

Nkala and others v Harmony Gold and others: Amici intervention of Sonke Gender Justice and the Treatment Action Campaign

Alternative Mining Indaba, 10 February 2015
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Outline

Founding Affidavit of **Anele Yawa**, Secretary-General of the TAC:

- + Affidavit of **Adv Anand Grover** - international law and the right to health
- + Affidavit of **Prof Francis Wilson** - history of gold mining and socioeconomic impact of mining
- + Affidavit of **Dean Peacock** - impact on families and children / gendered implications of lung disease

PART 1: International law: Affidavit of Adv Anand Grover

- + Three focuses:
 - + Final report: August 2014
 - + *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*
 - + Right to a remedy

Final report: Adv Grover's Concerns

- + Adv Grover's concerns re corporations:
 - + Need for accountability
 - + Increasing power and domination in global economy
 - + Influence over domestic policy "infringing on the state's policy space"
 - + Major rights violators that are not held to account: "Undermine rights with impunity"
 - + Esp transnational corps

Ruggie principles

- + Duty of **state to protect** rights, including through developing policy and law to hold corporations accountable
- + Responsibility of **corporations to respect** rights, including through preventing and addressing human rights violations
- + Access to **remedy**, including state obligation to reduce legal, practical and other barriers to remedy

PART 2: Prof Francis Wilson:
political history and socioeconomic
impact of gold mining

Geographic sources of labour 1989 - 1996

- + Lesotho: 26.8%
 - + Former Transkei: 21.5%
 - + Mozambique: 15%
 - + Balance: other "homelands"
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- + Labor force at its zenith in 1986
with 534,000 workers

Political history of mining industry

+ Migrant labour system:

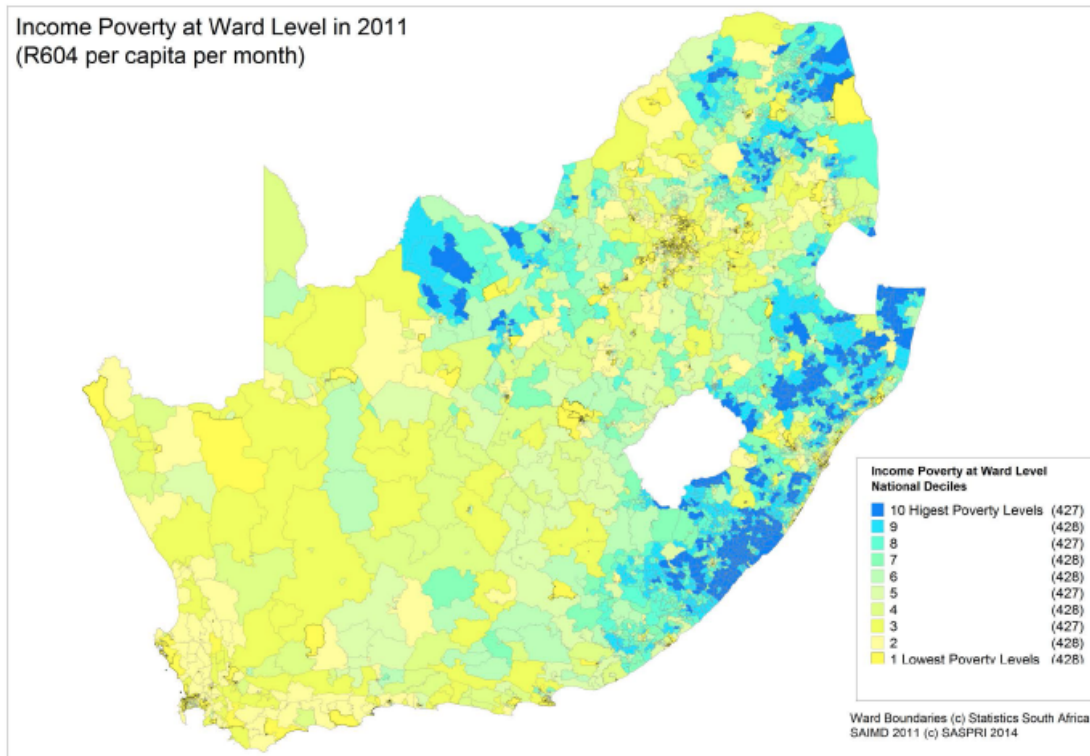
- + state and mining companies colluded to establish and maintain apartheid
- + Migrant labour was essential to the system. Established and maintained through:
 - + Chamber of Mines monopolized hiring / imposition of colour bar
 - + Pass Laws and NLA

Wealth

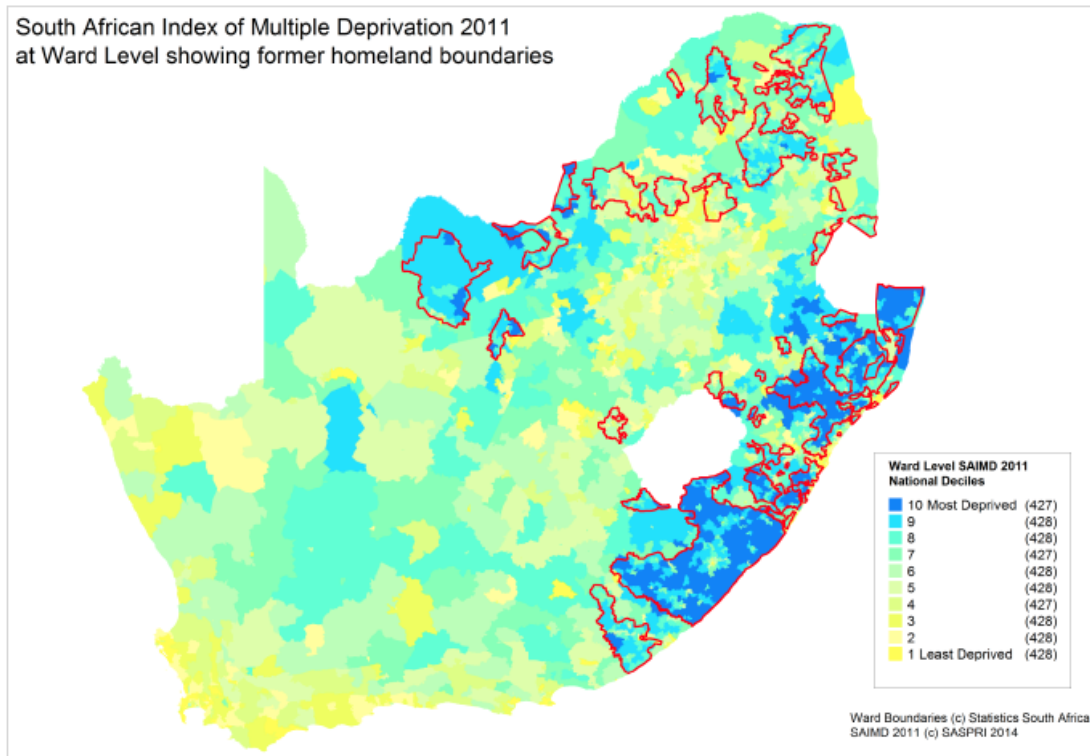
- + Very different experience of economic impact based on race and geography
- + Location of investment: Maize yields: 1950 – 1970 (100kg bags per hectare)

Year	C o m m e r c i a l farms	Reserves	Lesotho
1950	7.4	5.7	11.9
1960	9.1	2.1	7.4
1970	11.9	2.3	5.1

Spatial distribution of wealth: income poverty at ward level



Spatial distribution of wealth: multiple deprivation at ward level



Conditions in the former "Transkei"

Location	Former "Transkei"	All "Bantustans"	Rest of SA
Material deprivation	69	46.4	33
Educational	58.4	53.8	30.1
Employment	37.2	28	17.9
Living environment	87.8	73.7	27.6

Former mineworkers in the Alfred Nzo District

- + *The Hidden Epidemic Amongst Former Mineworkers: Silicosis, Tuberculosis and the Occupational Diseases in Mines and Works Act in the Eastern Cape, South Africa* -
Jaine Roberts

Reasons for leaving mine service

- + Retrenchment: 48.2%
- + Illness: 21.9%
- + Injury: 5.8%
- + Retirement age: 6.3%
- + Of own will: 17.5%

Knowledge of ODIMWA

- + 99% had no knowledge of ODIMWA (had learned nothing while employed and nothing from anywhere else)
- + 97% had seen health personnel in home areas, 96.5% of them had not learned about ODIMWA there

Health

- + Most had symptoms of respiratory illness: 95.6% had coughing, 83.4% had weight loss, 82.4% had fever ...
- + 26.3% diagnosed and treated for TB while in mines. 51.7% diagnosed and treated since leaving mines.

Employment

- + None formally employed
- + 21.9% had other source of income, but marginal (eg collecting and selling wood, house maintenance etc)

Hunger and deprivation

- + 92.2% of mineworkers and their households reported going without food or experiencing hunger on a monthly basis
- + Over 30% transport themselves to health facilities on horseback

Access to compensation

- + ODIMWA < COIDA
- + Libode study: 2.5% of of former mineworkers certified as eligible for compensation had been paid in full
- + Deloitte study: 1.5% of claims of people certified as eligible were paid

In Sum

- + Former mineworkers are likely to:
 - + be married and have dependant children;
 - + have left mining service due to retrenchment or illness;
 - + have no knowledge of ODIMWA / not have accessed compensation;
 - + have had TB during or since leaving mining service;
 - + be unemployed; and
 - + experience hunger on a monthly basis.

PART 3: Who cares for the sick?

Affidavit of Dean Peacock

- + In labor-providing areas, care is unpaid and provided by women.
 - + Stress to mind, body and finance
 - + Sacrifice jobs, educational opportunities, self care, other opportunities
 - + Risk exposure to infectious disease

Impact on girls

- + Withdrawal from school = increased risk for:
 - + HIV infection
 - + Gender-based violence
 - + Inequitable relationships later in life

Expectations on women

- + Increasingly expected to be breadwinner and caregiver
 - + Yet 32.5% of black women are unemployed (vs a national average of 24%)
 - + And yet women earn less: 20.5% of women earn less than R1000 per month compared to 9.5% of men

Conclusion

- + Women and girls, through care work, subsidize the provision of healthcare services and the mining economy at the expense of their health, education, finances and well being. This "drives an even thicker wedge between the privileged and the deprived".

- + Hearing on admission: week of 13 April
- + Hearing in main application: October
- + Thanks to
 - + our expert deponents;
 - + Our clients, TAC and Sonke;
 - + AMI Organisers; and
 - + Georgie and co-panelists