received was limited to the medical intervention necessary for his injury. Straight after hospitalisation, he was repatriated to Lesotho. He was extremely distressed about his compensation payment, which appeared to us extremely low for a double amputee.

At this point the nature of the research process changed, from interviewing to direct intervention. It was felt necessary to intervene in the situation in order to query some of the obvious deficiencies in Motlatsi's treatment. We set in motion a process of investigation into his situation, beginning in December 1989 with a letter to the General Manager of the mine where he was injured, and which was finally resolved in May 1991. We received a letter from the Rand Mutual Insurance Company to inform us that Motlatsi's request for a family allowance (accrued payments for seven years), and, for a review of his compensation pension according to section 42 of the WCA, had been granted. Appendix 4, the letter from the Rand Mutual Insurance company, shows the substantial financial improvement to Motlatsi's situation, after intervention.

This change of gear in the research process to include intervention, provided a number of interesting and worthwhile observations. The first was the fact that it took two tertiary educated researchers with access to the system, a year and a half to get Motlatsi what he was entitled to receive in the first instance. In this situation, there was no reason to believe that Motlatsi's experience was particularly a-typical. This was because of disabled workers' general lack of understanding of what they are entitled to, the reality of `medical' repatriations with limited or no vocational skills training, endemic unemployment in rural areas, a general lack of opportunity for

income generation, and the inaccessible location of many of the workers' homes. While there was no way of knowing how many workers there were in Motlatsi's situation, we were left with little doubt that others, `lost' to the rural areas, and not receiving what they were entitled to receive, do exist.

Secondly, it confirmed our general observation that there is often a discrepancy between head office, or even company policy, and practice in the field. Workers are caught in this disjuncture when they are unaware of what they are entitled to, or when they are not assisted by mine and/or union officials, to claim what is rightfully theirs. It also illustrates that the provisions of compensation legislation are not always adhered to, and highlights the urgency of worker education in this regard.

The difference in Motlatsi's financial situation, before and after our intervention, was substantial. This shortfall was worth noting for the insights it gave regarding the problems disabled people face once they return to their rural homes. It also illustrated the consequences for workers of inadequate rehabilitation and follow-up in the field. For Motlatsi and his family, the eight years spent denied the money he was entitled to receive, meant a daily struggle to survive.

CHAPTER 6 - ORGANISATIONAL INITIATIVES IN THE MINING INDUSTRY AROUND OCCUPATIONAL DISABILITY[264].

In August 1992, ten years after the National Union of Mineworkers (NUM) was formed, the Union and the Chamber of Mines signed an industry-wide agreement setting out policies and procedures for the rehabilitation of disabled mineworkers. These two agreements - a `Principles and Values' document and a `Medical Separation Agreement' - represent the development towards a comprehensive approach to the problem of occupational disability in the mining industry (see appendix 5)[265].

The shift in NUM policy to extend organisation around safety to include consequences of accidents and disease is a result of a number of factors. These include, the growing capacity of the Union, through its research, education and organisational structures to tackle the issue of disability on an industry-wide basis; the large numbers of permanently disabled mineworkers, whose presence on the mines in the last decade increased, together with the expectation that their specific problems would be addressed by Union safety stewards; the mines' current fiscal

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[264]The information on the Union's safety and organisational strategy and the information on management's approach to occupational disability were obtained largely from interviews with the various parties (see research strategy - chapter 3). Union and management publications were a further source of information. In addition, the author's involvement in the NUM working party on disability also informs the discussion.

[265]Prior to the signing of the 1992 Chamber agreements, two individual documents had been drawn up with the Palaborwa Mining Company and Stilfontein mine respectively. These two agreements, in many respects, served as `models' for the NUM-Chamber agreement. The first, the Palaborwa agreement of 1990, detailed a set of procedures to be followed in the treatment and follow-up of disabled mineworkers. The second, was a guiding document drawn up with the Stilfontein mine in 1991, to deal with the plight of the spinal injured as a result of the mines' programme of massive retrenchments. The thrust of these agreements was to ensure appropriate training and employment options, as well as, skills training and adequate remunerative packages for those spinal injured workers (in the case of Stilfontein) who were included in the mine's retrenchments as a result of the downscaling of its operations.

crisis and the Union's strategy to shift the focus of the 1991/1992 Chamber-NUM negotiations from wage to `social wage' bargaining; and the increasing susceptibility of mine management to the changing socio-economic and political realities of the nineties. These include both changes in the mining industry as well as political changes in the country as a whole.

This chapter charts the organisational initiatives around occupational disability in the mining industry, arguing that the current economic crisis and the subsequent downscaling of the industry has had the ironic effect of marking a positive shift in the industry's approach to the problem. The first part of this chapter discusses the NUM's organisational developments towards an industry-wide policy on occupational disability. Thereafter, management's approach to occupational disability is discussed by focusing on developments in mine medical practice towards rehabilitation over the last two decades.

The nineties, marks a significant turning point in the approach to occupational disability on the mines. The key shift in the NUM's strategy is the extension of bargaining from issues of the `employment contract' to encompass issues of the `post-employment contract'. Management's key shift is the expansion of TEBA's role to encompass a rural developmental function. With these changes, the idea of the worker as a `whole person', not just a factor of production, starts to penetrate the industry's traditional approach to their migrant workforce. The focus on rural areas signals a long-awaited, if tentative, recognition of migrant workers with lives outside of the workplace.

The conflict of interests between mineworkers and mineowners was given formal expression in the formation of the National Union of Mineworkers (NUM) in December 1982. This was the culmination of an historical process of struggle by black mineworkers against the excesses of the industry's exploitation and control. Black worker grievances were expressed both informally and formally, the latter producing impressive displays of collective action

over the years, viz. 1913, 1920, 1946 and more recently, 1987[266]. The mining industry had resisted unionism of its black workforce for decades as part of its tight system of control over workers' living and working environment. The political, economic and social forces ushered in by the 70's however, created the conditions for the emergence of a new style of labour relations[267]. Firstly, the economic climate following the change in the international gold price from 1968 onwards, from a fixed pricing system to a more flexible one, facilitated higher expenditure on labour costs than ever before. Endemic and violent unrest on the mines during the seventies, had `forced' the mining houses to adapt, albeit reluctantly, to the new climate of the post-Wiehahn period. Between September 1973 and June 1976 for example, 122 African workers were killed and over 700 injured in forty-eight separate incidents on forty-one gold mines alone", and, hundreds of other workers were arrested for illegal strike

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[266]The historical strikes are discussed in Vic Allen's, The History of Black Mineworkers in South Africa:Volume 1. Op Cit. See also, Phil Bonner's account of the 1920 strike in his article, "The 1920 Black Mineworkers' Strike:a preliminary account", in B. Bozzoli, ed., Labour, Townships and Protest. Johannesburg, Ravan Press, 1979; Dunbar Moodie provides an interesting argument for the 1946 strike in, "The Moral Economy of the Black Miner's Strike of 1946", Journal of Southern African Studies, vol. 13, no.1, October 1986. Marcel Golding's article, "Mass Struggles on the Mines" discusses the depth of worker grievances during the strikes and boycotts of 1984/5. See, South African Labour Bulletin, vol 10 (6), May, 1985. The 1987 industry-wide strike is discussed in Baskin's 1991, "Twenty-one days that shook the Chamber", in Striking Back:A History of COSATU, Johannesburg, Ravan Press. See also, Markham and Mothibeli, 1987. "The 1987 Mineworkers' Strike", South African Labour Bulletin, 13:58-75.

[267]Mike Kirkwood discusses this changing balance of power on the mines in his article, "The Mineworker's Struggle", South African Labour Bulletin, vol 1 (8), 1973; Phil Bonner provides a summary of these developments for the labour movement as a whole in, "Independent Trade Unions since Wiehahn", South African Labour Bulletin, vol 8 (4),1983; See also, Steve Friedman, "The Giant begins to Stir:The 1973 Durban Strikes" in Building Tomorrow Today: African Workers in Trade Unions 1970-1984. Johannesburg, Ravan Press, 1987; and Jeremy Baskir's 1991, Striking Back:A History of COSATU. Op Cit.

activity, intimidation and assault[268]. The dissatisfaction expressed by black workers over their living and working conditions was coupled with a growing awareness of their ability to challenge the status quo. The struggles and subsequent independence of Mozambique and Angola, and the escalation of the armed struggle in what was then Rhodesia, resulted in the mining industry reviewing its dependence on external sources of labour. The industry's moves towards stabilisation of the black labour-force with its purveying of mining as a "career", as well as, strikes (over wages and conditions) in early 1982, were two key factors in the decision to recognise the inevitability of centralized collective bargaining arrangements on the mines[269]. Ultimately, it was the inclusion of migrant workers within the state's industrial conciliation machinery in 1981 that paved the way for the legal organisation of black mineworkers.

The changing conditions of migrancy, as well as the changing nature of control on the mines, shaped the expression of militancy amongst miners. Prior to the seventies, most workers had a limited commitment to the mines. The view was widely held that migrant workers would not be amenable to organisation[270]. This however, failed to recognise the increasingly proletarian nature, albeit within the context of `stabilised' or `career' migrancy, of the mine work-force in the post-1970, and in particular, post-1980 period. During this period, miners spent ever longer periods of time on the mines, and had increasingly inadequate access to rural sources of income. It was also ironically, the repressive institutions of migrancy, such as the

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[268]First, R, 1983. Black Gold, Op Cit:49.

[269]Friedman, S, 1987. Op Cit, chapter 12, "Stirrings in the Bowels of the Earth:The Growth of African Mine Unionism".

[270]This view was held by management, but also by labour commentators who until recently, accepted the `conventional wisdom' that the migrant labour system greatly inhibited the process of unionisation. For example, see Southall's arguments quoted in Crush, J, 1989. "Migrancy and Militance:The Case of the National Union of Mineworkers of South Africa". African Affairs, 88 (350):5-23.

compound system, that workers used to their own advantage in organising[271]. In addition, migrant workers from areas such as Lesotho, brought with them, political affiliations and consciousness, that shaped their involvement in union politics. Migrants in many instances were, to quote Sitas, already "combined the moment they entered the hostel or factory"[272].

The historic recognition agreement signed between the NUM and the Chamber in 1982 was an enabling document which facilitated substantive and procedural agreements covering areas such as, conditions of employment, recognition of shaft stewards, dispute procedures and retrenchments[273]. Within a few years of the NUM's inception, the annual wage negotiations with the Chamber had broadened to encompass issues that went way beyond wage bargaining. Safety became a key element in this expanded agenda and, like the issue of miners' phthisis for white workers during the early decades of this century, became a focal point of worker dissatisfaction, facilitating union involvement and organisational gains[274]. The impact of major mine accidents on

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[271]This issue is discussed in South Africa's Labour Empire:A History of Black Migrancy to the Gold Mines, Op Cit, as well as in a chapter of Wilmot James's book, in which he shows how the compounds were instrumental to the success of worker mobilisation and militancy during the 1987 mineworkers' strike. See, "Compounds as Contested Institutions" in, Our Precious Metal:African Labour in South Africa's Gold Industry, 1970-1990, Op Cit.

[272]Sitas, A, 1985. "Moral formations and struggles amongst migrant workers on the East Rand". Labour, Capital and Society, 18 (2):372-404.

[273]cf. Thompson, Clive, 1984. "Black Trade Unions on the Mines", South African Review 2, Johannesburg, Ravan Press.

[274]In the contemporary period, Leger stands out as the leading writer to illustrate the link between safety and militancy on the mines. cf. From Hlobane to Kinross:Disasters and the Struggle for Safety on the Mines", South African Review 4, Johannesburg, Ravan press, 1987; "From Fatalism to Mass Action:The South African NUM's struggle for safety and health", which was published in the South African Sociological Review, 2 (2), 1990, under the title, "Key issues in safety and health in South African mines".

the Union's organisation around safety was illustrated by the Kinross commemoration in 1986, in which Leger observed, "the day of mourning, 1 October, saw the greatest black stoppage in the history of South African mining, involving half of all black miners"[275].

Safety has always been a priority for the National Union of Mineworkers. Cyril Ramaphosa, the first general secretary of the NUM, has gone down on record on numerous occasions as saying, "In the mines health and safety is the top priority. It is more important than wages. You've got to be alive or uninjured to earn the wages. Therefore, to us, health and safety comes first"[276]. While this may be an accurate reflection of the Union's sentiments, in practice, more pressing issues - recognition agreements, wages and dismissals - have put a brake on the extent to which the Union has been able to prioritize issues of safety and health. Nevertheless, the size and hazardous nature of the Industry[277], its high mortality and morbidity rates (relative to both other industries and to mining industries elsewhere), resulted in the early establishment of structures to facilitate organisation around safety and health. In addition, large mining disasters, one of which followed closely on the heels of the Union's formation, facilitated consciousness-raising campaigns by the Union for workers, and, stepped up the urgency for the

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[275]Ibid:296.

[276]Quoted in Arkles, RS, 1985. Op Cit:78; Maller, J, Steinberg, M, 1984. "Health and Safety in Industrial Relations", South African Labour Bulletin, Vol. 9 (7); Financial Mail (Mining Supplement), 28 September, 1984.

[277]Accident statistics for the mining industry are critically scrutinized in, Leger, JP, 1991. "Trends and Causes of Fatalities in South African Mines", Safety Science, 14:169-185; Also, Eisner, HS, and Leger, JP, 1988. "Safety in South African Mines: An Analysis of Accident Statistics". Journal of South African Institute of Mineral Metallurgy, vol 88 (1):1-7.

establishment of the Union's safety structures[278]. It also propelled the issue of safety on the mines into the public arena and thus created a more conducive environment for the Union to challenge the Industry's safety standards. For example, the NUM dispute with West Driefontein in 1983 was a landmark case, in that it raised the issue of `the right to refuse work in dangerous conditions'. In that dispute, workers were dismissed for refusing to work in an area they considered unsafe. Although the workers were eventually dismissed for refusing to work underground, the court ordered the company to re-instate the workers for the duration of the court case, arguing that the mine had not followed any procedures to ensure that the mine was in fact safe. The NUM has challenged conventional explanations for the high accident rates on the mines as being attributable to, either `Acts of God' or the fault of individual workers. Instead, it has questioned both the safety standards employed by the mines and the manner of their enforcement. These issue were researched in an important Union-commissioned study into safety on the mines in the mid-eighties[279]. Towards Safer Underground Gold Mining was controversial in that it considered the impact of job reservation on the mines on the practice of safety underground. Its impact was especially significant in that the study acknowledged the legitimacy of underground workers' knowledge, perceptions and experience in reaching its conclusions, and in so doing, challenged the previously undisputed managerial prerogative over this crucial aspect of workers' lives. In attempting to claim a measure of control for workers over safety, the Union has organised around the recognition of safety stewards and committees, the right to refuse work in dangerous conditions, the right to organise around matters concerning safety, the right to be present at accident enquiries and, held the first of

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[278]Since the inception of the NUM, there have been a number of major mine disasters. Two of the more serious occurred at Hlobane Colliery in 1983, claiming the lives of 68 mineworkers; and at the Kinross mine in 1986, in which 177 workers lost their lives.

[279]See, JP, 1985, Towards Safer Underground Gold Mining. TAG/Department of Sociology, University of the Witwatersrand.

subsequent national safety congresses[280].

In its earlier years (the first half of the eighties), the NUM's Health and Safety Department had three main functions. Firstly, the problems of individual disabled workers were attended to. In this respect the department was largely perceived, and functioned, as a compensation department. Secondly, the department attempted to educate workers regarding safety and health issues. Education was largely seen as consciousness raising and took place in the context of mass meetings. Thirdly, the Union dealt with immediate safety crises such as accident enquiries. In these situations, outside `experts' or consultants were asked to assist, but they were not actually integrated into the department itself. Further, initiatives around specific issues, such as the problems faced by paraplegics, grew out of local situations such as the one at the Ithuseng Rehabilitation Centre in Welkom[281].

From approximately 1986 onwards, there was a sense that training and education had to be more rigorous, and that an organisational infrastructure to deal with the complexity of safety and health issues had to be developed. Part of this complexity, was a recognition that the issue of disability on the mines, and not just compensation, would have to be addressed. In mid-1986, the Chamber asserted that health and safety issues were not negotiable. The Kinross disaster that year, and the mass protest

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[280]The Union's first national safety conference took place in March 1985 and brought together about 350 shaft stewards from the main mining areas. See, Leger, Maller, Myers, 1986. Op Cit:81.

[281]The Ernest Oppenheimer Hospital (EOH) in Welkom and the Ithuseng Rehabilitation Centre, were recognised as a branch of the Union. This paved the way for negotiation, albeit at a local level, around the paraplegic issue. A paraplegic from Ithuseng, was the local branch chairman of the EOH complex, and it was through him that a number of problems were raised. For example, the local branch organised a meeting with the Black Taxi Association, to discuss some of the problems the paraplegics were experiencing with taxi drivers and transport to their rural homes.

and media outcry which ensued, resulted in a more accommodating view being adopted. The NUM did in fact, secure concessions on safety in its 1986 wage negotiations[282]. As Leger stated, "for the first time, classic health and safety issues were successfully negotiated during wage bargaining"[283]. Increased accident leave, and an income-security clause - whereby the Chamber undertook to pay workers the wage they were earning at the time of their accident for six months, if they were demoted to a lower paying job as a result of their disability - were two of the concessions. The Chamber also agreed in principle, to try and find more favourable re-employment for disabled workers. The 1986 `Security of Income Clause' was the first significant concession to the question of the consequences of mining accidents. It was an important one, due to the reality of `medical repatriations', but limited, in that the future employment security of workers could only be guaranteed for six months.

The first detailed safety agreements began to emerge in 1988 and safety committees were formerly set up to facilitate bargaining. Both shaft stewards and safety departments were involved in setting up safety agreements. These agreements were enabling documents which had a number of functions. They set up forums for meetings with management, for meetings within the committee itself ie. for safety stewards, and for those with government officials on accident enquiries. With the signing of detailed safety agreements, the Union had to rethink its education and training for safety stewards. From mainly consciousness raising, education became more focused on resolving problems[284].

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[282]cf. Crush, Jeeves and Yudelman, Op Cit:194.

[283]Leger, JP, 1987. Op Cit:297.

[284]In addition to training manuals, the safety department has always had, and still has, a safety newsletter. It provides a forum for popularising matters concerning safety and health for workers. The newsletter has dealt with such issues as, the organisational gains of the Union, changes in health policy such as AIDS, changes in legislation, such as the Mineral's Bill and campaigns like Kinross, which focused on major mine disasters.

The purpose of training manuals, currently known as the Miners' Manuals, was to provide practical training, ie. workshops, for safety stewards[285]. This enabled practical problems to be dealt with at the mine, and for safety stewards to recognise when, and if, further assistance from the Union was needed. Educational materials thus incorporated the organisational function of the safety stewards. The safety manuals on noise, heat, compensation and so on, equipped safety stewards with the means to resolve problems at the mine level, to take up campaigns, to design campaign strategies with regional and head office assistance and to consider issues to be taken up with the mines inspectorate. As May Hermanus observed, "the long queues of workers with individual grievances, such as compensation and dismissals, started disappearing from head office, and even from regional offices, as local safety stewards at branch level were increasingly able to deal with the problems themselves".

In 1989, the Union's first systematic attempt to lay the foundation for a strategy around disablement occurred with the NUM Workshop for Disabled and Paraplegic Mineworkers[286]. The workshop was structured almost entirely to provide disabled workers with the opportunity to express their needs and problems with respect to the following areas: compensation awards, employment after injury, home and community, and what the Union should do to ensure that their problems would be catered for. The presence of approximately 200, mainly young workers in wheelchairs, filling a conference hall was a sobering and emotional reminder of the price some workers had paid in the

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[285]The idea of training manuals arose after the Hlobane disaster when Cyril Ramaphosa and Clive Thompson, a NUM lawyer, visited the American Mineworkers' Union at the end of 1983. They took as their inspiration the safety training manual of labour lawyer, David McAteer. Personal communication with Jean Leger, March 7, 1993.

[286]Verbatim transcripts were taken by the author at the paraplegic workshop. For further reference, the NUM's safety department has detailed minutes of the proceedings.

interests of mining production. Unlike the workers in the study sample, the workers at the NUM workshop were mainly resident on the mines. They faced many of the same worries when talking about their families back home, such as the inadequacy of compensation pensions to cope with the extra expenses they now experienced, problems with unsympathetic chiefs, transport difficulties to their homes, difficulties with cleanliness, access to water, firewood, toilets, accessible housing and the lack of meaningful skills relevant to their home situation. As one speaker put it, "our request from the rural areas is that employment should be provided at our respective homes, because we find ourselves at home and the money we get is decreasing, not increasing. The work we are given here is not the kind of work that can help us if we leave the mine". Other problems pertinent to their experience on the mines were raised. These related mainly to the type of work they were offered, their reduced wages, the ever present threats of dismissal if workers complained, the frustration many of them experienced trying to become involved in Union structures, and the anxieties many of them felt about changed relationships with their wives. One worker stated, "We have just been involved in a difficult accident. We are still trying to support our families. On top of that, we are earning unsatisfactory wages. After the accident, one gets downgraded, then your salary goes down. We cannot attend to our families like a normal person can. We are confined to our wheelchairs. It is more disappointing when you have a wife who was looking forward to your wages and now these are no more forthcoming. Due to that disablement, due to that frustration, your wife will leave you and go and seek that remuneration elsewhere. And the question is, how does one live then, because your wife has left you and there's no-one to look after you because you are confined to a wheelchair. We never thought we'd experience such problems".

The problems and expectations of disabled miners such as the above have been easily harnessed and given expression by the Union. `Disability' as an issue provides an effective focus for organising and mobilising workers. Firstly, the presence of

disabled workers on the mines, particularly those in wheelchairs, taps into the underlying fears of all mineworkers as they prepare to go underground. Secondly, its emotive and sensitive nature can be exploited by the Union in its dealings with management. The `moral' dimension of the employer's responsibility for the consequences of accidents has become increasingly difficult to ignore in the context of Labour's increasing demands around the issue, the public exposure generated by the work of academics and professionals in the field, and more generally, the trend towards increasing corporate social responsibility as a result of changes in the post-February 1990 industrial relations climate. Finally, disabled workers on the mines themselves are increasingly vocal about the need to organise. A paraplegic speaker at the NUM conference asserted. "We must fight for those who will be injured. These are our own children. We must fight for them".

The turn of the nineties, signalled a crisis of unparalleled proportions for the mining industry. The gold price had been declining since the late eighties, but dropped to a record low of 340 dollars an ounce in March 1992, when the national executive committee of the Union met to review the gold price and its implications for the forthcoming wage negotiations[287]. The plummeting international price of gold has resulted in a severe profit squeeze on companies that not only threatens wage levels but the very existence of mines themselves. Under these conditions, the Union has been forced to devise strategies to ensure that on the one hand, as many jobs as possible are protected, and on the other, that conditions for workers should not deteriorate. Given the severity of the crisis the consequent inevitability of wage restraint, the Union shifted the focus of its bargaining strategy from an emphasis on wages to, what has been termed, the `social wage'. The latter, encompasses health care rights, other social rights for workers, and general trade union rights.

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[287]Demands for the 1992 Negotiations, Chamber Gold and Coal Mines, National Union of Mineworkers, internal document.

Thomas Qhena, Regional Chairman of the NUM's Free State region, outlined the three-fold effects of the crisis for the Union. These effects have underpinned the Union's change in their collective bargaining strategy. Between 1990 and November 1992, approximately 60 000 workers have lost their jobs; two years of below-inflation wage increases have wiped out all the wage gains made by the Union in the ten years of its existence; and, the threat of further cut-backs and further erosion of basic standards confronts the Union[288]. As a result of these effects, the Union has four perceptions of the financial crisis - as it pertains to the gold industry. Firstly, it recognises the seriousness of the crisis; secondly, notes that the greatest burden has fallen on the poorest workers in the Industry; thirdly, the crisis is a national one that demands national solutions[289] and fourthly, there is a need for restructuring the Industry[290].

Since the onset of the crisis, there have been broadly two phases of this reconceptualisation. The first phase revolved around preparations for the 1991 annual wage negotiations with the Chamber. There were essentially five elements to this phase: wage levels, production bonuses, trade union rights, information disclosure and education and training[291]. The second phase, preparation for the 1992 annual wage negotiations with the Chamber (building the `social wage' further), involved, wages,

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[288]Qhena, T, How NUM Perceives the Financial State of Affairs in the Gold Mining Industry. Address to the Quarterly Meeting of the Association of Mine Financial and Administration Managers, Draft Copy, National Union of Mineworkers, 18 November 1992.

[289]cf. The Need for State Assistance to the Gold Mining Industry - The NUM Plan to Assist People Affected by Mine Downscaling. National Union of Mineworkers, internal document, August 1992.

[290]Ibid.

[291]cf. Review of the 1991 Wage Negotiations, National Union of Mineworkers, Collective Bargaining Department, January 1992.

profit-sharing, health care and the `agency shop'[292].

Negotiation around issues of health and social care[293], are attempts to fulfil two functions. One, is to improve the contract of employment for workers, while the second is to compel management to broaden its responsibility for mineworkers to include the `post-employment' contract. This includes consideration of the needs of workers once they leave the mines, as well as those of workers' families.

The changes in the NUM's collective bargaining strategy are an attempt to make the Union a central player in the Industry's restructuring and to determine, in part at least, the form that this restructuring will take. In the `survival plan' of many mines, the mining industry, has responded with mass retrenchment, unemployment and lower real wages. It is the Union's view, that this trend would continue in the future if the imperatives of Capital were left to its own devices. This kind of `strategic unionism'[294] is an attempt to intervene in the industry's agenda for restructuring, and to position the Union so that if and when the gold-price improves, workers are placed to take advantage.

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[292]cf. Demands for the 1992 Negotiations, National Union of Mineworkers, Collective Bargaining Department, April 1992. The `agency shop' refers to an attempt to end the `system of freeloading', whereby non-members of the NUM, in bargaining units for which the NUM negotiates wages and conditions of employment, should be obliged to contribute 1% of their basic wage to the NUM. `Profit-sharing' is a strategy of the 1992 negotiations designed to replace the `production bonuses' of the 1991 negotiations. According to a Union spokesman, the latter were divisive for workers and abused by management. Thus, it was decided to shelve production bonuses in favour of profit-sharing agreements.

[293]These include both general medical care for workers' families, and occupational health and rehabilitation services.

[294]`Strategic unionism' is a term used to describe "a strategic vision of a labour driven process of social change", which as a result of political reform and the reconstitution of South African society, within the context of economic crisis, is underpinning much of the Labour movement's proposals for a reconstituted industrial relations system. See, Karl von Holdt's article, "What is the future of Labour?", Op Cit:30-37.

Secondly, due to limitations in the law, the Union has used other means, namely, collective bargaining, to push the boundaries of the law to its limits. As stated by a Union official, "by negotiating detailed [disability] agreements in as many workplaces as possible, we believe we are - de facto - laying the basis for comprehensive changes to the compensation laws"[295]. Kahn-Freund's dictum that, "everywhere the effectiveness of the law depends on the unions far more than the unions depend on the effectiveness of the law", aptly describes the NUM's approach to disability[296].

Union developments around occupational disability did not take place in a vacuum. While developments occurred in response to management's inability to address the fundamental problems faced by disabled workers, management's approach to 'rehabilitation' has not been immune to broader socio-economic and political realities confronting the mining industry.

Most commentators on the mining industry point to the last two decades - the seventies and eighties - to illustrate the dramatic changes that have occurred in the industry's history. For example, James commenting on the first seven decades, has described the industry, as "a coercive and repressive labour system in that the rights of African workers regarding conditions of employment, housing, accommodation, collective organisation and trade unionism were circumscribed, even suppressed by corporate management or the state and frequently by both"[297]. The relative constancy of the earlier decades, in terms of wages, social conditions and labour relations, began its dramatic transformation in response to the socio-economic and political

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[295]Hermanus, May, 1992. Testing the Limits of the Compensation System. Paper presented to the Conference on the Reform of the Workmen's Compensation System in South Africa. Eskom Training Centre, Midrand, 26-28 March, 1992.

[296]Kahn-Freund, quoted in Macun, I, 1989. Op Cit:6.

[297]James, W, 1992. Op Cit:4.

changes of the seventies, and later the eighties. These factors were to alter the character of migrancy and begin the transformation of the conditions of its reproduction.

The mining industry for the first time began to increase the ratio of labour costs to production costs, of local to foreign labour, and, to encourage the development of a more stable and 'career-oriented' miner. Workers were provided with incentives to spend longer periods on the mines and fewer at their rural homes. Mining companies began to experiment with new labour recruiting markets and with expanding family housing for semi-and skilled workers. It is in this context, that mine medical practice began to adapt itself to the new conditions and demands of the industry.

The position of disabled workers prior to the introduction of these changes was pitiful. Standard practice was to repatriate workers who could no longer fulfil the tasks demanded of them. Compensation payments were paltry, and like wages, did not improve in relative terms until the vast improvement in wages, and, the changes in compensation law for black workers introduced in the late seventies. Simons, noting the sum of 35 pounds provisionally fixed for death or total disablement of African mineworkers in 1903, was compelled to comment, that "at the figure of 10 pounds paid to dependents, the African miner was cheap in death as in life and hardly worth the cost of safety measures that would curb the drive to step up production"[298]. This did not seem materially different from the lump sum of R554 paid in 1953 to a quadriplegic mineworker from Mozambique[299], nor to the R1000 granted to a paraplegic miner in 1970[300].

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[298]Simons, HJ, 1961. Op Cit.

[299]This information was gained from a list of disabled inhabitants resident at the Ithuseng Rehabilitation Centre in Welkom, as in 1984.

[300]This paraplegic, was interviewed in Quting, Lesotho by myself in 1984. The interview is published in, Industrial Accidents:The Social Consequences, Op Cit.

It was during the decade of the seventies that the first real changes in compensation and rehabilitation began to occur. In June 1977, compensation was improved substantially by the introduction of monthly pensions for black workers, with impairment ratings above 30 per cent. The payment of monthly pensions replaced the inadequate practice of paying a lumpsum for permanent disability, irrespective of severity of injury[301]. Further, during this decade a new approach to rehabilitation began to be discerned.

The relationship between the changing conditions of migrancy and mine medical practice was expressed by a mine medical officer as early as 1966 when he noted, "...where prolonged i..ness or physical defect following an accident resulted in the employee being unable to resume his former occupation, he was repatriated"[302]. He suggested however, that "in keeping with the broad trends taking place in the industry, such as progressive mechanisation and the growing shortage of labour, rehabilitation will become of increasing importance in South Africa"[303]. Further, within the context of the need for the Industry's political survival and adaptation under changing conditions, it was felt that mine doctors should play a key role in researching

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[301]Lumpsums for 100 per cent disability were calculated at ten to fifteen times the wage earned at the time of the accident, and reduced proportionately as the impairment rating decreased. Pensions were to be calculated at 75 per cent of the monthly wage for total disability (ie.100%), and similarly, reduced proportionately.

[302]Dangerfield, F, 1966. "Rehabilitation". **Proceedings of the Mine Medical Officer's Association of South Africa**, Chamber of Mines:103. When it came to the plight of the spinal injured, some managements adopted a more sympathetic approach. For example, in the mid-sixties, rehabilitated paraplegics were re-employed on the Anglo American mines in the Orange Free State - first on all seven mines and later on Western Holdings. See, Potgieter, I, 1989. Editorial - "The History of Care of the Spinal Cord Injured in the Mining Industry". **Journal of the Mine Medical Officers' Association of South Africa.** Special Issue:Spinal Cord Injury, vol. 64 (435):2.

[303]Dangerfield, Op Cit:103-104.

and developing a new approach to labour matters. This included attention being given to the type of workforce desired, as well as to a new attitude towards that workforce[304]. TEBA's presiding chief medical officer expressed it in a nutshell. "There is a need for new procedures and attitudes relating to medical problems ... as well as new ethics extending beyond the Industry"[305]. This marked the beginnings of an appreciation that rehabilitation for the spinal injured needed to broaden beyond the narrow confines of the mines themselves.

The industry's efforts at rehabilitation were however, at this point, centred on the mines and at mine rehabilitation centres[306]. The rehabilitation centres, which opened in 1979 in the case of Anglo's Ithuseng, and 1984, in the case of the Chamber's TEBA centre (which has since closed), provide/d a `sheltered' environment with specialised rehabilitation programmes, including sport and some form of skills training. The centres however, can only accommodate workers for a limited period of time and are really stepping stones on the person's road to recovery. On the mines - particularly on larger mines with sufficient medical and other facilities - provision has been

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[304]These arguments are set out in detail by TEBA's presiding chief medical officer in an article appropriately titled, "Socio-Medical Problems in the Mining Industry in Relation to Altered Recruiting and Recruiting Practices". cf. Martiny, O, 1979-80, in Proceedings of the Mine Medical Officers' Association of South Africa, vvl LV111, no. 427:11-13.

[305]Ibid.

[306]There are approximately 50 mine hospitals scattered throughout South Africa's gold and coal fields, to which 90% of mines belong. In addition, the Rand Mutual Hospital near Johannesburg, and the Ernest Oppenheimer Hospital (EOH) in Welkom, provide specialist medical care in their spinal injury units. TEBA's rehabilitation Centre for Chamber of Mines patients, and the Ithuseng Rehabilitation Centre in Welkom for miners from the Anglo American Mining Company, provide/d specialised rehabilitative care. The TEBA centre in Welkom has since closed (in 1991) du to financial constraints in the industry. This leaves the Ithuseng Rehabilitation Centre and the EOH hospital, and the Rand Mutual Hospital in Johannesburg, the only specialised rehabilitation centres.

made to house and employ paraplegics, as well as workers with other injuries, where it has been possible to do so. However, problems arose in situations where the mine did not have specialised personnel to deal with the specific problems of the spinal injured, or where the availability of suitable jobs was not forthcoming. Under these circumstances, the men were kept on the mines doing `token' rather than useful work, and did not receive the kind of attention they needed. This led in some situations to workers resigning from the mines, and in others, to their repatriation by the mine. The key flaw in the industry's practice of rehabilitation was inadvertently expressed by a mine medical officer when he stated that, "contact between mine doctors and the patients' homes, were for practical purposes, non-existent"[307]. Similarly, "the same applied to contact with local services, which in turn, were ignorant of the health and medical services provided at mines for employees"[308]. For all intent and purposes, rehabilitation in the industry, was largely synonymous with medical (surgical intervention) and physical (physiotherapy and occupational therapy) interventions. In other words, the obligation of the industry lay within the boundaries of a law, which was shown in chapter two, as being incapable of dealing with the complexity of problems raised by permanent disability - particularly with respect to the vocational needs of migrant workers.

Much of the focus of rehabilitation in the mining industry has centred on the situation of the spinal injured. There are a number of reasons for this. Firstly, mining is one of the few industries where the nature of production itself, predisposes workers to such injuries. The depths of the South African mines (the incidence of `falls of ground' increases with depth) together with the crouching position of mineworkers at the rockface, result in injuries of the spinal column being relatively frequent. There are approximately 130 new, work-

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[307]Martiny, O, 1979/80. Op Cit:8.

[308]Ibid.

related, spinal injury cases in the mining industry each year - most of them caused by rockfall[309]. As a Chamber of Mines publication put it, "the sight of spinal injury patients being taught how to rebuild their lives is the cruellest reminder of the physical risks involved in mining"[310]. This aspect of mining, that is, the increasing danger of seismic events in deep level mining, poses unique moral dilemmas for an industry intent on mining at ever greater depths. Secondly, the `moral dilemmas' posed by the severity of such injuries, have become increasingly difficult to ignore in more recent contexts. These dilemmas relate to the responsibility of the industry, which has been characterised as constituting both legal and moral dimensions[311]. The former, refers to that which is clearly defined by the law. In this case, it involves the payment of pensions, maintenance of appliances and costs of hospital care relating to the injury. The latter, refers to that which the law does not specify, but which is necessary for the total rehabilitation and well-being of the patient. "Moral responsibility is a less well-defined entity, and includes the dilemma of non-mining accidents or conditions, re-employment of the disabled as well as field follow-up"[312].

While the standard of medical and physical rehabilitative care offered to this group of patients in the mining industry, far outweighed treatment to any other group, it fell far short of addressing the needs of patients once they were obliged to go out

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[309]Maher, S, 1990. "A Hard Road to Travel", Mining Survey, no.2:36.

[310]Ibid.

[311]The issue of the employer's responsibility for rehabilitation is discussed by Dr. Jerome Boulle in, "The Role of the Mining Industry in the Rehabilitation of Spinal Cord Injuries - Spinal Cord Injuries in the Field", Journal of the Mine Medical Officers' Association, vol 64 (435), 1989:65-70. Dr. Boulle makes the distinction between the legal and `moral' responsibility of employers.

[312]Ibid:66.

into the world[313]. This related to two aspects. Firstly, their continued financial and psychological need for employment, which of necessity involved vocational retraining and the teaching of new skills. Secondly, their return to the home environment in rural areas, where water and sanitation systems, transport, access to health care and other facilities were frequently non-existent or inadequate.

For these reasons, the industry's need to pay increased attention to the relocation and follow-up phases of rehabilitation has been perceived as two-fold. Firstly, from a cost point of view, as a specialist in spinal injury commented, "it does not make sound economic sense to spend R30 000-R40 000 on a patient in the acute phase, only to have all one's efforts come to nought for lack of a decent follow-up programme. At R205 per day, a readmission [of a patient] with pressure sores can cost up to R73 000![314]". Secondly, while the law only demands that compensation and the costs of the medical consequences of the worker's injury be borne by the industry, the `moral' dimension relates to the fact that sound rehabilitation practices include attention to the social and vocational demands of the relocation phase. Given the fact that the industry is able to absorb fewer and fewer disabled workers on the mines themselves, `relocation' shifts from the workplace to the rural areas. These considerations resulted in

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[313]The medical and physical rehabilitative care and treatment of spinal injury patients began to improve dramatically in the Western world in the post World War Two period. Specialised spinal cord injury units, incorporating a multidisciplinary team, were established in many countries worldwide. The medical fraternity in the mining industry, recognising that spinal injuries were `an inevitable ' offshoot of deep level mining, availed themselves to the expanding range of medical literature on the subject, consultation with overseas specialists in the field, and employed personnel who had experience in dealing with such injuries elsewhere. See, Potgieter, I, "The History of Care of the Spinal Cord Injured in the Mining Industry", and, Key, A, "The State of the Art - Spinal Cord Injuries", in Journal of the Mine Medical Officers' Association of South Africa, vol 64 (435), November 1989.

[314]Boulle, JR, 1987. Op Cit:181.

a second significant moment in the practice of mining rehabilitation (with respect to the spinal injured), where from the latter half of the eighties, the follow-up of paraplegics and quadriplegics in the field was initiated[315].

Conditions in the mining industry in the nineties however, have marked a further shift in the approach to the mines' disabled. The massive downscaling of the industry has brought with it the potential for, and fear of, mass starvation and de-stabilisation in the sub-continent. For workers with disabilities the specific effects of the crisis in the industry has been largely two-fold. Firstly, the numbers of `medical repatriations' have increased - thus reversing the trend of the eighties[316]. In this situation, virtually all paraplegics, as well as a surprising number of quadriplegic patients will end up in the home environment. In the absence of accurate statistics, a specialist in spinal injuries has suggested, that in excess of 70% of the paraplegic/ quadriplegic population are at home at any one time[317]. Further, "economics will dictate this figure eventually, and the availability of jobs for the disabled will be the deciding factor"[318]. Secondly, due to the shrinking employment base, TEBA depots in the rural areas have decreased from 92 to 71, and this number could decrease further[319]. Given the fact that TEBA offices are the point of communication between disabled workers,

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[315]Paraplegic care in rural KwaZulu is one of the best functioning regions of TEBA's field infrastructure. The Field Assistance Officer - whose job it is to monitor the physical, financial and social problems of the seriously disabled - has 43 paraplegics in the region under his care. cf. Russell, Charmane, 1992. "The Rocky Road:Paraplegic Care in Rural KwaZulu". Mining Survey, no. 2, 1992:27 -31.

[316]Declining repatriations in the mining industry during the eighties are discussed in Leger, JP and Arkles, RS, 1989. Op Cit.

[317]Boulle, JR, 1989. Op Cit:68.

[318]Ibid.

[319]Figures provided in interview with the Chamber's, Dr Isak Fourie.

their families and the mine, this declining trend is disturbing for its possible implications on follow-up in the field. These adverse developments - increased medical repatriations and a shrinking TEBA base in the region - in the context of the Union's increasing focus on disability, has compelled management to consider alternatives in adapting to the new conditions and constraints imposed by the current crisis.

The major shift in strategy is that while TEBA's role as a recruiting organisation has contracted, its rural developmental role has been forced to expand. This is happening at two levels. Firstly, efforts at relocation and follow-up in the field with respect to the para- and quadriplegics are being expanded. Secondly, the industry's interventions are being broadened beyond the ambit of the spinal injured, to encompass the local employment options of retrenched workers, of which migrants with other disabilities, such as the amputees, pneumoconioses, will be a part.

TEBA's rural developmental role grew out of the crisis in the industry. The thrust toward this approach began two to three years ago[320]. According to TEBA's development advisor, "strategic planning was required because of the fall in the gold price and the downscaling of the industry". In light of the above, the following options have been explored in the last couple of years, and are currently in their planning stages. The focus is two-fold. Firstly, the aim is to set up the para - and quadriplegics in small `spazashops', or, as agents for TEBA's own strategy for purveying appropriate technology to the rural areas. Workers will be provided with training for this purpose by TEBA reps who will also visit the men in the field to restock them with the necessary materials. The emphasis is on affordable, appropriate technology, such as that needed for candle-making and

[320]The information on TEBA's developmental role is drawn from the interview with Jim Latham, development advisor, Kevin Cotterell, organisation and methods manager, and Alan Smith, administration manager.

brickmaking projects. Other options favoured include, a focus on `cottage industries' - the "one family business" - which could develop into co-operatives. Secondly, TEBA is also looking to the overall field of rural development, such as primary health care, and the identification of community needs, like water development, education and so on.

With respect to the follow-up of workers with 100 per cent disability, there are two requirements[321]. "Firstly, a good data-base, which will have to be expanded and up-dated from old medical records; Secondly, regular contact points between the industry and disabled workers in rural areas". Despite the fewer numbers of TEBA depots operating in the region, the TEBA and TEBA CASH offices, where workers collect their monthly compensation pensions, will continue to provide the contact point through which problems experienced by disabled workers can be detected.

The responsibility for the socio-medical care of workers will take place at different `levels of contact'. The `first level of contact' (where the family usually initiates contact) falls on the TEBA representatives. If a problem is diagnosed, it will be referred to a central point that co-ordinates the entire process. Where necessary, a team of people from the specialised rehabilitation units at the Rand Mutual or Ernest Oppenheimer Hospital (comprised of a doctor, physiotherapist, nurse etc), will visit the region. There are two aspects to the follow-up programme. One, is visiting patients whose socio-medical circumstances warrant it; two, is quality control of the TEBA representatives. This includes the need for their continuing education. At present, Dr Fourie's estimate is that relocation and follow-up programmes appear to be functioning well in about 50% of mining regions. The system therefore, will have to be extended.

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[321]These were outlined by the Chamber's Medical Advisor, Dr Isak Fourie.

TEBA sees itself being able to fulfil its rural developmental function by harnessing its infrastructure and resources to generate income. Their administration manager explained further. "For the system to work, TEBA must be able to produce a cost-effective bottom-line. This is envisaged in essentially two ways. One is a process whereby the TEBA reps get a salary or `cut' of the profit of the small business engaged in by disabled ex-workers, in return for our role in setting the men up and keeping them equipped. In this way, the TEBA rep will cover the cost of his journey in the rural areas. The other, is to fund community initiatives by raising community productivity through agricultural production and cottage industries". TEBA proposes to work through community structures, such as a headman's area and bottom-tier local government. This kind of strategic planning, like the NUM's embracing of `strategic unionism', is an attempt to grapple with prevailing economic and political realities confronting the mining industry.

The shift of focus from the workplace to encompass `rural development' grew originally out of the NUM's response to the mass dismissals following the 1987 strike. The Union set up a co-op department in 1988 to assist retrenchees from the strike with local employment initiatives. Although many of the co-ops were successful, the scale of the problem and the low skill levels of most members, have required that the NUM extend the system of co-ops to a broader community development approach. As Kate Phillips, the co-ordinator of the NUM's Development Unit[322], pointed out, "while about 500 jobs were created by the co-ops, approximately 180 000 jobs have since been lost as a result of downscaling"[323]. NUM's development programme has the following elements: the retrenchment process itself; training for alternative jobs; community development, which involves addressing basic needs such as food production, water and

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[322]The NUM's Development Unit, set up in 1992, replaced the Co-Op Unit which was originally established in 1988.

[323]Telephone interview with Kate Phillips of the NUM's Development Unit, 28 April, 1993.

sanitation, and energy; enterprise development; economic and development support services, including business support, the establishment of a loan fund, and development centres in the regions[324]. The Unit's approach is to ensure that workers are organised into contact groups before they are actually retrenched from the mines, so that the necessary communication structures between the workers themselves, and between the workers and the Union can be set up.

The Development Unit's approach has all the elements - training, community development and support, worker and union communication channels - applicable to a community-based vocational rehabilitation approach. No doubt, the question as to whether workers with disabilities - those retrenched on `medical' grounds - will be accommodated by the NUM's development strategy, is one that is likely to be placed on the Development Unit's agenda. Equally so, whether the NUM's Development Unit and TEBA will co-operate and co-ordinate their rural development operations, is likely to be the subject of future debate.

The issue of occupational disability in the mining industry is not without its contradictions. Despite the expertise and sensitivity of many of the medical personnel who are involved in treating disabled workers on a daily basis, their interventions occur in the context of the industry's imperatives. The result is that, "this level of responsibility [the moral dimension] is intimately related to available finance", and further, "involvement is proportional to the publicity attached to a particular condition as the image of the industry is directly affected"[325].

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[324]cf. Development Strategy for Retrenched Mineworkers, Development Unit, National Union of Mineworkers, February 1993.

[325]Boulle, JR, 1989. Op Cit:66.

Secondly, the mere presence of collective bargaining agreements can fail to achieve their stated objectives, when the procedural requirements governing them frustrate the Union's attempts to utilise them to their full advantage[326]; when the implementation mechanisms in the field are not adequately in place, or when the Union's own internal functioning is not conducive to exploiting the potential of such agreements.

Despite these considerations, the `disability agreements' signed with the Chamber in 1992 are landmark agreements for occupational disability on the mines (see appendix 5)[327]. They provide an enabling collective bargaining framework in which to organise, on an industry-wide basis, around an improved dispensation for the mines' disabled. Ultimately however, the extent to which organised labour in the mining industry will be able to effect improvements for its disabled constituency will be restrained by the financial realities of mining, and, the political place of organised labour in a future democratic government.

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[326]For discussion of such problems, see, "Impala Platinum:No Easy Road to Collective Bargaining", South African Labour Bulletin, vol 16 (3), Jan 1992:26-39.

[327]These agreements encompass the determination of disability (including medical care), appropriate skills training, placement in suitable alternative work on the mines, a financial package for workers who are being repatriated on `medical' grounds, and, who are unable to be placed on the mine. The agreements also place procedural and substantive conditions on the repatriation of disabled workers. Moreover, they include provision for a process of notification and consultation with the Union on the above matters. NUM representatives have been appointed to the board of control of the Rand Mutual Assurance Society. It has also been agreed that a joint Chamber-NUM working party, comprised of an equal number of union and management representatives, investigate the range of possibilities for re-training and employment options in the mining regions and in the rural areas where miners live.

CHAPTER SEVEN - CONCLUSION

The aim of this thesis has been to reveal three levels of inquiry. First and foremost, an account of the social consequences of permanent disability for migrant workers in rural areas. Secondly, an exercise in social policy, in that the key piece of legislation pertaining to workers who become disabled in industry - the Workmen's Compensation Act, no. 30 of 1941 (as amended) - is scrutinized for its ability to address the complex economic, vocational and social implications raised by work injury. Thirdly, an interpretive attempt to understand the implications of a changing economic and political framework for the future `reproduction' of workers who become disabled in the mining industry.

In the introduction, a number of questions regarding migrancy and its relationship to occupational disability were raised. This conclusion will attempt to answer these questions by relating the results of the study's fieldwork - the survey, biographies of individual migrants and interviews with management and union representatives - to Burawoy's conceptualisation of the `maintenance' and `renewal' functions of reproduction. What follows will highlight only those aspects pertinent to issues of reproduction in a migrant labour force.

Traditionally, the functions of a migrant rural household, in addition to ensuring the survival of "future generations of labourers", has also been to "renew, repair and service the reproduction of labour-power" in other ways[328]. This they do by acting as, "points of refuge, rest and recuperation for exhausted labourers. In the event of sickness, injury and disability they become field hospitals. When workers are fired, marginalised or reach old age, the peasant household provides a functional substitute for unemployment benefits, redundancy payments and a

[328]Cohen, Robin, 1987. Op Cit:82.

pension"[329].

In chapter one, it was shown how the specific economic and political mechanisms underpinning the system of labour migrancy, were predicated on the separation of the `maintenance' and `renewal' functions of the reproduction of the mines' labour force. In assessing the social consequences of permanent injury for migrants (and their dependents), this study explored a number of issues. Firstly, what were the effects of a disruption or termination in the `maintenance' sphere as a result of a disabling injury for rural migrant communities? Secondly, what effect did the above have on `renewal' capacities at home? Finally, how effectively has the mining industry been able to maintain the distinction between these functions - in relation to its disabled workforce - in the face of changing economic and political conditions? In answering these questions, a key consideration was the extent to which the mining industry continued to provide `maintenance' for its disabled constituency, and moreover, the extent to which it went beyond `maintenance' functions at the workplace to encompass `renewal' in the home environment. Of central concern, was the extent to which disabled miners were re-integrated into a productive place in society with respect to their vocational capacity.

The results of this study's fieldwork indicated both the limited and the precarious nature of employment on the mines following injury. Employment was limited in that just over half the sample (58%) had returned to work on the mines after injury, and precarious, in that a sizeable percentage of those re-employed (41%), were only able to maintain employment for one year or less. The sizeable number of repatriations following injury suggested a more `traditional' approach to migrant workers who were no longer productive. They were dispatched back to rural areas where it was left to compensation payments and the vicissitudes of rural conditions to ensure their survival, and

[329] Ibid.

that of their dependents. Those that were employed by individual mines were given the opportunity to regain a measure of productivity and independence. The precarious nature of subsequent employment however, whether determined by the imperatives of the mines (repatriations and retrenchments), or the dissatisfaction of individual workers (resignations), suggested that attempts to restore workers to the productive status they enjoyed before the injury were not particularly successful. The appropriateness of the work offered, the nature of alternative skills training and the adequacy of remuneration (viz. the high levels of resentment over the vastly reduced wages for workers in lower grade jobs) were all factors contributing to this.

Further, the results indicated the limited extent to which workers were assisted to regain their vocationally productive potential. Firstly, vocational skills training was limited to the spinal injured. Secondly, skills training, where it had been provided, was limited when considering its usefulness to the workers' home environment. In relation to the former, Zakia's biography pointed to the common scenario of mineworkers with 'less serious' impairments, such as leg fractures, which had ostensibly healed but not resulted in full functional recovery. This had serious implications for their future productive potential. As Zakia told us, with this type of injury he could not use his leg as before. In particular, standing for long periods of time and crouching were extremely painful. Like Bothata, with multiple finger injuries, manual workers like Zakia, without alternative training, were limited in terms of the type of work they could do on the mine, and, at home. Secondly, the usefulness of skills training provided to the spinal injured was called into question by the fact that only two of the eight were subsequently able to apply their training at a later stage. These workers did not have the capital or access to goods and markets required to set themselves up in self-employment. The disabled workers at the NUM paraplegic conference, in view of the vulnerability they felt in relation to their continued employment

on the mines, appealed for skills appropriate to their rural homes. Similarly, workers like Motlatsi in this study, expressed the desire for acquiring skills, and assistance, in order to provide an income for dependents at home.

A further aspect of the need for increased intervention by the industry for the continued `maintenance' of seriously disabled workers was raised by Petrose's biography. His experience highlighted the problem of insufficient facilities - in terms of accommodation and employment options - on mines for people in wheelchairs. On some of the better equipped mines, men in wheelchairs were housed and provided with some form of employment. Where these facilities did not exist, workers like Petrose, were repatriated. Individual mining houses were loath to accept the `social burdens' of other mining houses, or even of a mine in the same group. It was unacceptable however, that the future employment opportunity of a seriously disabled miner was jeopardised because of the nature of the mine on which the man was injured. This indicated the lack of uniformity in the care of the spinal injured in the industry.

Where workers had returned home without making arrangements for future employment on the mine, their chances of later doing so were extremely limited. Tseliso and Zakia's stories, illustrated the trend where, the longer a disabled worker stayed at home with no guarantee of a job on the mines, the more difficult it became for him to go back to the mines at a later date. Either the employment contract had expired or the man did not have the money to pay for the successive trips into town to the TEBA offices to enquire about a job. This was a further illustration of the precarious nature of employment for workers with disabilities.

Vocational or skills training and employment, as part of rehabilitation in the industry, was one crucial element impacting on the productive potential of disabled workers. Workers' compensation, as a means of financial redress for lost income, as well as, the legislative `protection' for workers disabled in

industry, was another. The workers interviewed in this study had been injured both prior to, and after the change in compensation practice introduced in June 1977. They also presented a diverse range of impairments, encompassing both permanent partial and permanent total disability. The adequacy of the financial recompense provided by compensation could be measured with reference to both the nature, scope and level of benefits, as well as, to the procedural functioning of the system.

With respect to the latter, one of the problems raised was the issue of compensation for temporary disability. Bothata's biography highlighted the problem - common to half the sample - of not receiving accident leave pay and temporary disability payments whilst hospitalised. This meant substantial periods of time, of varying length, without any source of income. Financial insecurity only compounded the anxiety of workers in hospital. Further, a third of the study sample had experienced some form of delay in receiving monthly pensions, resulting in similar financial insecurity.

The information on wage loss (calculated for those workers receiving monthly pensions), and read in conjunction with the employment status of the respondents and the limited access to rural resources, was the most dramatic illustration of the financial implications of a work injury. Information on wage loss in relation to type of injury, was also illuminating in highlighting the inadequacy of compensation for both permanent total, and particularly, permanent partial disability. The problems related to a number of factors. Firstly, by basing compensation on a percentage of the wage, low income earners were severely discriminated against. This was particularly problematic in the case of workers, such as paraplegics, where the nature of the injury itself, imposed a host of additional financial burdens on the worker. Almost all the workers in the study sample, whose physical impairments were a liability in the rural environment, pointed to the extra expenses imposed by their dependence. In all five biographies for example, workers spoke of the assistance

they required in order to do the jobs they did prior to the accident - be it ploughing or building. This was particularly the case for workers with serious disabilities. This shortcoming could be addressed by including in the calculation of disability, a `fixed' amount for a given impairment, in addition to the wage-based method of calculation. Secondly, wage loss in relation to type of injury, in the context of unemployment, revealed an inverse relationship to the severity of the injury. Only workers extensively disabled and earning in the higher-grade income brackets at the time of their accidents received a pension sufficient to survive on. Workers with multiple finger injuries or severe leg fractures were particularly vulnerable to impoverishment. Despite the extremely large number of workers who fell into this category, the criteria for assessing permanent partial disability, failed to take into account the unusually serious socio-economic consequences for manual workers with such injuries - in a labour market where supply far exceeds demand. The precise manner in which criteria for disability determination could provide a more sensitive and realistic measurement of functional and vocational disadvantage, should be the function of a well-appraised compensation board. A decision of the board could be, for example, that in the event of unemployment, a worker's compensation be increased. Alternatively, the percentage disability on the `meatchart' for such injuries could be upgraded. A second type of `minima', in addition to the one proposed for a given impairment, is a `floor' or basic minimum amount, that no compensation payment should fall under. This should apply to both monthly pensions and lump sum payments.

For those workers injured prior to June 1977, and for those with impairment ratings of 30 per cent or less, lump sum payments were inadequate, both in terms of amounts and for how long they lasted. Grievances directed at the system of compensation, were largely a result of the `disabling' context in which disabled migrants found themselves once no longer employed on the mines. The migrant labour system compelled them to return to areas characterised by widespread structural unemployment, lack of

resources for income generation, and limited, if any access to educational or training opportunities. The lack of provision for employment, and in particular, for vocational training enshrined within the legislation was one of the ways in which the WCA failed to provide adequate protection for workers who became disabled in work accidents.

A further way in which the compensation legislation failed to protect respondents against an inevitable slide into impoverishment, was in the systematic erosion of compensation payments due to inadequate and irregular inflation adjustments. These deficiencies were highlighted given the lack of other forms of social security and equity legislation which disabled workers could draw on for assistance.

In addition to deficiencies in the nature, scope and level of benefits, a further problem existed where respondents were unsure of their compensation entitlements, and where procedural problems in the system had denied them what they were entitled to receive. These related largely to the additional provisions in the compensation system, such as those under section 42 of the WCA, as well as, additional provisions under Rand Mutual's policy for workers with 100 per cent disability, such as `family allowances'. Motlatsi's biography was a damning indictment of the procedural loopholes in the compensation system and its potentially devastating consequences for workers and their families in remote rural areas. Further, it illuminated deficiencies in the mines' follow-up system for workers with severe injuries.

Given the limitations of compensation legislation in assisting workers to maintain a decent standard of living following a disabling work accident, and the limited numbers of alternative available employment options on the mines for disabled workers, access to resources in rural areas was a further crucial element in providing `support' for disabled migrants and their dependents. The evidence however, points to the extreme

dependence of the miners in the study on the mines for their continued livelihood. It was startling that only six workers had found intermittent and short-term employment in Lesotho since returning to their rural homes. Equally instructive, was the fact that the only person to sustain viable employment over a lengthy period of time, was the photographer - a man with a specific skill - who was not reliant on his physical strength to make a living.

Disabled migrants were still relied upon as primary breadwinners, in that compensation was the main source of income for rural households. Monthly income however, was vastly reduced in most cases, and had to be ever more `thinly spread' over the number of dependents, and the increasing needs of dependents, such as schooling, as children grew older. The capacity of rural households to provide the necessary `renewal' functions at home was extremely limited when considering the extent and nature of income-generating activities of disabled migrants and their households. A small number of disabled migrants (22%) supplemented inadequate compensation payments with informal attempts to generate income at home. However, the amounts and regularity of income actually generated, indicated that problems with lack of resources, equipment, transportation, terrain, sufficient markets and low skill levels mitigated against the productive potential of these initiatives. Similarly, attempts by wider family members to supplement diminished household income by utilizing resources at hand, such as liquor brewing, selling prepared foodstuffs, sewing, knitting and piece-jobs, were limited by poor returns. In addition, while most households in the sample had access to some land and livestock, the latter was unable to provide a cash income sufficient for the needs of workers and their dependents. Agricultural activities were overwhelmingly for subsistence purposes, and erratic, given climatic conditions, soil erosion, overgrazing, and lack of equipment and fertilizers. Sales from cash cropping and livestock were a source of income for a very limited number of households (8) in the sample. Rather, subsistence farming was the primary

source of survival for a sizeable percentage of households, and similarly, relied upon as a secondary source of maintenance.

The socio-economic impact of the termination or diminishing of the worker's wage (or `maintenance') following injury, was expressed by respondents in relation to their difficulties with children's schooling, insufficient food and clothing, maintenance of houses, ability to make `lobola' payments and to pay for transport, medical expenses and funerals. The loss of the mining wage, and the reduced monthly income for those receiving pensions, placed increased burdens on rural households, whose capacity to continue providing for the maintenance of their dependents was severely affected. This was due to the overwhelming dependence of households on migrant remittances, and the inability of rural areas to provide an independent or sustainable livelihood.

The specific nature of this study's sample - a rural one - was interesting in a number of respects. Firstly, the findings illustrate the cumulative `burden' of disability for a society historically dependent on mine labour. Secondly, in the context of the present crisis in the mining industry, a picture of the likely future scenario for the labour supplying areas is presented, in that increasingly, disabled and other retrenched workers have little, if anything to `fall back on' in rural areas. Thirdly, the specific personal characteristics of the study sample, viz. educational and marital status, present particular scenarios with respect to the consequences of disability. Firstly, the educational characteristics of the respondents, 45 per cent with no schooling and overwhelmingly unemployed, may be an indication that workers with little or no education are less likely to benefit from alternative employment or skills training offered to disabled workers. In relation to the `trifurcation' of the labour force, that large stratum of workers - those most resembling traditional oscillating migrants - may be at a disadvantage in the mines' future rehabilitation programmes when compared to more `stabilised' and skilled

workers. Secondly, almost all the workers in the study sample (83%) were married and thus had emotional and material support - to varying degrees. Wives or parents performed the traditional migrant function of `carers', despite the limited productive capacity of rural households to cater for their `renewal' functions[330]. There is evidence however, that increasing numbers of workers living on mines or resident at hospitals and adjacent rehabilitation units, have home circumstances which cannot provide support for the disabled family member[331]. In this scenario, rural households would be unable to provide the traditional functions required by labour migrancy - despite the `conventional wisdom' to the contrary[332]. Fourthly, the rural sample illuminated the incapacity of the rural areas to provide meaningful sustenance for disabled miners and their families.

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[330]This belies the complex physical, economic and psychological effects imposed by the disablement of a family member on `carers'. An area not explored in this thesis is the relationship of labour migrancy and disability to gender. Issues worthy of further research are, the relationship of disability in a migrant context to a study of `patriarchy' and role reversals in rural households, where the wife becomes the primary breadwinner, and where, in a material and psychological sense, the husband is `emasculated'. The evidence of the present study suggests that disabled husbands are still perceived as the primary breadwinner, but with diminished resources. However, where a wife has a regular income through employment or informal sector activities, it would be interesting to consider the implications of this changed family role. Similarly, if one could trace some of the wives of migrants who have `deserted', a more complex picture of the psychological and social consequences of disability might be illuminated. A further area worthy of consideration, is the greater dependency that migrant labour imposes on women once the rural base is destroyed.

[331]I refer here to the evidence provided in the article, "A Hard Road to Travel" by Stan Maher, Op Cit. These issues were discussed in chapter six.

[332]In this study, a young paraplegic, who had been repatriated from the mine, lived alone in a rented room near the `town' of Mafeteng itself. This situation had come about because he was single and had limited contact with his aged and ill parents. His neighbours did their best to assist him where they could, but with his compensation pension, he could not afford the cost of hiring a permanent `helper'. In his situation, there was no `rural household' to provide support for him.

This supports the general view that increasingly, migrant miners are `proleterianised' (in the classic sense of dependence on wage labour for survival), albeit within the context of an essentially migratory framework[333].

If `peasant households' were ever able to successfully meet the social costs of providing for the continued reproductive needs of migrant families with a disabled former breadwinner, this must, as Cohen has pointed out, have been in an era more suitable to the dynamics of early capitalist accumulation in southern Africa[334]. What this study's findings show is the precarious, and somewhat uneven, capacity of rural households to provide their `traditional' migrant function. It should be borne in mind however, that these functions are still performed, but in a context of increasing impoverishment. As Cohen writing on the reproduction of migrant labour-power points out, this "enfeeblement", indicates that "shell rather than substance is being dealt with in respect of the pre-capitalist economy"[335]. While historically, the functions of reproduction in migrant labour systems have been the mechanism for reproducing `cheap labour', the contradiction in the system has come about with the real (material) destruction of the `precapitalist mode' as it has been subsumed into the capitalist economy. With decreasing access to rural resources and increasing dependence on wages for survival, the capacity of rural households to continue with this function becomes questionable. The economic contradictions in the system are exacerbated with changes in production relations on the mines between black and white workers, and more generally,

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[333]Moodie notes the changing composition of the mine labour force from the seventies, and particularly the eighties, onwards. Changes in mine conditions and the rural material base, has resulted in a shift from "a largely illiterate peasant workforce (with its own migrant cultures), to one which includes numerous better educated, proletarian (if often still migrant) workers". cf. Moodie, D, (forthcoming), Op Cit:10.

[334]Cohen, R, 1987. Op Cit.

[335]Cohen, R, 1987. Op Cit:78.

in the changing balance of power between organised labour and mining capital. The need therefore, to adjust the analysis of the `reproduction' function of rural households in the light of certain changed economic and political realities, becomes obvious.

Thus far the discussion has concentrated on the effects of a disruption or termination in the `maintenance' sphere as a result of a disabling injury for migrant communities. It has also focused on the limited and precarious capacity of rural households to provide their `traditional' renewal functions. The remainder of the discussion on reproduction, will consider how effectively the mining industry has been able to maintain, and will continue to be able to do so in the future, the distinction between the `maintenance' and `renewal' functions of reproduction in respect of its disabled workforce. A key consideration in the above, is the capacity of the mining industry to continue generating the `interdependency' required for the migrant labour system's continued functioning.

The experiences of the disabled miners in this study reflect many continuities with traditional patterns of oscillating migration and its `reproduction'. Nevertheless, changes in the industry's approach to the reproduction of its disabled workforce can be discerned during the period covered by this study, viz. the seventies onwards. The first real signs of change for black workers began in the seventies, with the substitution in compensation practice from the payment of a lumpsum only, to a monthly pension for those with disability ratings above 30% impairment. This was a tacit recognition of the inappropriate recompense offered by small, `one-off' lumpsum payments for certain categories of physical impairment. The opening of the first rehabilitation centre for the spinal injured in 1979 by the Anglo American group recognised the specialised needs of this group of disabled workers given the adverse living conditions for most in rural areas. The opening of a subsequent rehabilitation centre for members of the Chamber in 1984, the signing of a six

month `security of income' clause and a `verbal' commitment to place disabled workers in alternative jobs on the mines during the 1986 annual wage negotiations, was a further indication of the industry assuming greater, albeit limited, responsibility for the continued maintenance of workers who had experienced an accident at work.

A significant shift in `reproductive' practices occurred in the late eighties with a different approach to the spinal injured being adopted. The industry made its first systematic attempt to follow-up the spinal injured in the field. By entering the domain of the rural environment, a more complex picture of the migrant worker, in relation to his family and home circumstances could be appreciated. This development was also a recognition that if the spinal injured were, by and large, not going to be employed on the mines' themselves, a different approach to rehabilitation was required. Increasingly, it was recognised that `token' jobs on the mines would have to be replaced by appropriate skills training to equip workers with disabilities for employment in alternative jobs on the mines, or more likely, for self-employment in the home environment. It was also an acknowledgment of the need for rehabilitation to move beyond its urban bias to include the rural dimension of disability. The relocation and follow-up stages of rehabilitation were finally being acknowledged as an integral part of treatment for serious disability. It was also at about this time, that the effects of the fiscal crisis facing the industry began to be felt. For disabled workers, this meant increasing numbers of `medical repatriations' to rural areas.

The scale and depth of the crisis for the industry, has led to a further moment of change, arguably the most significant in terms of its potential for a break with past `reproductive' practices. For the Union, the key shift has been in the extension of collective bargaining from issues of the `employment' contract to include those of the `post-employment' contract. This change of strategy is a de facto attempt by the Union to ensure that the

functions of `maintenance' and `renewal' coalesce, by compelling the industry to assume increased responsibility for the `maintenance' of workers (and their families) when retrenchment, through injury or other factors, results in their leaving the mine environment.

For management, the key shift has occurred with the recognition of the industry's need to develop its `rural developmental function'. This has come about largely through the realisation of the potentially disastrous effects of mass unemployment in the region as a result of the mines' programme of downscaling. This, in the context of ongoing organisation around the issue by the Union, has resulted in the industry looking increasingly to `rural development' as part of the solution to this crisis. By looking to the productive potential of local initiatives to maintain workers (and their dependents) after they leave the mine, there is a de facto recognition of the central role played by the mineworker in the survival of whole communities. Whatever the political and economic motivations for these changes, the perception of the migrant as a `totality', in relation to a family and community, signals an important shift from earlier approaches to the migrant labour force. By taking the workers' home environment into account, a greater understanding of the complexities of the problem, rooted in a sociology of occupational disability, is facilitated. Further, it lays the basis for exploring the, mainly tentative, links between the sphere of production and that of its reproduction.

The shift described above, illustrated by both the Union and management's response to the economic crisis facing the industry, has come about largely because the economic and political supports for labour migrancy are seriously being eroded. While individual migrant households in labour supplying areas have taken much of the responsibility for the `renewal' costs of migrants (and will no doubt continue to do so for some time), there is increasing evidence to suggest, that diminished rural resources and extreme dependence on increasingly fewer migrant

remittances, will have the likely result of rural households being less able to continue absorbing the social costs of retrenchment - of which `medical repatriations' are a component. As well as increasing evidence to illustrate the inability of rural areas to provide even the most basic support for workers and their dependents, there are other factors eroding the system as it currently stands. While vested interests - the government, mining industry, labour supplying states in the region - all have a stake in perpetuating migrancy, there is increasing pressure from other forces - organised labour and political groupings - whose location in society is increasing in dominance, to transform, if not abolish, migrant labour as the dominant form of labour organisation in industry. Notwithstanding the continued advantages of perpetuating labour migrancy to the dominant interests in society, the economic, political and social costs of reproducing the system in this context, has resulted in a process of reflection regarding the costs, as Burawoy suggested, of continuing to `externalise' renewal functions. In this respect, the `interdependency' - both economic and political - required for the system's continued functioning, in its present form, cannot be guaranteed.

Although migrancy as a system will by all accounts remain the dominant form of labour organisation in the mining industry, there is finally a recognition (largely through the catastrophic effects of mass retrenchments in the industry), of the fact that the migrant labour force is a `proleterianised' one. The implications of this for the future are two-fold. One, is the effect of producing more dependence on wages and therefore on mining for a livelihood. The second, is the political effect of proleterianisation leading to increased involvement in union politics. Both dimensions of proleterianisation would have the likely effect of migrants looking increasingly to the mines to continue providing their `maintenance' in the event of a disabling accident, and more generally, to assuming greater responsibility for their future circumstances once they are no longer employed on the mines. The contradiction however, lies in

the fact that `proleterianisation' is still being played out in an essentially migratory framework.

Recent developments around occupational disability suggest that increasingly, the industry is moving in the direction of assuming greater responsibility for the `maintenance' of disabled workers once they are no longer employed on the mines. While this trend has been identified in the study, current initiatives are too premature to come to any definitive conclusions. Further, a number of observations have a bearing on an overly optimistic interpretation of such initiatives. Firstly, it should be borne in mind, that improvements in working conditions (of which the quality of life for disabled workers is a crucial component) are taking place in the context of a vastly diminishing employment base. The structural vulnerability of disabled workers is thus the underpinning of improved conditions in the industry.

Secondly, much of the success of the industry's current rehabilitation interventions, rests on the quality of TEBA's follow-up service in the field. There are a number of potential problem areas. Since TEBA has no future as a recruiting agency, it has turned to `rural development' to sustain itself. Unless its initiatives are supported, particularly financially, by the mining industry it is likely to encounter serious difficulties sustaining its infrastructure and operations in the field. Secondly, for many mineworkers and their families, TEBA has negative connotations, and thus, will very likely need to change its image to ensure that its services are utilized. This may involve substantial `reaching out' into the community, such as assisting those workers who have not been compensated, in order to gain credibility. Thirdly, if TEBA wants to work effectively in rural development, it is going to have to take local community politics into account. This will of necessity involve a `bottom-up' approach to rehabilitation, as opposed to, the industry's more familiar `top-down' method of working.

Ultimately, the extent and nature of changes in the approach of the industry to the `reproduction' of its disabled workforce, lies in a complex interplay of factors encompassing the economic and technological circumstances of the mining industry; changes in production and power relations, both with respect to different categories of workers, and, workers and owners; regional inter-state relations, and more generally, the relationship of the labour movement to the state, in the transitionary period, as well as, in a future constitutional dispensation.

The material or economic erosion of rural economies may pose a greater threat to the `interdependency' requirements of the migrant labour system than its political counterpart. While the NUM, other `progressive' forces in society, and `independent' states in the region would like to break out of the shackles of a migrant system, they are compelled to accept its continued existence by the social and financial realities confronting workers, and indeed whole economies. In this context, improvements for future generations of migrants who become disabled will be tempered by the fiscal restraints of the mining industry, and the economic and political vulnerabilities of workers locked into a migratory system for their survival.

Implications of research for social policy

The sociology of social policy has both a theoretical and an empirical bent. The latter relates to generating information about a particular social problem - in this case, disability in industry. The former, is an attempt to bring "social reality closer into accord with a certain set of values[336]". This was essentially the starting point of the present study, namely, the position that the social consequences of mining injuries was an essential focus for a study of occupational disability. Further, that it was the responsibility of the mining industry, as well as the State, by the provision of an effective legislative

[336]Bulmer, M, 1977. Op Cit:18.

framework, to provide for the needs of workers disabled in industry. The specific trajectory of this study (as well as the one that preceded it) has provided interesting information on the relationship between the social generation of knowledge and its practical implementation[337].

In many respects, this study began as an attempt to fill a knowledge gap. The assumption was that the information provided would generate information vital to the application of social policy recommendations. In some respects, this has held, but what has become clearer over time, is that in policy making, `knowledge is not power'; `Power is power'[338]. Neither did the nature of the empirical evidence supplied by the research, clarify the matter for policy makers. The subject matter was caught in the differing subjective interpretations of what constitutes adequate responsibility on the part of the industry for disabled migrant workers. Even before the evidence provided by the findings of the research could be utilized to support the position of the group representing workers - the National Union of Mineworkers - the group representing management's interests, in anticipation of the results of the study, embarked on a tactical process of research endeavour. This had positive spin-offs, in that the industry for the first time, ventured into rural areas and interviewed a sizeable number of seriously injured workers (those confined to wheelchairs) to assess the nature of their home circumstances.

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[337]These policy reflections are pertinent to this study in that the fieldwork project, conducted at the NCOH, was essentially an indepth research report with policy implications. Secondly, the author has been involved over the years, mainly in a `consultative' capacity, with the safety department of the National Union of Mineworkers, and more recently, in the NUM working party on disability that negotiated the 1992 `disability agreements' with the Chamber of Mines.

[338]Carol Weiss discusses the maxim, `knowledge is power', in relation to ideology, interests and information in her article, "Exploring Research Utilization", in How Research and Information Are Used, ed., Jane Hofmeyr and Johan Muller. Centre for Continuing Education, University of the Witwatersrand, January 1986:37.

While the industry's findings were not open to public scrutiny as such, it did confront mine medical management with the range and complexity of social problems generated by permanent disability for migrants in rural areas. Further, the discourse within the mining industry itself, relating to the area of mining injuries and rehabilitation, shifted dramatically from that which had gone before. Earlier, the focus of published articles (such as those in the Journal of the Mine Medical Officers' Association of South Africa) was on the medical and physical dimension of rehabilitative care in the industry. In the late eighties, this dialogue expanded to incorporate the importance of `relocation' and `follow-up' to the process of rehabilitation[339], and importantly, presented sensitive, albeit brief, accounts of individual disabled workers' experiences to illustrate their new-found focus[340].

It was at this point that more effective communication was established between the author (aligned with the Union) and representatives of the industry, in that both parties had access to the `evidence' provided by disabled miners themselves - the latter (ie. management) on terms that they themselves had set. Prior to this, the `evidence' provided by disabled miners in an earlier study published by the author, was not considered `acceptable' to management, in that its methodology, by focusing on indepth case-studies, was regarded as `unscientific' in the dominant `scientific' community[341]. Subsequently, the Chamber's own research revealed remarkably similar information.

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[339]For example, Boulle, J, 1989. "The Role of the Mining Industry in the Rehabilitation of Spinal Cord Injuries - Spinal Cord Injuries in the Field", Op Cit.

[340]cf. Two publications of the Chamber of Mines, Mining Survey. One, Maher, S, 1990. "A Hard Road to Travel", Op Cit; Two, Russell, Charmane, 1992. "The Rocky Road:Paraplegic Care in Rural KwaZulu", Op Cit.

[341]Arkles, RS, 1985. Op Cit.

In many respects, the impact of the research generated by the present study - in conjunction with other factors, such as changes in the economic and political climate - has been through the concepts and perspectives that have come to permeate the thinking behind the policy making process. At first glance, the concept of `social consequences' in occupational disability does not seem particularly ground-breaking. However, this concept is novel and contentious in the following ways. Firstly, by its focus on the rural environment, the research challenges traditional notions of responsibility' for a migrant workforce. This it does by asserting the importance of the industry maintaining responsibility for the continued welfare of disabled migrant workers (and thereby their dependents) after they leave the mine environment; secondly, by illustrating the adverse social consequences for most workers with a permanent disability, it provides `moral' ammunition in a political climate, where increasingly, notions of corporate social responsibility are gaining currency; thirdly, the mere presence of the research (conducted by an outsider to the industry) is itself a threat to the managerial prerogative to control and suppress information regarded as `damaging' to the industry.

The research has permeated through processes, aptly described as akin to images of `percolation' and `circulation'[342]. The ideas and information `percolate' all the more vigorously through the presence of powerful players - the National Union of Mineworkers and the Chamber of Mines - who are actually engaged in the process of policy formation. However, the channels through which the concepts and information are circulated - the media, professional journals, interaction with colleagues - have assisted in creating a climate conducive to the reshaping of the policy agenda. In this way, it has shifted the premises taken for granted and the issues that are seen as problematic[343].

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[342]Weiss describes these processes occurring in the `enlightenment model' of research utilization. cf. Carol Weiss, Op Cit.

[343]Ibid:31.

The reshaping of the policy agenda occurred by asserting the importance of the socio-environmental component of rehabilitation in the mining industry. By focusing on the `reproductive' sphere of the organisation of work and its consequences, this study has contributed an additional dimension to the `new labour studies'. The `labour process' studies of the post-Braverman era, focused almost exclusively, on the organisation of production at the workplace to highlight shifts in class location and relationships with issues, such as health and safety. The `new labour studies' moved beyond a strict workplace focus by acknowledging the `totality' of the worker in relation to cultural, political and community institutions and practices. In shifting the analysis of disabled workers to the `reproductive' sphere, this thesis, by arguing for a sociology of occupational disability, has illuminated the links between issues of labour and those of development. This may well become one of the key issues for labour studies in South Africa, as increasingly, we are forced to come to terms with our African location, and with the reality of a diminishing formal employment base.

For management, `rehabilitation' of injured workers has increasingly come to include a focus on the relocation and follow-up of workers - albeit limited to those with serious injury. This has compelled the industry to consider the socio-economic environment from which miners are recruited, and to which they return when they are no longer employed on the mines.

For the Union, the agenda has broadened from a focus on compensation as the critical issue in occupational disability, to include demands on the industry for comprehensive rehabilitation, of which vocational training, for alternative employment on the mine or employment in the home environment, is a crucial component.

The emphasis on `total' rehabilitation, stems from Labour's position that the mining industry should accept some measure of historical liability for conditions in rural areas, in that it was instrumental in creating a system of dependence on wage labour and contributing to the erosion of the productive capacity of the labour supplying areas. Ironically, the ghost of the migrant labour system is coming back to haunt the industry. The system, for decades, convenient as a `dumping ground' for the sick, old and injured, is now an unwieldy entity which is going to become increasingly difficult to avoid in the industry's future rehabilitation plans.

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APPENDIX 1

MAFETENG DISABLED PEOPLES' PROJECT

LEBITSO LA MOEMELI .....

ADDRESS EA MOEMELI .....

TELEPHONE NUMBER .....

LITABA KA BATHO BA HOLOFALITSOENG KE LIKOTSI

(Litaba li ka neheloa ke motho ea holofetseng, leha ele mang kapa mang feela ea tsebang ka ena; joaloka seng,motsoalle,moaheloana)

1. LEBITSO.....

2. ADDRESS EA POSO .....

3. MOO A LULANG .....

4. SELEMO SA TLHAHO ..... LILEMO .....

5. SELEMO SA KOTSI .....

6. MOFUTA OA KOTSI E O HOLOFALITSENG (TSOAEA E NEPAHETSENG)

   a) KOTSI EA 'MILENG ( )
   b) KOTSI EA LAPENG ( )
   c) KOTSI EA 'MAENENG ( )
   d) NTOA KAPA HO OTLUOA ( )
   e) KOTSI EA PERE ( )
   f) KOTSI EA MOSEBETSING O MONG FEELA ( ) HLALOSA .....

   g) KOTSI E 'NGOE FEELA ( ) HLALOSA .....

7. HLALOSA LITHO TSA 'MELE TSE HOLOFETSENG .....

   .....

   .....

   (PHETLA LEQEPHE LA LITSOANTSO)

8. O EA SEBETSA HONA JOALE? E ( ) CHE ( )

   HA O SEBETSA, O SEBETSA ENG?.....

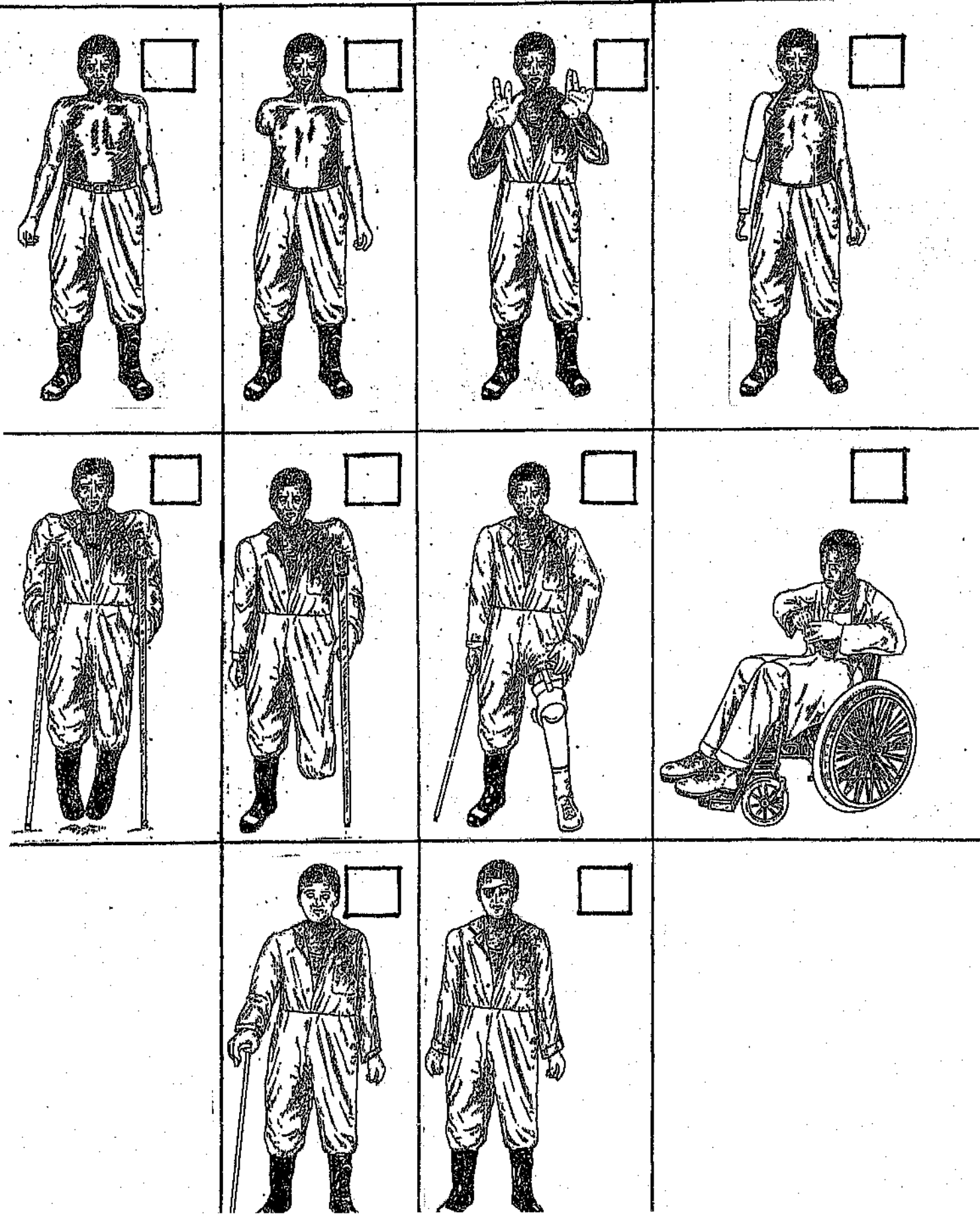
   .....

9. HAEBA HONA LE BATHO BAO O BA TSEBANG BA HOLOFETSENG SEBAKENG SENA, KE KOPA 'MABITSO A BONA, LE MOO BA DULANG TENG.

LEBITSO	MOTSE
.....	.....
.....	.....
.....	.....

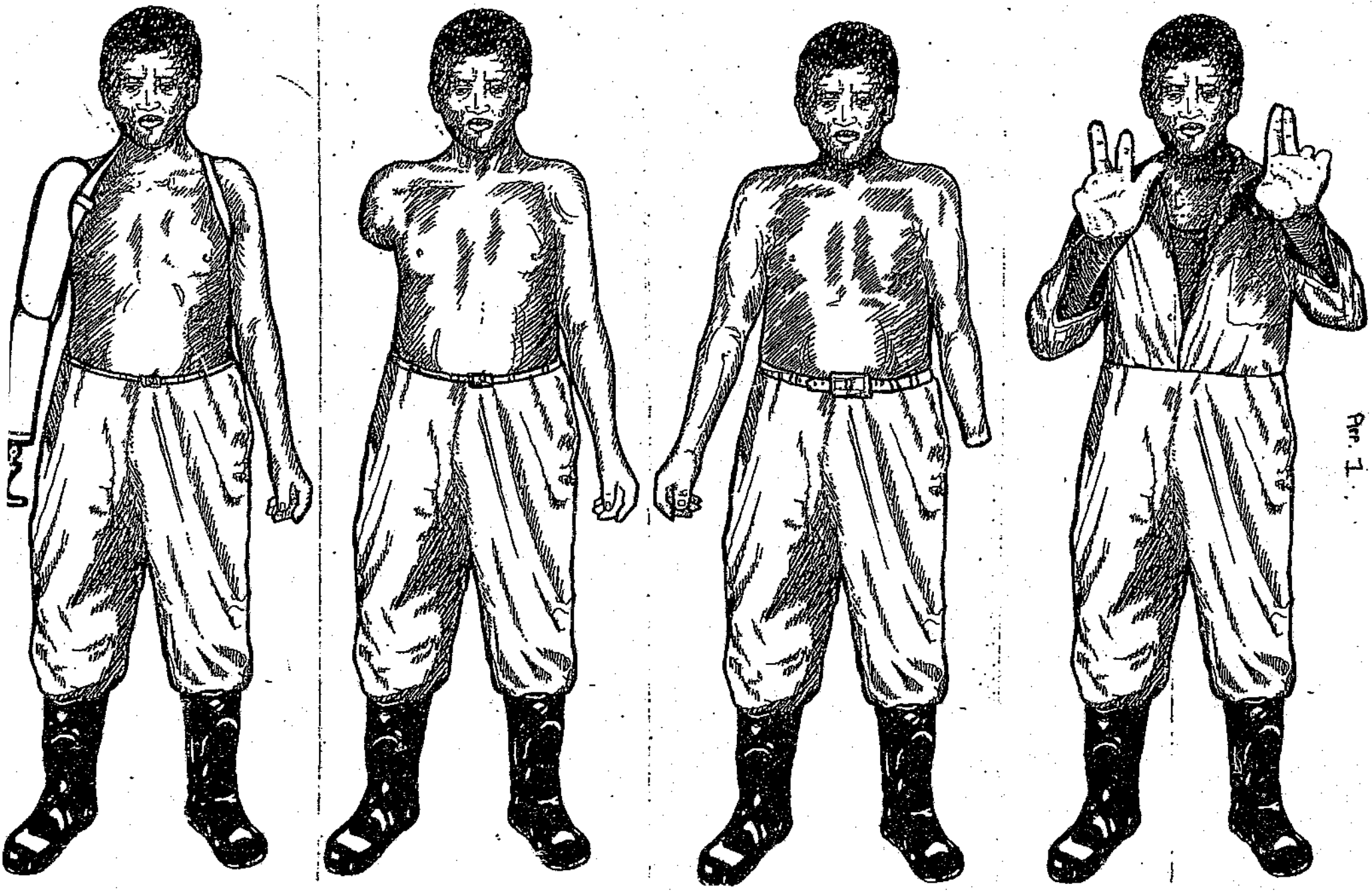
KEA LEBOHA

TSÓAEA HO HOLOFALA HO TSÓANANG LE HOA HAO, KAPA HO BATLILENG HO TSÓANA LE HONA



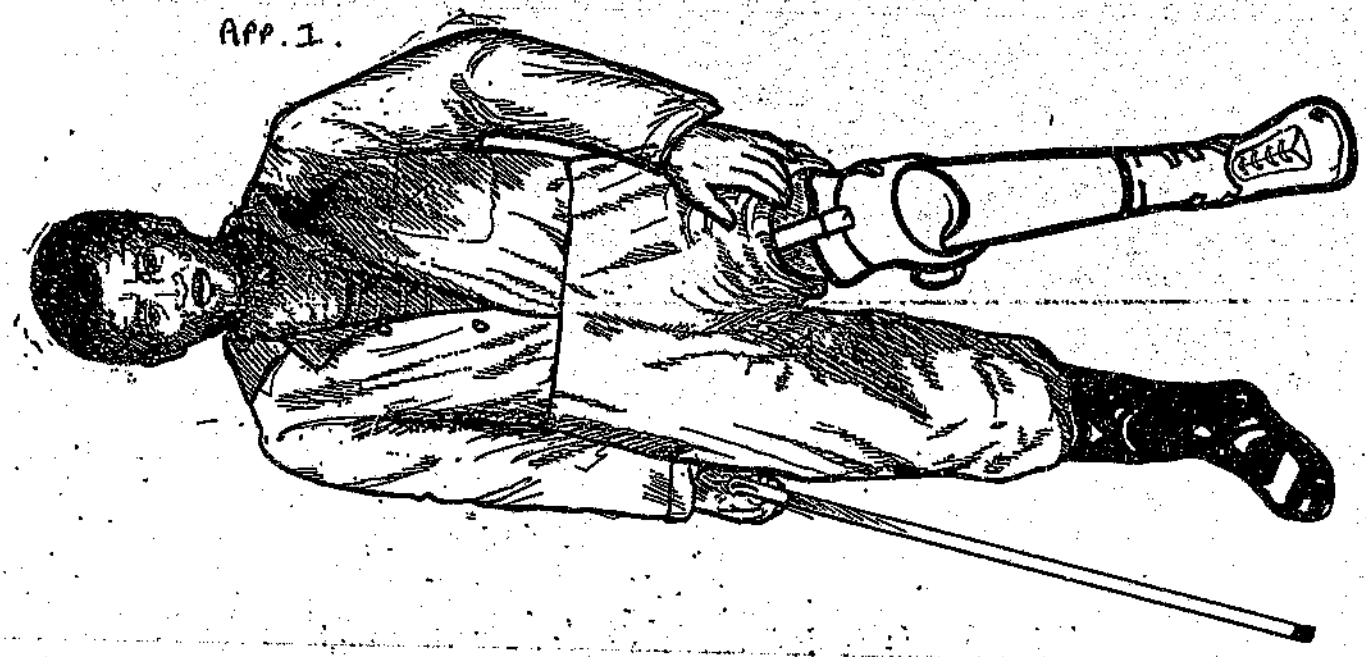


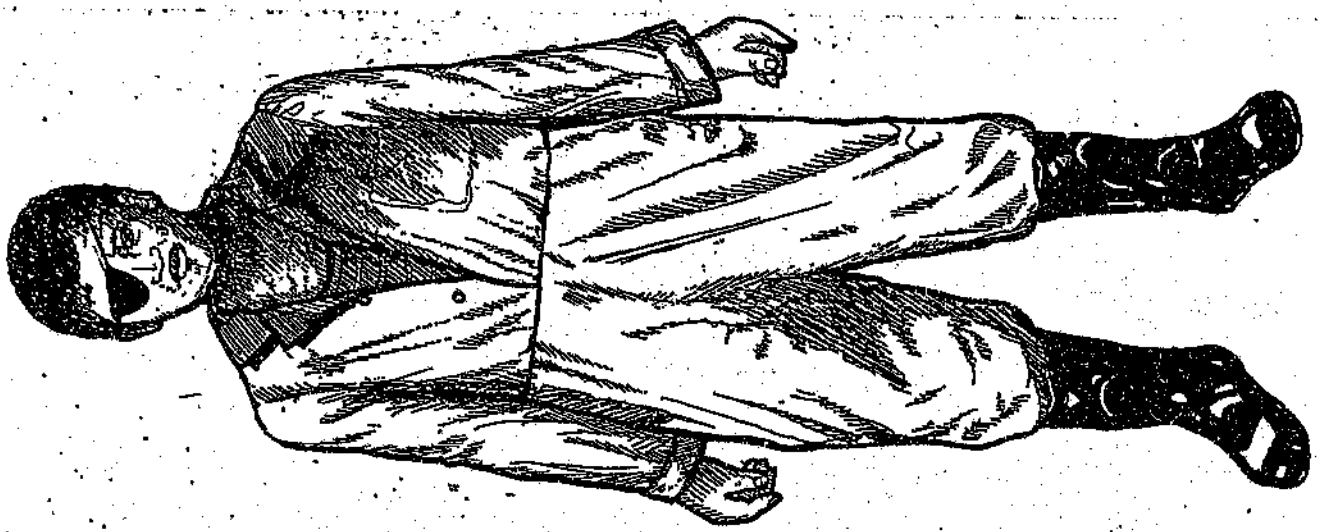


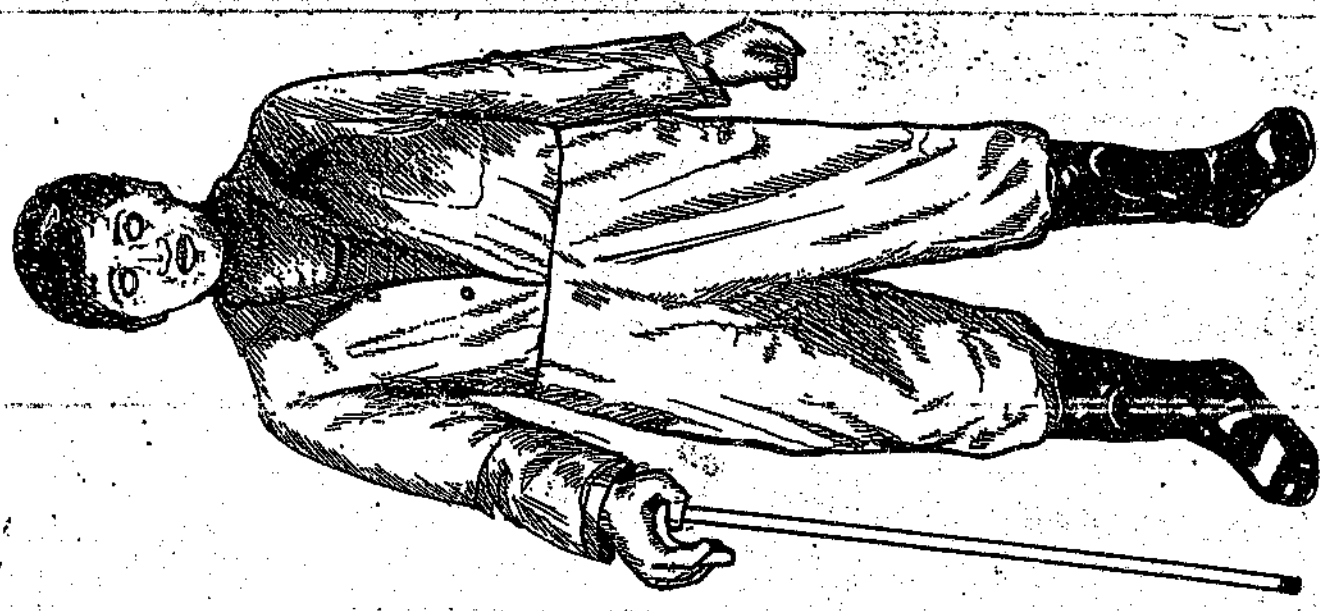


Per. 1.

App. I.







Appendix 2

Card 1
ID no.



QUESTIONNAIRE FOR DISABLED MINERS

1. PERSONAL DETAILS

1.1 Name .....

1.2 Address .....

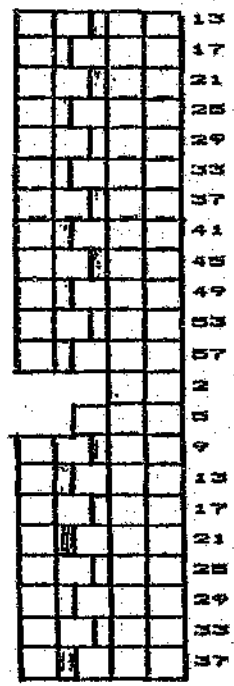
.....

1.3 Age [ ][ ] yrs

1.4 Household members (group of people living together and sharing eating and cooking facilities):
list all members of your household (this includes people both present and absent)

relationship to respondent	main occupation/ status	wage earner y/n	amnt (per month)

Card 2
ID no.



1.10 BEFORE THE ACCIDENT, had you had any post-school training?
yes [1] no [2] 17

If yes, please specify 19

I am going to ask about your accident in a minute, but first I am going to ask some questions about your jobs before the accident.

2. OCCUPATIONAL HISTORY

2.1 Please tell me all the mines you have worked on, during what years, and what your jobs were.
Let's start with the first job you had on the mines and go up to the last job you had just before the accident.

years	mine	job description
19 -19		
19 -19		
19 -19		
19 -19		
19 -19		
19 -19		

25 27 31 35 39 43 47 51 55 59 63 67

Card 5
ID no. 2 5

19 -19		
19 -19		
19 -19		
19 -19		

9 13 17 21 25 29 33 37

2.2 What was your wage at the time of the accident (excluding bonus, overtime, etc.)?
..... (.....per month) 40

2.3 In addition to your basic wage did you receive any bonus, overtime pay, etc? yes [1] no [2] ☐ 41

If yes, how much? ..... (..... per month) ☐☐☐ 44

2.4 While working on the mine, did you make any extra money? (eg. hawking, selling, etc.) yes [1] no [2] ☐ 46

If yes

a) doing what? ..... ☐☐ 47

..... ☐☐ 49

..... ☐☐ 51

b) how much (per month)? ..... ☐☐☐ 54

Card 6 ID no. ☐☐ 2 5

☐ 6

2.5 Before the accident, had you ever worked anywhere else, ie. not on the mines? yes [1] no [2]

if yes,

I'd like to know more about each job that you had. Let's start with the earliest and go to the latest.

Where did you work, what work did you do and what was your wage?

years	employer	job description	wage per month
19 -19			
19 -19			
19 -19			
19 -19			
19 -19			

☐☐ 12 17 23 28 34 39 45 50 54 61

Card 7 ID no. ☐☐ 2 5

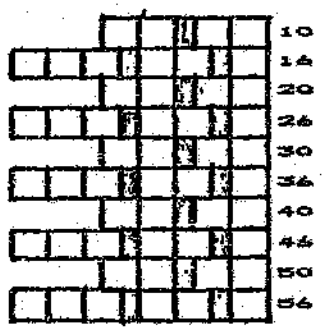
☐ 6

2.6 Before the accident, did you ever work for yourself? eg. farming, selling? yes [1] no [2]

If yes

Can you describe what you did, and tell me approximately what income you received (cash or kind)? Specify frequency of payment eg. weekly, monthly etc.

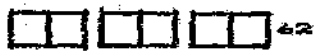
description of work	produce/goods	income cash/kind	freq.



Now let's talk about your accident.

3. ACCIDENT AND INJURY DETAILS

3.1 When did the accident happen? ___ /___ /19___



3.2 Would you describe how the accident happened .....

.....

.....

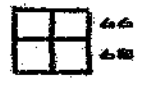
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3.3 Would you please describe your injury(ies) .....

.....

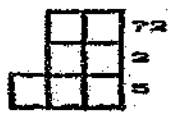
.....



3.4 How old were you when you had the accident? [ ]{ } years



3.5 At what mine did you have the accident? ....



Card 8
ID no.

4. HOSPITALISATION

4.1 At what hospital(s) were you treated and for how long?

Hospital	duration of stay (weeks)	
		10
		15
		20

4.2 How did your family hear about the accident? .....

.....

..... 22

4.3 How long after the accident was your family informed?

..... (.....days) 25

4.4 Did you receive any visits from members of your family while you were in hospital? yes [1] no [2] 26

If no, why not? 28

..... 30

If yes

a) Which member(s) of your family came to see you? 32 34 36

.....

b) When did you receive your first visit from your family?

..... (.....days after accid 39

c) Who organised the visits for your family? 41

.....

d) Did they experience any difficulties in order to visit you?
yes [1] no [2]

If yes, please explain .....

.....

42

44

46

4.5 Apart from your family, did anyone else come to visit you while you were in hospital? yes [1] no [2]

47

If yes, who came to visit you? .....

48

.....

49

4.6 After you were discharged from hospital, where did you go, why did you go there and for how long did you stay there?

place	reason	duration (days)

53

56

60

63

67

70

Card 9
ID no.

2

3

4

4.7 Since your injury, have you been referred to a rehabilitation centre? yes [1] no [2]

If yes

a) where did they tell you to go, who told you to go, and when were you told to go (month and year)?

place ..... person ..... date ...../19....

10

14

15

b) did you go? yes [1] no [2]

IF NO, GO TO QUESTION 4.8

If yes,

c) how long did you spend at the rehabilitation centre?

..... (..... days) 18

d) did you find your time at the rehabilitation centre helpful?
yes [1] no [2] 19

Please explain your answer 21

..... 23

.....

GO TO SECTION 5

4.8 What were your reasons for not going? 25

..... 27

.....

5. TRAINING

5.1 Since your accident, have you received any job or skills training (in hospital or after)? yes [1] no [2] 28

IF NO, GO TO SECTION 6

If yes

a) What TYPE(s) of training? 30

..... 32

.....

b) WHERE did you receive training? 34

..... 36

c) HOW MANY periods of training did you receive? 37

d) HOW LONG was each period of training? .....

.....

e) Who organised/paid for this training? .....

.....

f) Have you used this training in any job(s)? yes [1] no [2]

If yes, in what job(s)? .....

.....

If no, why not? .....

.....

40
43
45
47
48
50
52
54

6. RE-EMPLOYMENT

6.1 Since the accident have you gone back to work on the mines?
yes [1] no [2]

58

IF NO, GO TO 6.2

If yes

a) Since you were re-employed by the mines, what have your jobs been and what wages have you received? Let's start with your first job on the mine after your accident.

year(s)	mine	job description	wage (per month)
19 -19			
19 -19			
19 -19			
19 -19			
19 -19			

Card 10
ID no.

2
5

11
16
22
27
33
38
44
49
55
60

b) Are you still employed on the mines? yes [1] no [2] 41

If no, why did you leave the mine? 43

..... 45

..... 47

c) Since you were re-employed on the mines, are/were you satisfied with the work you do/did?
yes [1] no [2] 69

Please explain your answer 70

..... 72

.....

GO TO QUESTION 6.

Card 11
ID no. 2 5

6.2 Why have you not gone back to work on the mines? 7

..... 9

.....

6.3 Since the accident have you been employed anywhere else, ie. not on the mines (in waged work)?
yes [1] no [2] 10

If yes, I'd like to know a little about each job
Let's start with your first job after the accident.

year(s)	employer	job description	wage(/mnth)	
19 -19				14
19 -19				21
19 -19				27
19 -19				32
				38
				43
				49
				54

6.4 At the moment are you:

unemployed	[1]	in occasional/casual employment	[5]
self-employed	[2]	at a rehabilitation centre	[6]
working on a mine	[3]		
working elsewhere	[4]		

other, please specify ..... [ ][ ] 54

6.5 If unemployed or in casual employment, when did you last have a regular job?

..... (..... weeks ago) 59

Card 12 ID no. 2 3

7. COMPENSATION

7.1 Did you (or your family) receive your wages (part wages, or any money at all) while you were in hospital? yes [1] no [2] 6

If yes, who paid you, how much and when?

source (person, place)	amount (rands)	date received mnth	yr
			19
			19
			19
			19
			19
			19
			19
			19

11 15 20 24 29 33 38 42 47 51 54 60 65 69

Card 13 ID no. 2 3

7.2 Since your accident have you received compensation in the form of a:

a) lumpsum	yes [1]	no [2]	4
b) pension	yes [1]	no [2]	7

If yes to 7.2a (lumpsum)

i) How much did you receive, and when?

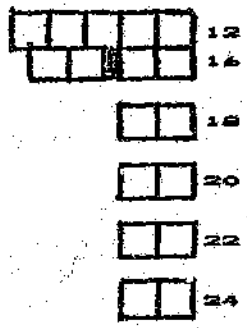
amount: R_____ date: _____/19_____

ii) What did you spend it on? .....

.....

.....

iii) When did you finish your lumpsum (year)? 19 _____



If yes to 7.2b (pension)

i) How much, and when, was your first payment?

amount: R _____ date: _____/19_____

ii) Has the amount changed since then? yes [1] no [2]
If yes, when and to what amounts?

year: 19_____ amount: R _____

year: 19_____ amount: R _____

year: 19_____ amount: R _____

year: 19_____ amount: R _____

year: 19_____ amount: R _____

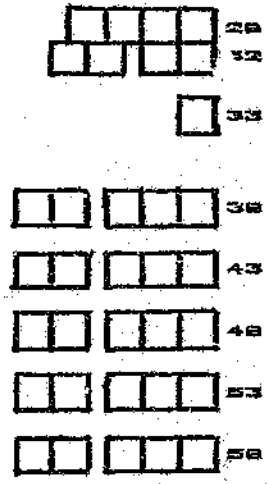
iii) Where do you get your pension from? .....

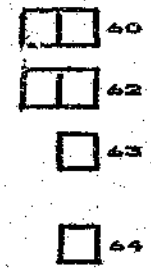
.....

iv) Who collects your pension? .....

v) How is it collected (transport)? .....

vi) Have you experienced delays in getting your compensation?
yes [1] no [2]





If yes, how many times? [ ][ ]
what was the longest delay? ..... (.....days)

what was the shortest delay? ..... (.....days)

vii) Have you experienced any <u>other</u> difficulties getting the money? yes [1] no [2]

If yes, what difficulties have you experienced? .....

.....

.....

viii) Does it cost you anything to get your compensation?
yes [1] no [2]

If yes, approximately how much does it cost you R.....?
(each time)

Card 14
ID no.

44
49
72
2
5
6
8
10
11
12

7.3 Are/were you able to meet your expenses with your compensation?
yes [1] no [2] 14

If not, please explain .....

..... 16

..... 18

..... 20

8. <u>INCOME</u>

8.1 Do you own/have access to any land? yes [1] no [2] 21
IF NO, GO TO QUESTION 8.2

If yes

a) Do you use the l d to grow crops? yes [1] no [2] 22

b) If no, what do use the land for? 24

..... 26

c) If yes, does your household use this agricultural produce, do you sell it or both?

home use [1] sales [2] both [3]

If yes to 'sales' or 'both', what produce do you sell, how often and how much (approx.) do you receive in payment (eac time)?

produce	amount (kind/cash)	frequency (per year)

d) What do you usually use the money from these sales for?

.....

.....

.....

e) Do you have problems with your crops/produce (eg. selling, etc.)? yes [1] no [2]

If yes, please tell us what problems .....

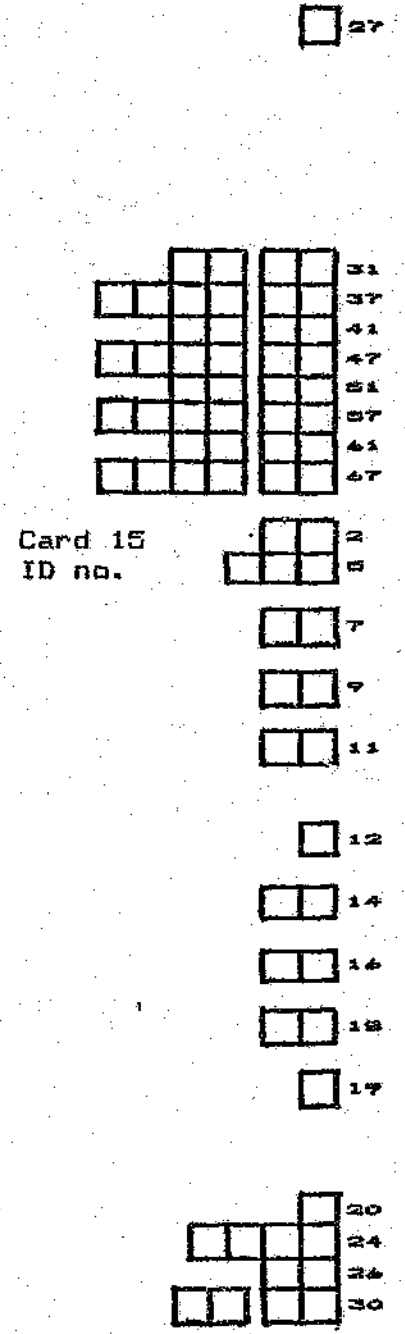
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.....

f) Do you ever rent/loan land to others? yes [1] no [2]
If yes,
i. what do you charge for it? Specify payment (cash/kind), amount and frequency of payment (eg. weekly, monthly, etc.)

cash [1] amount ..... freq .....

kind [2] specify ..... freq .....



ii. what are your reasons for doing this? .....

.....

.....

32
34

8.2 Do you ever rent/borrow land <u>from</u> others? yes [1] no [2] 38

If yes

a) what do you pay for it? Specify payment (cash/kind), amount and freqency of payment (eg.weekly, monthly etc)

cash [1] amount .....freq.....

kind [2] specify .....freq.....

b) What are your reasons for doing this? .....

.....

.....

36
40
42
46

48
50

8.3 Do you own any livestock? yes [1] no [2] 51

If yes

a) Which of the following livestock do you own?
sheep [1] horses [2] chickens [3] pigs [4]
goats [5] donkeys [6] cattle [7] other ..... [ ][ ] 53

b) Have you sold any livestock since your injury?
yes [1] no [2] 54

If yes, <u>why</u> did you decide to sell? 56

..... 58

..... 60

Card 16
ID no. 2
5

c) Have you bought any livestock since ir accident?
yes [1] no [2] 4

If yes, which of the following livestock did you buy?

sheep [1] horses [2] chickens [3] pigs [4]
goats [5] donkeys [6] cattle [7] other ..... [ ][ ] 6

d) What do you use your livestock for?

	home use	sales	both		home use	sales	both	
sheep	[1]	[2]	[3]	horses	[1]	[2]	[3]	10
goats	[1]	[2]	[3]	donkeys	[1]	[2]	[3]	12
cattle	[1]	[2]	[3]	pigs	[1]	[2]	[3]	14
chickens	[1]	[2]	[3]	other	[1]	[2]	[3]	16

e) Do you experience any problems with your livestock/animal produce (eg. selling, etc.)? yes [1] no [2] 17

If yes, please tell us what problems 19

..... 21

..... 23

f) Is the output from your land/crop produce and/or your livestock/animal produce enough for your household to live on? yes [1] no [2] 24

If no, please explain .....

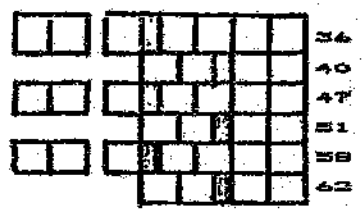
..... 26

..... 28

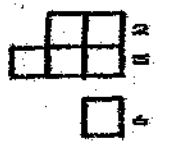
B.4 Do any members of your household work for <u>other</u> farmers?
yes [1] no [2] 29

If yes, what work do they do and what payment do they receive? (cash/kind). State payment and frequency of payment. ie. how often do they get paid?

work	payment (cash/kind)	frequency (weekly/monthly/etc.)
....	.....	.....
.....	.....	.....
.....	.....	.....



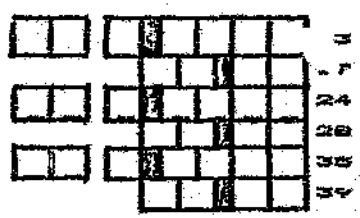
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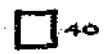
8.5 Do you ever employ other people to do work for you?
yes [1] no [2]

If yes, what work do they do and what payment do they receive (cash/kind)? State payment and frequency of payment.

work	payment (cash/kind)	frequency (weekly/monthly/etc.)
.....	.....	.....
.....	.....	.....
.....	.....	.....

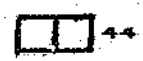


8.6 Are you involved in any income-generating activities?
yes [1] no [2]



i) IF NO, what income-generating activities would you like to get involved in?

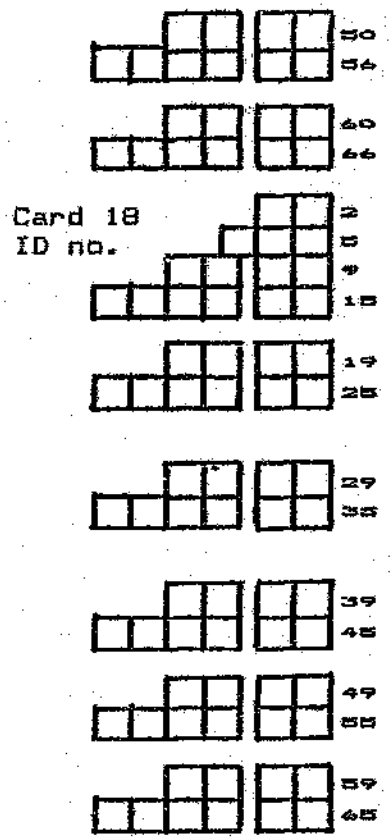
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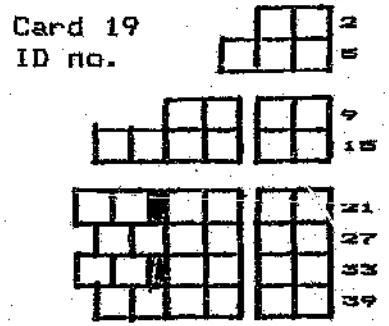
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..... 

ii) IF YES, please indicate which of the following income-generating activities you, or members of your household are involved in.

Activity	year started	Participants (household membs):	Approx. earnings	freq. (per yr)
liquor brewing				
traditional medicine				
food preparation				
mechanical repairs eg. radio				
handicrafts specify:				
stalls				
shops				
rental of rooms				
shoemaking/ repairs				
other,specify:				
.....				
.....				





8.7 Do you experience problems with any of the above activities?
yes [1] no [2]

If yes

a) what problems do you experience, and in which activity(ies)

activity	problem
.....	.....
.....	.....
.....	.....

b) What would your solutions to these problems be?

.....

.....

.....

8.8 Do you or any members of your household ever borrow money?
yes [1] no [2]

8.9 If yes, can you tell me who borrows, why and from whom?

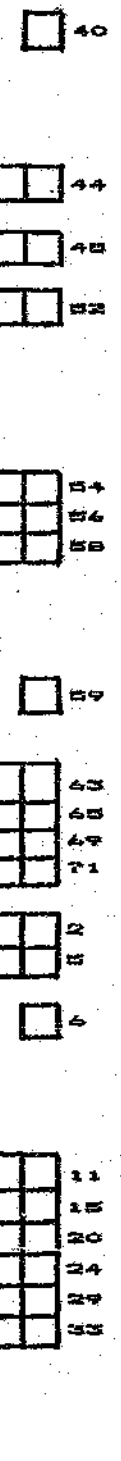
household member	reason	person
.....	.....	.....
.....	.....	.....

8.10 Do you ever receive gifts, donations or other assistance from anyone?
yes [1] no [2]

If yes, please specify who from, what you receive and how often (each year)

source	type of assistance (state cash/kind)	frequency (per year)
.....	.....	.....
.....	.....	.....
.....	.....	.....

Card 20
ID no.



8.11 What is the main source of income of this household?
What are the secondary sources of income?

	main source	secondary source	
subsistence farming	[1]	[2]	34
cash cropping or sales of livestock	[1]	[2]	35
business income	[1]	[2]	36
cash remittances from migrant workers	[1]	[2]	37
cash wages and salaries (non-migrants)	[1]	[2]	38
compensation money	[1]	[2]	39
other pensions eg) old age pension	[1]	[2]	40
other sources of income (specify)	[1]	[2]	41

..... 43

9. LIVING IN THE RURAL AREAS

9.1 Did you move house after your accident? yes [1] no [2] 44

If yes, can you tell me how many times you have moved since your injury and why?

a) No. of times [ ][ ] 46

b) Reason(s) for moving 48

..... 50

.....

9.2 Do you have any difficulties getting into and out of your house?
yes [1] no [2] n/a [3] 51

If yes, please describe these difficulties 53

..... 55

..... 57

9.3 Have any alterations been made to your house since your injury to make it easier for you to get around?
yes [1] nc [2] n/a [3] 59

if yes,

a) what alterations have been made? 60

..... 62

..... 64

b) Who organised these alterations for you? .....

....

c) How much did they cost you? .....

Card 21
ID no.

45
46
47
72
2
5
6
7
8

9.4 Where is your nearest water supply?
near [1] not so far [2] far [3]

9.5 Where do you get your water? .....

9.6 Do you have a toilet at your house? yes [1] no [2]

9.7 How do you manage with the following activities and who helps you with each activity, if necessary?

	independent	partially dependent	dependent	helper	
eating	[1]	[2]	[3]	.....	11
getting into/ out of bed	[1]	[2]	[3]	.....	14
dressing	[1]	[2]	[3]	.....	17
washing	[1]	[2]	[3]	.....	20
toilet	[1]	[2]	[3]	.....	23
mobility in house	[1]	[2]	[3]	.....	26
mobility out-side house	[1]	[2]	[3]	.....	29

9.8 Has your injury caused you difficulties with:
a) work around the home? yes [1] no [2] 30
b) recreation? yes [1] no [2] 31

If yes to either, please explain these difficulties 33

..... 35

..... 37

..... 39

9.9 How do you travel if you need to go:

a) somewhere in your village/area? ..... ☐ 40

b) away from home? ..... ☐ 41

9.10 Do you experience any problems with transport? yes [1] no [2] ☐ 42

If yes, please explain .....

..... ☐☐ 44

..... ☐☐ 46

..... ☐☐ 48

9.11 Does a nurse ever visit you? yes [1] no [2] ☐ 49

9.12 If yes, how often each year? ..... ☐☐ 51

9.13 Does she help you? yes [1] no [2] ☐ 53

Please explain your answer ..... ☐☐ 54

..... ☐☐ 56

.....

9.14 Which of the following aids or equipment do you have?

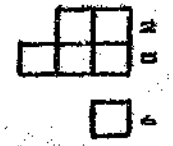
none [1] artificial limb [3] other (specify)
crutches [2] wheelchair [4] .....[ ][ ] ☐☐ 58

9.15 Do you experience problems with these aids/equipment?
yes [1] no [2] ☐ 59

If yes, what problems do you experience and with which equipment?

type of aid	problem	
.....	.....	☐☐☐☐ 63
.....	.....	☐☐☐☐ 67

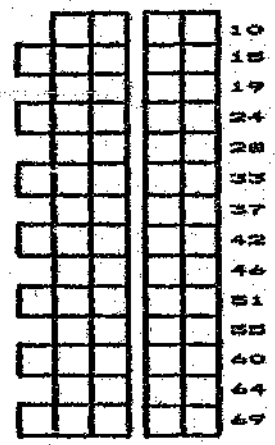
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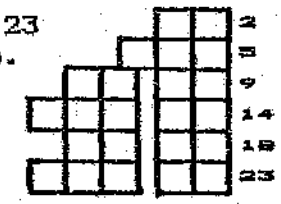
9.16 Since the accident, have you been back to hospital?
yes [1] no [2]

If yes, please specify:

year	hospital	length of stay (days)	reason for going



Card 23
ID no.



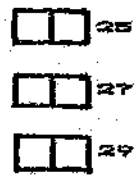
9.17 What do you feel are the main problems facing disabled people (like yourself) in this community?

.....

.....

.....

.....



10. COMMUNITY PARTICIPATION

10.1 Do you go to church? yes [1] no [2] sometimes [3] ☐ 30

10.2 Do you belong to any organisations, clubs etc? yes [1] no [2] ☐ 31

If yes, which organisation(s)? ..... ☐☐ 33

..... ☐☐ 35

10.3 Do people give you help when you need it? yes [1] no [2] ☐ 36

10.4 Do you talk about your problems/worries to anyone? yes [1] no [2] ☐ 37

If yes, to whom? ..... ☐☐ 39

10.5 Do you feel you have ever been unfairly treated because of your disability? yes [1] no [2] ☐ 40

If yes, in what way(s)? ..... ☐☐ 42

..... ☐☐ 44

..... ☐☐ 46

.....

11. CONTACT

11.1 Since the accident, has anyone from the mine or the mine hospital kept in touch with you? yes [1] no [2] ☐ 47

If yes, please describe who made contact with you, when contact was made and why.

person	: date (mnth/yr)	: reason for contact
	:	:
	:	:

☐☐ ☐☐ 49 50 51 52

☐☐ ☐☐ 53 54 55 56

Card 24
ID no. ☐☐☐ 2 3 4 5

if no, would you like contact with someone from the mine or mine hospital? yes [1] no [2] ☐ 4

if yes, what kind of contact would you like? ..... ☐☐ 6

..... ☐☐ 10

..... ☐☐ 12

..... ☐☐ 14

.....

11.2 Have you heard of the NUM? yes [1] no [2] ☐ 15

11.3 Do you have contact with the NUM? yes [1] no [2] ☐ 16

11.4 Do you think the NUM could help <u>you</u> in any way? yes [1] no [2] dk [3] ☐ 17

if yes, please explain how .....

..... ☐☐ 19

..... ☐☐ 21

..... ☐☐ 23

..... ☐☐ 25

12. <u>CONCLUSION</u>

12.1 In what ways has the accident affected your life and your family's life?

..... ☐☐ 27

..... ☐☐ 29

..... ☐☐ 31

..... ☐☐ 33

..... ☐☐ 35

12.2 Can you recommend ways in which the situation could be made easier for you and your family?

..... 37

..... 39

..... 41

..... 43

12.3 Is there anything else you would like to say or any questions you would like to ask?

..... 45

..... 47

..... 49

..... 51

THANK YOU VERY MUCH FOR YOUR TIME AND FOR SHARING YOUR EXPERIENCES WITH US

APPENDIX 3

[1]FIRST SCHEDULE.

INJURY.

	Percentage of Disablement.
Loss of two limbs	100
Loss of both hands, or of all fingers and both thumbs	
Total loss of sight	
Total paralysis	
Injuries resulting in being permanently bedridden	
Any other injury causing permanent total disablement	
Loss of *arm* at shoulder	65
Loss of *arm* between elbow and shoulder	
Loss of *arm* at elbow	55
Loss of *arm* between wrist and elbow	
Loss of *hand* at wrist	50
Loss of four *fingers* and *thumb* of one hand	
Loss of four *fingers*	40
Loss of *thumb*—both phalanges	25
one phalanx	15
Loss of *index finger*—three phalanges	10
two phalanges	8
one phalanx	5
Loss of *middle finger*—three phalanges	8
two phalanges	6
one phalanx	4
Loss of *ring finger*—three phalanges	6
two phalanges	5
one phalanx	3
Loss of *little finger*—three phalanges	4
two phalanges	3
one phalanx	2
Loss of *metacarpals*—first, second or third (additional)	4
fourth or fifth (additional)	2
Loss of *leg*—at hip	70
between knee and hip	45 to 70
below knee	35 to 45
Loss of *toes*—all	15
great, both phalanges	7
great, one phalanx	3
other than great—	
four toes	7
three toes	5
two toes	3
one toe	1
Eye: Loss of whole eye	30
sight of	
sight of, except perception of light	
Loss of *hearing*—both ears	50
one ear	7

1. First Schedule substituted by sec. 23 of Act No. 7 of 19[illegible].

APPENDIX 4

TK/EH/33/4

3 May 1991

The Representative
The Employment Bureau of Africa Limited
P O Box 15
MAFETENG 900
LESOTHO

Dear Sir

WORKMEN'S COMPENSATION ACT 1941
MOTLATSI SEKOAI : 26664/149969
ACCIDENT : 26.11.83
BRACKEN MINES LIMITED
REFERENCE : D B 2308

We acknowledge receipt of your faxed Baptismal Certificates of the six minor children in respect of Mr Sekoai's application for a family allowance.

Please find enclosed my company's cheque for the amount of R7262,13 being accrued family allowance from 2.3.84 to 31.3.91.

We are pleased to inform you that Mr Sekoai's monthly pension has increased from R394,63 to R500,52.

Would you please pay Mr Sekoai the amount of R7262,13 for which my company's cheque is attached

Yours faithfully

T KHOZA
ASSISTANT CLAIMS OFFICER

Encl

ANNEXURE TWO

APPENDIX 5.

AGREEMENT

between

NATIONAL UNION OF MINEWORKERS
(hereinafter called the "NUM")

and

CHAMBER OF MINES OF SOUTH AFRICA
(hereinafter called the "Chamber")

concerning

THE PRINCIPLES, VALUES AND PROCEDURES APPLICABLE IN RESPECT OF THE TERMINATION OF EMPLOYMENT OF EMPLOYEES ON THE GROUND OF MEDICAL INCAPACITY

WHEREAS the parties wish to record the principles and values that should apply in the event of the termination on the ground of medical incapacity of an employee who is a member of the NUM in a recognised bargaining unit on a mine which is a member of the Chamber ("the employer").

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. SUBSTANTIVE AND PROCEDURAL FAIRNESS

1.1 The parties agree that the termination of employment of an employee on the ground that the employee is medically incapacitated for the occupation in which he is employed ("termination on the ground of medical incapacity") should be effected in a manner which is both substantively and procedurally fair.

2. SUBSTANTIVE FAIRNESS

2.1 The employment of an employee shall not be terminated by the employer on the ground of medical incapacity unless there is a valid reason for such termination.

2.2 In determining whether there is a valid reason for termination on the ground of medical incapacity, regard shall be had to whether the relationship between the employer and the employee can fairly be expected to continue bearing in mind the circumstances of the case.

2.2.1 Such circumstances shall include, but not be limited to, the following:

2.2.1.1 the nature of the employee's incapacity;

2.2.1.2 the likelihood that the condition of the employee may improve or that he may recover;

2.2.1.3 the prospect of the employee returning to the occupation performed by him prior to incapacity;

2.2.1.4 the availability of alternative positions;

2.2.1.5 the prospects for retraining the employee for an alternative position;

2.2.1.6 the implications of his incapacity for the employer's operations;

2.2.1.7 the effect of the employee's incapacity on his own welfare and safety and that of other employees.

3. FAIR PROCEDURE

3.1 Consultation:

The transfer of an employee to a new occupation and the termination of the services of an employee on ground of medical incapacity shall be effected subject to consultation by the employer with the employee himself. In such consultation the employee shall be entitled to the assistance of his duly chosen representative. No attempt shall be made by the employer to dissuade an employee from being represented by the Union.

3.2 Notification:

The employer shall notify the employee of any intention to transfer the employee or terminate his services on the ground of medical incapacity and shall offer to notify the Union on behalf of the employee. If the employee so agrees the employer shall notify the Union immediately of such intention. No attempt shall be made by the employer to dissuade an employee from being represented by the Union.

3.3 Fitness for Current Position:

3.3.1 Should an employee who is required by law to hold a certificate of fitness to perform his occupation be found to be medically unfit by the medical officer of the employer acting in terms of the law, the employee will be entitled to seek a second opinion from the Medical Bureau for Occupational Diseases, whose decision shall be regarded as definitive as to the medical condition of the employee.

3.3.2 Should an employee who is not required by law to hold a certificate of fitness to perform his occupation be found medically incapacitated by the medical officer of the employer, with the consent of the employee a medical adviser appointed by the Union at its cost shall be entitled to:-

3.3.2.1 make an independent assessment of the employee's condition; and

3.3.2.2 an appropriate medical report by the employer's medical officer.

If there is substantial disagreement between the opinions of the employer's medical officer and the Union's medical adviser, the parties agree to seek the opinion of an independent medical practitioner, acceptable to both parties, whose findings will then be regarded as definitive of the medical condition of the employee.

3.3.3 The employer will take into account both the medical opinion or opinions and other relevant circumstances in making a decision as to whether or not an employee is fit to return to his occupation.

3.4 Alternative Employment:

If the employee is not able to return to his occupation, an endeavour shall be made to identify suitable alternative occupations. In this regard the parties agree to adhere to the principle of disclosure of relevant information in the interests of both the employee and the company.

3.5 Termination of Employment:

Should the termination of services of the employee prove unavoidable, such termination shall be in accordance with the specific employee's relevant conditions of employment.

3.5.1 In a case of statutory occupational disease or injury sustained on duty, the employer will explore and consider appropriate and suitable arrangements in regard to access to ongoing medical treatment, the notice period, retraining and accommodation. Where agreed, these arrangements will be implemented in respect of the employee concerned.

4. MINE PROCEDURES

4.1 The provisions of this agreement shall be construed as supplementing, and not detracting from relevant procedures applicable on an employer's mine save to the extent that such procedures are inconsistent with this agreement in which event the procedures in this agreement shall apply.

5. LABOUR RELATIONS ACT

5.1 The provisions of this agreement shall not detract from the rights of the employer and the employee under the Labour Relations Act in respect of the termination of the employee's services on the ground of medical incapacity but shall be invoked only after the procedures in this agreement have been exhausted.

6. TERMINATION OF AGREEMENT

6.1 This agreement shall terminate:

6.1.1 upon the termination of the relevant recognition agreement between the NUM and the Chamber;

6.1.2 upon three months' written notice given by either party to the other of its intention to terminate the agreement.

SIGNED AT JOHANNESBURG ON THE .... DAY OF ..... 1992 ON BEHALF OF THE PARTIES.

....

NATIONAL UNION OF MINEWORKERS

CHAMBER OF MINES OF SOUTH AFRICA

AS WITNESS:

1. .....

2. .....

AS WITNESS:

1. .....

2. .....

PTDA/acf/1/N2088

20/8/92

A G R E E M E N T

between

NATIONAL UNION OF MINEWORKERS
(hereinafter called the "NUM")

and

CHAMBER OF MINES OF SOUTH AFRICA
(hereinafter called the "Chamber")

concerning

THE PRINCIPLES AND VALUES APPLICABLE TO EMPLOYEES WITH STATUTORY OCCUPATIONAL DISEASES AND INJURIES SUSTAINED ON DUTY

Noting that:

A. The parties remain committed to the prevention of work related injuries and diseases.

B. The NUM and the employer have respectively established organisational and supervisory structures to endeavour to achieve this aim.

C. Employees whose job opportunities are dependent on their physical capabilities are especially disadvantaged following disability from injury on duty.

D. The word "statutory" in the title of this agreement refers to both the scheduled lists of injuries and diseases as well as those conditions which entitle the employee to compensation under any other provision of the Workmen's Compensation Act (WCA) contemplated in section 93 of the WCA and to the list of diseases in, and the diseases gazetted, under section 1 of the Occupational Diseases in Mines and Works Act (ODMWA).

E. Compensation law does not make provision for rehabilitation and retraining and, as a result, compensation is largely limited to monetary awards in both the WCA and the ODMWA.

F. The ODMWA, which regulates the certification and compensation of employees who contract occupational diseases, is unsatisfactory in many respects.

G. Existing practices within the industry could be formalised to assist individual employees and the NUM to lodge complaints or to register dissatisfaction about medical services and practices within the industry.

H. An income security agreement is in place for employees who are permanently transferred to a lower paid job.

I. The parties have recognised the need of employees for job security and the concomitant right not to be dismissed unfairly as set out in the settlement agreement of the 1991 Review of Wages and Other Conditions of Employment.

J. There is a need for a document to address through a set of principles and values the circumstances of the individual who has been affected by injury on duty or an occupational disease.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The parties shall make joint representations to the Minister of Health to expedite the revision of the Occupational Diseases in the Mines and Works Act, 1973, in accordance with the principles set out in Annexure B1 hereto.

2. Every attempt shall be made to resolve a complaint on medical services and practices in respect of an individual employee at the lowest possible level. Either party may refer to the relevant official listed in Annexure B2 hereto any complaint which is not resolved at a lower level within a reasonable time.

   The complainants, however, reserve the right to direct such complaints to the South African Medical and Dental Council or relevant statutory bodies and/or institute legal action should the parties not be able within a reasonable time period to resolve the issue.

3. The employer will make every reasonable endeavour to provide appropriate rehabilitation programmes directed towards:

   (i) restoring the physical, mental and social well being of the employee;

   (ii) assisting the employee to remain in gainful employment.

   3.1 These programmes shall where appropriate include

   (i) the modification of appliances such as wheelchairs to meet the rigours of the rural environment;

   (ii) the counselling and training of family members for the care of the employee;

   (iii) assistance other than financial, save where agreement on financial assistance has been reached between the parties, with the modification of workers' homes;

   (iv) a system of support for disabled employees;

   (vi) the adaptation of the work environment to enable the employee to remain in his current occupation.

4. The parties agree that the retraining of incapacitated workers is important if these workers are to continue to be gainfully employed.

4.1 The employer is committed to the retraining of medically incapacitated workers for vacancies on the employee's mine.

4.2 The employer is committed to exploring and considering an appropriate and suitable retraining course for a medically incapacitated employee for whom alternative employment is not available on the employer's mine, and where agreed, the relevant course will be implemented in respect of that employee.

5. The parties agree to establish a working party at the conclusion of the 1992 negotiations to investigate and make proposals on rehabilitation and retraining, within a period of 3 months, for negotiation between the Chamber and the NUM.

6. If a disabled employee is found to be permanently medically unfit to return to his occupation and no suitable alternative employment can be found, the termination of his employment will take place in accordance with his conditions of employment, including any medical separation procedures that are agreed to by the parties from time to time.

7. Mine will give preferential consideration to the employment of a dependant nominated by an employee who suffers permanent total disability if a vacancy exists and the dependant meets the requirements of the mine with regards to the vacancy.

8. A dependant nominated by an employee who suffers permanent total disability, should be considered for a place on a retraining programme defined in terms of clause 4.

9. In giving effect to the principles and values for employees disabled or injured on duty, as set out in this agreement both parties agree to take account of the needs and constraints of the employee and the employer including but not limited to the costs involved.

10. <u>Termination of Agreement</u>

This agreement shall terminate:

10.1 upon the termination of the relevant recognition agreement between the NUM and the Chamber;

10.2 upon three months' written notice given by either party to the other of its intention to terminate the agreement.

11. This agreement shall come into operation with effect from the date of signature hereof by both parties.

SIGNED AT JOHANNESBURG ON THE .... DAY OF ..... 1992 ON BEHALF OF THE PARTIES.

.....
NATIONAL UNION OF MINEWORKERS

.....
CHAMBER OF MINES OF SOUTH AFRICA

AS WITNESS:

1. .....

2. .....

AS WITNESS:

1. .....

2. .....

PTDA/acf/1/N2089

Author: Arkles, Rachelle Susan.
Name of thesis: The social consequences of industrial accidents- disabled mine workers in Lesotho.

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