

Environmental justice and slow violence: Marikana and the post-apartheid South African mining industry in context

By *Caiphaz Soyapi** and *Louis J. Kotzé***

Abstract: South Africa has come a long way since the constitutional revolution that swept the country in the early 1990s. The Constitution of the Republic of South Africa, 1996 introduced and continues to drive far-reaching changes to the political, social and juridical landscape and it aims to create a more just and equal society for all; one where respect for human rights is paramount. On 16 August 2012 the country was rocked to its core when the South African Police Service killed 34 striking miners at Lonmin Plc’s platinum mine at Marikana in the country’s North-West Province in what appeared to be a brutal suppression of one of the most significant labour unrests in the country’s history. Evoking images of apartheid-era police brutality, the “Marikana massacre” has unearthed some of the many challenges the country is struggling with on its long road to creating a just society for all. The predominant focus of political and juridical commentary on and scholarly critique of the incident has to date focused on labour and social justice issues. In this article we focus on the often ignored, albeit equally critical, deleterious socio-economic and related environmental impacts of mining in South Africa by exploring the intimate link between slow violence and the broader environmental justice movement within the South African context through the lens of the Marikana massacre. In pursuit of this objective, the article commences with a brief overview of the actors involved in the Marikana massacre. The following part seeks to understand environmental justice and slow violence in relation to the massacre. We then demonstrate how the South African mining industry, backed as it was by government, has been highly exploitative of workers and natural resources, and how successive post-apartheid governments have been and continue to be complicit in environmental injustice and

* Temporary Lecturer and Doctoral candidate at the North-West University, Potchefstroom Campus.

** Research Professor of Law, North-West University, Potchefstroom Campus; Visiting Professor of Environmental Law, University of Lincoln, United Kingdom. An earlier version of this paper was presented at the joint annual symposium of the Global Network for the Study of Human Rights and the Environment (GNHRE) and the Lincoln Centre for Environmental Law and Justice, Symposium on *Environmental Racism*, which was held in November 2015 at the University of Lincoln, United Kingdom. We are grateful for the critical comments and views that we have received from participants during this event and that have shaped this article. We also wish to thank Professors Nicola Smit (North-West University); Mia Swart (University of Johannesburg); Sam Adelman (Warwick University); and Anna Grear (University of Bristol) for their useful views on an earlier draft of this article. The generous financial assistance of the South African National Research Foundation that enabled this research is acknowledged with thanks. All views and errors are our own.

slow violence against marginalised black people in South Africa. In view of the consequences of this historical legacy, in the final part of the article, we provide some critical observations within the framework of environmental justice and slow violence.

A. Introduction

As a concept, social activism movement and broader field of academic inquiry, environmental justice is an issue that has received considerable attention over the years in the literature. Lesser known and often neglected, but equally acute and related, is the issue of slow violence.¹ In this article we focus on the continuing (and increasingly aggravated) deleterious socio-economic and related environmental impacts of mining in South Africa by exploring the intimate link between slow violence and the broader environmental justice movement within the South African context. We do so through the lens of what has come to be known as the “Marikana massacre”,² which occurred in South Africa on 16 August 2012, when the South African Police Service (SAPS) killed 34 striking miners at Lonmin Plc’s platinum mine in the country’s North-West Province. In the week that led up to the fateful day of the massacre, two policemen, two private security guards and six miners had been killed.³ In addition, 78 people were wounded and 250 were arrested. Evoking memories of the 1960 Sharpeville massacre and the many other acts of protracted civil disobedience that characterised South Africa’s apartheid past, Marikana and the heavy-handed actions of the county’s democratically elected African National Congress (ANC)-led government to suppress the strike, have been described as the county’s “first ‘democratic’ massacre”,⁴ and as “the biggest incident of police brutality since the advent of democracy [reviving] memories of the brutality suffered under Apartheid security policy”.⁵ Following the incident, government established a commission of inquiry to investigate the massacre. Its final report was released on 31 March 2015.⁶

1 See generally *Rob Nixon*, *Slow Violence and the Environmentalism of the Poor*, Cambridge 2011.

2 See, for example, *Nick Davies*, *Marikana Massacre: The Untold Story of the Strike Leader Who Died for Workers’ Rights*, <http://www.theguardian.com/world/2015/may/19/marikana-massacre-untold-story-strike-leader-died-workers-rights> (last accessed on 5 January 2016).

3 *Patrick Bond and Shauna Mottiar*, *Movements, Protests and a Massacre in South Africa*, *Journal of Contemporary African Studies* 31 (2013), p. 292.

4 *Andrew Nash*, *Marikana’s Path*, *Social Dynamics* 41 (2015), p. 387.

5 See South African History Online, *Marikana Massacre 16 August 2012*, <http://www.sahistory.org.za/article/marikana-massacre-16-august-2012> (last accessed on 23 November 2015).

6 Marikana Commission of Inquiry, *Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province*, <http://www.thepresidency.gov.za/medialib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commission%20of%20Inquiry.pdf> (last accessed on 6 January 2016).

Despite being primarily rooted in labour unrest and demands for better wages, we believe the Marikana massacre should not be understood as a purely labour-related matter: the massacre, its causes and consequences, must also be understood as a matter of environmental injustice and slow violence perpetrated against marginalised black mine workers that built up over time and erupted in a sudden, violent counter-reaction to the oppressive practices of mining companies that have seemingly been sanctioned by the state. Mindful of the increased interest that the Marikana massacre is drawing among scholars,⁷ it is our hypothesis that environmental injustice and slow violence are crucial considerations for understanding the relationship between humans and the environment, including issues of rights, justice, corporate greed and government policies in a country with a racially tainted past and in the light of ongoing impacts of the mining industry on people and the environment.

The Marikana massacre provides a unique opportunity to canvass the interplay between these issues and to identify and discuss some of the historical and present systemic problems in the extractive industry as they emerge from Marikana's context. In particular we reflect on the systemic and unjust subjection of miners to low salaries, poor working conditions, poor living conditions and environmental degradation by mining corporations and the state. These issues directly or indirectly relate to environmental injustice. In joining recent attempts by other commentators, we thus seek through this article to re-open the neglected closed epistemic space that has been forming around the Marikana massacre by redirecting parts of the discussion towards the environmental domain. Nash recently pointed out that:

The immediate response of many mainstream commentators and institutions - from political parties to universities - was to close that space up again, or pretend it was not there. Far from recognising how Marikana had changed our horizons, they treated it as a momentary aberration or unforeseeable tragedy, the result of criminality, backwardness, police indiscipline and the like. Instead, more than two years after the massacre, Marikana has cut open a path of its own.⁸

In pursuit of the objectives outlined above and for contextual purposes, the article commences with a brief overview of the actors involved in the Marikana massacre. The following part seeks to understand environmental justice and slow violence in relation to the massacre. We then demonstrate how the South African mining industry, (im)properly backed by government, has been highly exploitative of workers and natural resources, and how successive governments have been and continue to be complicit in environmental injustice and slow violence against marginalised black people in South Africa. In view of the consequences of this historical legacy and continued practices, in the final part of the article, we

7 Sam Adelman, *The Marikana Massacre, the Rule of Law and South Africa's Violent Democracy*, *Hague Journal on the Rule of Law* 7 (2015), p. 243.

8 Nash, note 4, p. 387.

provide some critical observations with respect to environmental injustice and slow violence in light of the massacre.

B. Marikana revisited

With its images of apartheid era police brutality, the violent suppression of public protests and indiscriminate killing, the Marikana massacre came as a shock to many within and outside South Africa. The incident started as a wildcat labour strike at a platinum mine owned by Lonmin Plc (listed on the London Stock Exchange) in one of the world's richest platinum belts.⁹ The principal motivation behind the strike was to secure a salary increase for the striking miners, some of whom were being paid ZAR4000 per month (approximately USD 400 at the time). The miners were demanding an increase to ZAR12500 per month (approximately USD 1250 at the time). While there is no evidence to suggest that the striking miners were agitating for other demands apart from remuneration, it is reasonable to assume that related considerations such as better living conditions, prosperity, well-being and quality of life were also factors in the strike, as they are in virtually all other labour disputes.¹⁰

In South Africa, trades unions within the country's collective bargaining framework usually handle salary negotiations in the extractive industry.¹¹ In this instance, the responsible representative labour entity at the mine was the National Union of Mineworkers (NUM).¹² NUM is affiliated with the Congress of South African Trade Unions (COSATU), the largest trade union federation in South Africa which forms part of a tripartite alliance also consisting of the ruling ANC and the South African Communist Party (SACP). Historically, this tripartite alliance was able to mass-mobilise marginalised workers in protests against the apartheid regime. By providing a labour-focused alternative to party politics, unions have exerted significant political and socio-economic influence in South Africa by offering platforms through which discontent against apartheid policies, laws and practices and recently, discontent even against the ANC government and its policies,¹³ can be expressed. As a result, labour unions have had an enduring influence over South African politics. As well, the ANC's current Secretary General, Gwede Mantashe; the former President and Deputy President of the country, Kgalema Motlanthe; and the current Deputy

9 *Keith Breckenridge*, Marikana and the Limits of Biopolitics: Themes in the Recent Scholarship of South African Mining, *Africa* 84 (2014), p. 152; *Vishwas Satgar*, Beyond Marikana: The Post-Apartheid South African State, *Africa Spectrum* 2 (2012), p. 34.

10 *Adelman*, note 7, p. 245.

11 See section 1(c)(i) of the *Labour Relations Act* 66 of 1995, which provides that one of the aims of the Act is to provide a framework within which workers and their trade unions can collectively bargain for the determination of wages, terms and conditions of employment.

12 Although at this time NUM had lost significant support to its rival AMCU.

13 See, for example, *Thembi Mabhula*, Which is Which? Tripartite Conflict or Alliance?, <http://www.afesis.org.za/local-governance/local-governance-articles/214-which-is-which-tripartite-conflict-or-alliance.html> (last accessed on 8 February 2016).

President of the country Cyril Ramaphosa, have all served as Secretaries General of NUM.¹⁴ Ramaphosa is in the run to succeed Jacob Zuma as South Africa's president in a few years' time. According to one perspective, for many black mineworkers Ramaphosa:

*... was a true compatriot who fought for the transformation of labour relations in the mining industry under the apartheid government. Fearlessly, he steered NUM to focus its campaigns on wages and working conditions for black mining workers. In effect, the union won scores of significant victories through bargaining and the courts.*¹⁵

In the Marikana case, NUM had lost the support of the workers and many had defected to the rival union, the Association of Mineworkers and Construction Union (AMCU). NUM was perceived as having become detached from its membership and was consequently unable to effectively represent its members' interests. To this end, Chinguno notes that:

*NUM representatives not living and experiencing the harsh realities of Nkaneng [a township in the Marikana area]¹⁶ had strongly alienated them from workers. They are out of touch with workers' daily reality. During the struggle against apartheid, union activists were intimately tied to the lives of ordinary workers and citizens of the community. However, this has shifted since the democratic transition.*¹⁷

Encouraged by the success of miners at another platinum mine earlier in the year in their labour actions to secure significant wage increases,¹⁸ Lonmin miners subsequently embarked on an unprotected strike and sought collective bargaining outside the NUM.¹⁹ Lonmin, however, refused to engage in formal bargaining with AMCU because they preferred

- 14 Peter Alexander et al, Marikana: A View from the Mountain and a Case to Answer, Auckland Park 2012, p. 144. Ramaphosa is the founding member of NUM, having set up the trade union in 1982.
- 15 The Presidency of South Africa, following Ramaphosa receiving *The Order of the Baobab in Silver* for his contribution to the anti-apartheid struggle. See The Presidency of the Republic of South Africa, The Order of the Baobab in Silver Awarded to Cyril Ramaphosa, <http://www.thepresidency.gov.za/pebble.asp?releid=7604> (last accessed on 24 November 2015).
- 16 Nkaneng is an informal residential settlement in the Marikana district where the bulk of the striking miners lived.
- 17 Crispin Chinguno, Marikana and the Post-apartheid Workplace Order, Johannesburg 2013, p. 31. See also Alexander et al, note 14, p. 146, where it is noted that the investment firm J.P. Morgan noted that NUM had become too close to both the mines' management and the ruling party.
- 18 A strike by workers outside the unions had been successful at Impala Platinum in February 2012. See Chinguno, note 17, p. 22.
- 19 For Lonmin, negotiating with AMCU constituted a breach of contract as the contractually and officially recognised collective bargaining union in terms of the requirements of the *Labour Relations Act* 66 of 1995 was NUM. See also Adelman, note 7, p. 246.

negotiating with NUM. This inflamed the mineworkers' resentment of low wages and poor working conditions.²⁰

On 16 August 2012, the miners, as they had been doing throughout that week, gathered on an elevated hill close to the mine to enable them to clearly observe advancing government-backed security forces that were instructed to keep the order. They also settled on this hill to ensure that no damage would befall their informal settlement, Nkaneng, in the event that violence did erupt.²¹ While the sequence of events that led to the shootings on 16 August remains contested, it has been reported that the SAPS shot at the miners because they were charging at them (some workers firmly believed they would not be harmed by bullets because they had gone to a *sangoma* (traditional healer) who performed rituals to make them invincible).²² Surprisingly, it was the highly specialised and trained South African Police Service Tactical Response Unit, rather than conventional police units that carried out the shootings.²³ Also, it has been reported that some of the victims were shot in the back, ostensibly indicating that the striking miners were killed while fleeing from the police, and others were shot at great distances far from police lines.²⁴

For these and many other reasons Marikana is a “surreal flashback to a repudiated past”;²⁵ recalling the often brutal violence of the apartheid regime against black people, and notably the violent and hard-handed suppression of public protests. It also became clear that:

*During this five-month platinum strike, an important reversal of ideological roles took place between the ruling elite in South Africa and the majority subjected to their rule. Instead of the ruling elite claiming responsibility for the long-term future, they appealed ever more narrowly to short-term loss of investor confidence, stock prices, [and] worker's wages. In this, they followed the logic of neoliberalism, which seeks to appropriate for immediate private profit whatever has been built up and sustained over generations for the common good.*²⁶

As well, Marikana showed that, as in the past, people were willing to take extreme measures to achieve better socio-economic conditions for themselves and their dependants; and

20 *Chinguno*, note 17, p. 23.

21 *Chinguno*, note 17, p. 26.

22 *Chinguno*, note 17, p. 26.

23 Peter Leon, Marikana, Mangaung and the Future of the South African Mining Industry, *Journal of Energy and Natural Resources Law* 31 (2013), p. 174.

24 Adelman, note 7, p. 245; Satgar, note 9, p. 34.

25 Breckenridge, note 9, p. 151. See also Ylva Rodny-Gumede, Coverage of Marikana: War and Conflict and the Case for Peace Journalism, *Social Dynamics* 41 (2015), p. 359, for the view that Marikana is the worst act of police violence post-apartheid.

26 Nash, note 4, p. 388.

it showed the very real continuing threat of corporate and political interests overlapping and becoming mutually reinforcing at the expense of marginalised and vulnerable people.²⁷

C. Conceptions of environmental justice and slow violence

It has been observed that scholars working on environmental justice “tend to cast a broad net to allow consideration of how exploitative relationships between industrial actors and marginalized communities, including workers, transcend into peoples’ everyday lives.”²⁸ We are similarly inclined to such a broad approach. Historically, environmental justice started off as a social movement, focused on advocating for equality in the distribution/sharing of environmental benefits and burdens.²⁹ The movement started in the United States of America (USA) and gained momentum in the 1980s when those at the centre of or experiencing environmental injustice were poor minority communities agitating for political and socio-economic empowerment.³⁰ Environmental injustice in the USA had a discernible connection to race and ethnicity, and is frequently related to environmental racism, a phenomenon that echoes the environmental injustices within South Africa. The idea of environmental racism emerged following a 1987 report entitled *Toxic Waste and Race in the United States*³¹ which detailed how people of colour are disproportionately exposed to and affected by pollution.³² As such, environmental racism combines public policies affecting the environment and industry practices to benefit some racial groups while shifting costs to other groups.³³ Environmental injustice can exist everywhere: in homes, in workplaces and

27 Also see discussion below.

28 Dayna Nadine Scott, What is Environmental Justice?, <http://digitalcommons.osgoode.yorku.ca/olrs/ps/4> (last accessed on 24 November 2015).

29 Scott, note 28.

30 These minorities were mostly black people. Many scholars agree that the decision to situate a hazardous waste site in Warren County resulted in opposition and a movement that became the environmental justice movement.

31 Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-economic Characteristics of Communities with Hazardous Waste Sites*, New York 1987.

32 See generally *Laura Pulido*, Rethinking Environmental Racism: White Privilege and Urban Development in Southern California, *Annals of the Association of American Geographers* 90 (2000), pp. 12-40; *Michael Fisher*, Environmental Racism Claims Brought Under Title VI of the Civil Rights Act, *Environmental Law* 25 (1995), p. 297; *Anthony R. Chase*, Assessing and Addressing Problems Posed by Environmental Racism, *Rutgers Law Review* 45 (1993), p. 341.

33 *Robert D. Bullard*, Dismantling Environmental Racism in the USA, *Local Environment* 4 (1999), p. 6. See also Dickinson for the view that “historical, governmental, legal, political, economic, and (post)colonial institutions and practices not only tolerate but can perpetuate environmental racism”. *Elizabeth Dickinson*, Addressing Environmental Racism Through Storytelling: Toward an Environmental Justice Narrative Framework, *Communication, Culture and Critique* 5 (2012), p. 61.

communal spaces.³⁴ It reflects a double standard of “what is acceptable in some communities, villages or cities and not in others”,³⁵ especially in relation to environment-related impacts on quality of life. This double standard is tied to patterns of inequality evident from the incidence of environmental harms linked to racialised and class impacts on ownership and geographies and patterns of residence and employment.³⁶ Arguably for this reason, environmental justice in the USA is defined by the Environmental Protection Agency with explicit reference to race (among other grounds) as: “the fair treatment and meaningful involvement of all people regardless of race, color, sex, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.”³⁷

The starting point for any discussion of environmental justice in South Africa is the National Environmental Management Act (NEMA) 107 of 1998. NEMA sets environmental management principles which should guide environmental policies, laws and environmental governance. Section 2 of NEMA provides that “environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons”; and “[E]quitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.”³⁸ Clearly, the conceptualisation of environmental justice in South Africa is underpinned by the recognition that it is not only environmental protection that matters, but that environmental issues related to human beings, e.g. their health and well-being, are equally important.³⁹ In fact, an understanding of environmental justice is complete only when both the environment and people are at the centre of its conceptualisation.⁴⁰

Environmental injustice affects a wide range of human rights, including rights related to the natural environment upon which people depend for survival; socio-economic rights such as the right to water and labour rights; and political rights such as the right to equality.⁴¹ To this end environmental injustice can manifest in, among others, the differential exposure to pollution among different racial groups; deliberate targeting and location of noxious industrial facilities close to certain communities; differential access to environmental

34 Fisher, note 32, p. 297. See also *Chase*, note 32, p. 338.

35 *Deborah M. Robinson*, Environmental Racism: Old Wine in a New Bottle, <http://www.wcc-coe.org/wcc/what/jpc/echoes/echoes-17-02.html> (last accessed on 13 September 2015).

36 *Pulido*, note 32, p. 13.

37 See EPA, What is Environmental Justice, <http://www3.epa.gov/environmentaljustice/> (last accessed on 13 September 2015).

38 Sections 2(4)(c)-(d).

39 *Scott*, note 28.

40 See discussion below on the South Africa’s mining legacy and how it has affected workers.

41 These rights are entrenched in the *Constitution of the Republic of South Africa*, 1996 in sections 24, 27 and 9 respectively.

services and material conditions of human welfare such as housing, water, waste collection and sanitation; and labour related issues where black people work in high-risk and environmentally deleterious industries, such as mines, for the benefit of others.⁴² In its simplest form then, and in the South African context, environmental justice gives rise to demands for a more equal distribution of environmental benefits and burdens regardless of colour and class and it becomes an especially pertinent concern to address where previously disadvantaged or marginalized people are concerned.

Slow violence is a recent concept developed by Rob Nixon. It is gradual, often occurs out of sight and has delayed destructive effects dispersed across time and space (in this context 'space', among others, figuratively denotes particular incidences of violence at specific geographical places in a particular time, such as at Marikana).⁴³ Because it is slow and gradual, such violence cannot be viewed as violence in the 'normal' sense of immediate brutality.⁴⁴ What is also distinctive about slow violence is its unpredictability and that it "can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded."⁴⁵ As well, because of the protracted time in which it manifests, slow violence can erupt in sudden and severely brutal acts of violence, oppression and retribution.

Marginalized, racially oppressed, and poor people are most affected by slow violence because they are often voiceless and lack the power to challenge acts of hegemonic slow violence. General examples of environment-related slow violence are, among others, continuously subjecting people to poor environmental working and living conditions that are deleterious to their health and well-being; depriving people of access to water, sanitation and housing; and not exposing or misrepresenting the interests of people where they are affected by environment-related impacts. More pertinent to our present focus are examples of slow violence in the mining industry in which disempowered black workers are forced to perform environmentally hazardous work that deleteriously affects their health and well-being and where they are paid low salaries that force them to live in informal settlements with lack of basic services. These effects of slow violence on victims are often invisible and the

42 See generally *Bullard*, note 33, p. 6 and *Dorceta E. Taylor*, *Environmental Racism*, <http://www pollutionissues.com/Ec-Fi/Environmental-Racism.html> (last accessed on 15 September 2015). In some instances where environmental racism has occurred openly and where the affected communities have demonstrated publicly against such practices, such as at Marikana, authorities have heavy-handedly suppressed them (see *Joan Martinez-Alier*, *The Environmentalism of the Poor*, *Geoforum* 54 (2014), p. 239). An example is the hanging of Nigerian activist Ken Saro-Wiwa by the Nigerian military government because of his activism against the government and multinational corporations. See *Francis O. Adeola*, *Cross-National Environmental Injustice and Human Rights Issues: A Review of Evidence in the Developing World*, *American Behavioural Scientist* 43 (2000), p. 701.

43 *Nixon*, note 1, p. 2.

44 *Nixon*, note 1, p. 2.

45 *Nixon*, note 1, p. 3.

severity and multifarious environmental and related socio-economic impacts that come with it are easily underestimated.⁴⁶

In sum, Marikana's violence, as it were, is usually seen as a matter of labour unrest and retribution; a view that ignores an important additional aspect, i.e. the sudden and brutal violent acts during the massacre were also a result of slower forms of 'violence' as a result of environmental injustices that gradually built up over a protracted period of time to suddenly erupt in an incident that shook a nation. In the case of Marikana, as elsewhere, "the primary victims of environmental injustice and slow violence are also the primary victims of injustices of class, gender, race, and locale, with the poor in developing countries the most affected group".⁴⁷ To fully understand what occurred at Marikana, it is necessary to understand the links between environmental injustice and slow violence within South Africa's historical mining context.

D. South Africa's environmentally unjust and slowly violent mining industry

South Africa produces 80 per cent of the world's platinum group metals, 90 per cent of which are in the Rustenburg area where Marikana is located.⁴⁸ The country is estimated to be one of the richest in the world in terms of mineral wealth deposits, which are valued at US \$ 2,5 trillion.⁴⁹ Mining also currently makes up the bulk (approximately 60 per cent) of South Africa's export revenues;⁵⁰ although this has been steadily declining in recent years.⁵¹ Despite all the positive contributions the extractive industry can make to South Africa and its economy,⁵² it is detrimental to the environment and to the health and well-

46 Jennifer L. Willett, *The Slow Violence of Climate Change in Poor Rural Kenyan Communities: 'Water is Life. Water is Everything'*, *Contemporary Rural Social Work* 7 (2015), p. 41.

47 Willett, note 46, p. 41.

48 See Commodity HQ, *What South Africa Means to the Platinum Market*, <http://commodityhq.com/2012/what-south-africa-means-to-the-platinum-market/> (last accessed on 20 September 2015). See also *Bond and Mottiar*, note 3, p. 294.

49 This valuation was done by Citigroup. See *Sam Ashman and Ben Fine*, *South Africa: The Meaning of Marikana*, <http://thinkafricapress.com/south-africa/state-mining-industry-run-mangaung-marikana> (last accessed on 5 September 2015).

50 Leon, note 23, p. 178. Leon also notes that mining employs almost 1 million people directly and indirectly.

51 See an official estimation by the World Bank at World Bank, *Most Commodity Prices Expected to Continue Declining in 2015, in Rare Occurrence, Says WB Report*, <http://www.worldbank.org/en/news/press-release/2015/01/22/commodity-prices-expected-to-continue-declining-2015-wb-report> (last accessed on 24 November 2015).

52 Between 2012 and 2013, the extractive industry contributed 9.6% to the South African gross domestic product (GDP). See statistics developed through African Economic Outlook, *Country Notes*, <http://www.africaneconomicoutlook.org/en/countries/> (last accessed on 14 September 2015). Besada and Martin have also found that between 2000 and 2011, natural resource extraction constituted a major contribution to the GDP of over 15 countries. *Harry Besada and Philip Martin*, *Mining Codes in Africa: Emergence of a 'Fourth' Generation?*, <http://www.nsi-ins.ca/publicati>

being of people, and its socio-ecological footprint is clearly visible on many human and non-human living and non-living entities.⁵³ For instance, platinum mining in South Africa (the core activity at Lonmin's Marikana mine) produces noise and vibrations through blasting processes; it produces solid waste which results in tailing dams and waste rock dumps which are difficult to rehabilitate; it is highly dependent on the use of water (at a rate of 273 to 544 m³/kg); and produces and releases CO₂ emission at the rate of 40 to 50 t/kg.⁵⁴ The socio-economic impacts of the foregoing are also far-reaching: most mining communities and labourers in South Africa, (almost all of them black people), live close to the mines where they work and their physical and social spaces are directly affected by the deleterious impacts of mining throughout the entire mining project life cycle, from exploration through commissioning and extraction to decommissioning and rehabilitation.⁵⁵ Shari and Hofmann note that governments generally face two challenges in this respect: to attract investment while limiting the environmental and social impacts associated with the extractive industry.⁵⁶ In South Africa, these challenges are augmented by the fact that the socio-economic developmental contribution of mining must also address past and present injustices to the extent that it must provide socio-economic empowerment to previously disadvantaged people in an effort to create a more equal and just society.⁵⁷

Historically, South Africa's extractive industries underpinned apartheid and gave rise to the Minerals-Energy Complex (MEC) that linked government and corporate interests while

ons/mining-codes-in-africa-emergence-of-a-fourth-generation-2/ (last accessed on 24 November 2015), p. 3.

- 53 Among the many impacts of this industry, it can modify landscapes through its use of chemicals and excavations, it contaminates water bodies and land through the discharging of effluents with toxic chemicals, it causes deforestation as forests are cut to make way for extraction, and it erodes the soil, pollutes the air and emits greenhouse gases that contribute to climate change. UNECA, *Minerals and Africa's Development: The International Study Group Report on Africa's Mineral Regimes*, Addis Ababa 2011, p. 46; *Andre Standing*, *Corruption and the Extractive Industries in Africa: Can Combatting Corruption Cure the Resource Curse?*, <https://www.africaportal.org/dspace/articles/corruption-and-extractive-industries-africa-can-combatting-corruption-cure-resource> (last accessed on 24 November 2015), p. 10. See also *Willemien Du Plessis and Louis J. Kotzé*, *Absolving Historical Polluters from Liability through Restrictive Judicial Interpretation: Some Thoughts on Bareki No V Gencor Ltd*, *Stellenbosch Law Review* 18 (2007), p. 173.
- 54 *Eugene Cairncross*, *Health and Environmental Impacts of Platinum Mining: Report from South Africa*, <http://www.thejournalist.org.za/wp-content/uploads/2014/09/Environmental-health-impact-s-of-platinum-mining1.pdf> (last accessed on 24 November 2015).
- 55 *Leon*, note 23, p. 184.
- 56 *Shari Bryan and Barrie Hofmann* (eds), *Transparency and Accountability in Africa's Extractive Industries: The Role of the Legislature*, Washington DC 2007, p. 19.
- 57 This is formally facilitated by, among others, the *Broad-Based Black Economic Empowerment Act* 53 of 2003 which seeks, among others, to: promote economic transformation in order to enable meaningful participation of black people in the economy; and achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises. See section 2 of the Act.

serving as the main driver of the economy.⁵⁸ When South Africa was isolated by the international community because of its apartheid policies, the MEC contributed significantly to the economic survival of the apartheid state.⁵⁹ In addition to its widespread environmental impacts during a time when little environmental enforcement was in place, to obtain the maximum possible profits from mineral extraction, the mining industry in general relied on cheap labour and exploitation of black workers, including migrant labour. Mining therefore “generated wealth in the economy [but] simultaneously produced poverty and patterns of unemployment that still hobble South Africa as it struggles to democratize in the twenty-first century.”⁶⁰ This suggests a nexus between the environment (from which the minerals are extracted), poverty and race (the bulk of the people performing hazardous work in South African mines are black people), that collectively result in a tenuous environment-poverty-race relationship that could be situated in the environmental justice and slow violence paradigms explained above.

There is ample evidence of environmental injustice and instances of slow violence during the apartheid era which have continued into the post-apartheid dispensation. Generally, the apartheid era’s geographical landscape was based on racial separation where people of colour⁶¹ were at the receiving end of demeaning apartheid policies, laws and practices.⁶² The division of labour in terms of workspace and environment was and remains based on race, with black people performing dangerous and hazardous work; a feature of apartheid policy that was (and continues to be) particularly evident in the mining industry.⁶³ As noted earlier, strikes have long been part of the South-African mining sector landscape and even as early as 1946 there was a strike which occurred as a result of the differential treatment between white and black workers resulting from unequal working conditions and salaries (there was a 12 to 1 ratio pay difference between white and black miners).⁶⁴ The 1946 strike resulted in the deaths of 9 miners, with over 1000 injured after striking workers were

58 Ashman and Fine, note 49.

59 Gold mining is considered to have powered the South African industrial revolution for over a century. See *Francis Wilson*, *Minerals and Migrants: How the Mining Industry has Shaped South Africa*, *Daedalus* 130 (2001), p. 101.

60 *Wilson*, note 59, p. 101.

61 In the context of apartheid, ‘people of colour’ represents other races with the exception of white people.

62 *Brij Maharaj*, *Apartheid, Urban Segregation, and the Local State: Durban and the Group Areas Act in South Africa*, *Urban Geography* 18 (1997), p. 135.

63 *Morgan Ndlovu*, *Living in the Marikana World: The State, Capital and Society*, *International Journal of African Renaissance Studies* 8 (2013), p. 54. See also *Rex A. McKenzie*, *Financialization and Labor: What does Marikana Tell Us about Inequality in South Africa?*, http://www.economicpolicyresearch.org/econ/2013/NSSR_WP_052013.pdf (last accessed on 24 September 2015), p. 13.

64 *Chris Webb*, *Echoes of the Past: Marikana, Cheap Labour and the 1946 Miners Strike*, <https://libcom.org/library/echoes-pastmarikana-cheap-labour-1946-miners-strike> (last accessed on 24 September 2015).

suppressed by the state and its security forces.⁶⁵ As part of its oppressive response to labour unrest, the apartheid government promulgated the *Native Labour (Settlement of Disputes) Act*⁶⁶ which, in the spirit of environmental injustice and slow violence, outlawed striking and labour unions, effectively ensuring that there were no labour rights for black workers despite them performing hazardous work in environmentally deleterious conditions while being paid low salaries.

Environmental injustice and slow violence were also evident in more general non-labour laws, which impacted miners. An example is the notorious (and highly effective) *Group Areas Act*,⁶⁷ which was designed to divide South African society between places where white people could live and work and where black people could live and work.⁶⁸ Pass laws further restricted the free movement of people while simultaneously closing down potential labour prospects for many.⁶⁹ As well, black labourers were forced to live in polluted areas close to work,⁷⁰ which is why many mines in South Africa, including those at Marikana, are surrounded by informal settlements where mainly black people continue to live.

Slow violence and environmental injustice were particularly evident from the living space and conditions of miners. These conditions were deplorable since miners would live in single sex compounds or hostels, which were (also) designed as means of labour and social control.⁷¹ As many as 25 people would be housed in one room in these hostels.⁷² Miners were not allowed to visit their families, who themselves often lived in far-flung underdeveloped rural areas or in racially separated townships. The hostels resulted in miners being segregated from the local communities they lived in: “almost all the black mine workers exclusively lived in hostels and never constituted part of the local communities adjoining the mines.”⁷³ Where the workers did not live in hostels, they lived in informal settlements around the mine; often in deplorable conditions without access to basic sanitation or other socio-economic and environmental services.⁷⁴ The foregoing examples suggest that race

65 *Webb*, note 64.

66 48 of 1953.

67 41 of 1950.

68 *Maharaj*, note 62, p. 135.

69 These include the Natives (Urban Areas) Act of 1923, the Black (Natives) Laws Amendment Act of 1952 and the Natives (Abolition of Passes and Co-ordination of Documents) Act of 1952.

70 *Michael Kidd*, *Environmental Law*, Cape Town 2011, p. 300.

71 *Michael Savage*, *The Imposition of Pass Laws on the African Population in South Africa 1916-1984*, *African Affairs* 85 (1986), p. 199. *Ashman and Fine*, note 49.

72 *Crispen Chinguno*, *Marikana Massacre and Strike Violence Post-Apartheid*, *Global Labour Journal* 4 (2013), p. 161.

73 *Chinguno*, note 72, p. 161.

74 *Savage*, note 71, p. 200. See also the case of *Mazibuko and Others v City of Johannesburg and Others* 2010 (3) BCLR 239 (CC); *Louis J. Kotzé*, Phiri, *the Plight of the Poor and the Perils of Climate Change: Time to Rethink Environmental and Socio-economic Rights in South Africa?*, *Journal of Human Rights and the Environment* 1 (2010), pp. 135-160.

was used to deny many workers their human dignity and other rights, and it was used as a justification for actions that would normally constitute rights violations in constitutionally democratic and equal societies.⁷⁵ As Pieterse puts it:

*Apartheid, through its intentional and persistent marginalisation, exploitation and oppression of black people, has combined with the remnants of colonialism and the pervasiveness of patriarchy to concretely shape severe patterns of social, economic and political vulnerability and deprivation in South Africa.*⁷⁶

Unfortunately, even after apartheid had formally ended as a matter of law and state policy at the start of the 1990s, environmental injustice and slow violence continue to manifest in South Africa, despite a new constitutional dispensation. The Constitution of the Republic of South Africa, 1996 is underpinned in its introductory provision by a set of fundamental values that form the foundation upon which post-apartheid South Africa must be built i.e.: human dignity, the achievement of equality, the advancement of human rights and freedoms,⁷⁷ non-racialism and non-sexism.⁷⁸ These values are embodied in the Bill of Rights, which includes, among others, rights to equality, dignity, life, labour rights and the right to an environment not harmful to health and well-being. In addition, South Africa has an extensive complex of legislation promulgated to give effect to these rights. Some of the laws relate to the environment,⁷⁹ labour,⁸⁰ socio-economic entitlements,⁸¹ and even mineral resources.⁸² Collectively, these values, rights and legislation should have worked constructively in tandem with a variety of other governance interventions to rectify past, to avoid and minimise present, and to mediate future occurrences of those conditions that contributed to environmental injustice and slow violence of Marikana.

75 *Sabelo J. Ndlovu-Gatsheni*, Beyond the Equator There Are No Sins: Coloniality and Violence in Africa, *Journal of Developing Societies* 28 (2012), p. 421.

76 *Marius Pieterse*, What Do We Mean When We Talk About Transformative Constitutionalism?, *South African Public Law* 20 (2005), p. 157.

77 See section 1(a) of the Constitution. See also section 7(1) of the Constitution.

78 See section 1(b) of the Constitution.

79 The overarching and point of departure legislation is the *National Environmental Management Act* 107 of 1998 (NEMA).

80 The framework legislation for labour matters is the *Labour Relations Act* 66 of 1995 (LRA).

81 These are varied and range from rights to which people have access to and also unqualified rights (health care services, sufficient food and water and adequate housing).

82 See the *Mineral and Petroleum Resources Development Act* (MPRDA) 28 of 2002. Importantly, the MPRDA requires prospective mineral companies to submit to the Department of Mineral Resources a social and labour plan (SLP, section 10(g)) before a mining licence is required. This SLP aims to advance the social and economic welfare of all South Africans; to promote transformation of the mineral industry as well as to ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.

Unfortunately, despite South Africa's supposedly transformative constitutional order,⁸³ the latter still prevail both as a result of historical legacies and, more alarmingly, post-apartheid practices. Miners and many local communities still suffer from historical pollution (especially acid mine drainage)⁸⁴ caused by erstwhile mining activities,⁸⁵ while (mostly) black miners continue to work in hazardous working environments.⁸⁶ This is exemplified by a class action launched in 2012 on behalf of former gold miners, which potentially can affect over 196 000 South Africans and over 84 000 people from neighbouring countries.⁸⁷ The pending case is against former gold mining companies by past and present gold miners who have suffered and still suffer from silicosis. Arguments for the certification of the class action were heard in the South African High Court in October 2015, almost three years after the initial application.⁸⁸ The High Court, on 31 October 2015 certified the class action by ruling that all pending silicosis cases against gold mining companies can be consolidated into one action. While the eventual outcome of this case could potentially be historical, it is not the first of its kind. An earlier post-apartheid case was also launched in the United Kingdom against Cape PLC,⁸⁹ where approximately 2000 complainants sought compensation on the basis that Cape PLC was negligent in the supervision, production and distribution of asbestos products (research showed that almost 80% of black miners who died between 1959 and 1964 in South Africa's Limpopo Province was as a result of asbestosis).⁹⁰ The legislation that was promulgated for occupational diseases then, the *Occu-*

- 83 See *Karl E Klare*, Legal Culture and Transformative Constitutionalism, *South African Journal on Human Rights* 14 (1998), pp. 146-188; *Pius Langa*, Transformative Constitutionalism, *Stellenbosch Law Review* 17 (2006), pp. 351-360; *Theunis Roux*, Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction without a Difference?, *Stellenbosch Law Review* 20 (2009), pp. 258-285; *Karin van Marle*, Transformative Constitutionalism as/and Critique, *Stellenbosch Law Review* 20 (2009), pp. 286-301 for informative discussions on transformative constitutionalism in South Africa.
- 84 See, on the issue of historical pollution in South Africa, *Du Plessis and Kotzé*, note 53, p. 193; and on acid mine drainage, *Loretta Feris and Louis J. Kotzé*, The Regulation of Acid Mine Drainage in South Africa: Law and Governance Perspectives, *Potchefstroom Electronic Law Journal* 17 (2014), pp. 2015-2163.
- 85 See for example *Bareki NO v Gencor Ltd* 2006 (1) SA 432 (T).
- 86 *Joan Martinez-Alier*, Mining Conflicts, Environmental Justice, and Valuation, *Journal of Hazardous Materials* 86 (2001), p. 164.
- 87 See SAIOH, Silicosis: The Long Battle to Get the Mines to Cough Up, <http://www.saioh.co.za/news/249578/Silicosis-The-long-battle-to-get-the-mines-to-cough-up.htm> (last accessed on 24 September 2015). See also *Richard Spoor*, Silicosis Litigation Timeline, <http://goldminersilicosis.co.za/about-the-silicosis-litigation/timeline/> (last accessed on 24 September 2015) respectively.
- 88 Legal Resources Centre, David Versus Goliath Battle over Silicosis, <http://lrc.org.za/lrc-in-the-news/3606-david-versus-goliath-battle-over-silicosis> (last accessed on 26 September 2015).
- 89 See generally *Peter Muchlinski*, Corporations in International Litigation: Problems of Jurisdiction and the United Kingdom Asbestos Cases, *International and Comparative Law Quarterly* 50 (2001), pp. 1-25.
- 90 See generally *Martinez-Alier*, note 86, p. 164.

pational Diseases in Mines and Works Act,⁹¹ was recently challenged in the Constitutional Court where it was found that the Act offered meagre compensation for those who worked in mines with risky working environments.⁹²

Worker's rights thus continue to be infringed and practices reminiscent of the apartheid order are disturbingly evident. For instance, a non-governmental organization ActionAid⁹³ accused Angloplats (Anglo American Platinum, the world's largest producer of platinum) of human rights abuses in its relocation of communities for the purpose of paving the way for platinum mining at its Potgietersrust Platinum mine in South Africa's Limpopo Province. The South African Human Rights Commission (SAHRC) investigated these claims and concluded that:⁹⁴

- There were perceptions relating to the poor quality of water.⁹⁵
- People were complaining about Enviroloops (dry sanitation systems),⁹⁶ which posed potential sanitary and health risks.⁹⁷
- There were concerns that the impacts of blasting at the mine on the environment and the surrounding communities were not fully considered.⁹⁸
- The process of removal of historical graves to make way for mining was marred by allegations of lack of consent from the communities and also disrespect of their dignity in the process.⁹⁹

The problems leading to environmental injustice and slow violence in the mining industry are clearly entrenched and systemic. Arguably, "the structures of inequality that came with the imposition of the colonial and apartheid systems in South Africa are still intact in the non-existent post-apartheid dispensation."¹⁰⁰ To demonstrate, it is noticeable that since black people form the majority of blue collar jobs, they are often at the receiving end of "adverse environmental circumstances at the workplace."¹⁰¹ In the mining industry for ex-

91 78 of 1973.

92 *Mankayi v AngloGold Ashanti Ltd* 2011 (3) SA 237 (CC).

93 ActionAid, *Precious Metals: The Impact of Anglo Platinum on Poor Communities in Limpopo, South Africa*, London 2008.

94 SAHRC, *Mining-related Observations and Recommendations: Anglo Platinum, Affected Communities and Other Stakeholders, in and Around the PPL Mine, Limpopo*, http://www.sahrc.org.za/home/21/files/Reports/Anglo%20Report%20Final%202008_Chapter%20to%203.pdf (last accessed on 29 August 2015).

95 SAHRC, note 94, pp. 29-35.

96 SAHRC, note 94, p. 36.

97 SAHRC, note 94, pp. 36-38.

98 SAHRC, note 94, pp. 38-42.

99 SAHRC, note 94, pp. 43-46.

100 *Ndlovu*, note 63, p. 53. See also *Tumai Murombo*, *Regulating Mining in South Africa and Zimbabwe: Communities, the Environment and Perpetual Exploitation*, *Law, Environment and Development Journal* 9 (2013), p. 38.

101 *Kidd*, note 7, p. 300.

ample, South Africa's mining industry has the highest annual occurrence of tuberculosis cases in the world, affecting mostly black workers.¹⁰² In 2011 alone, there were 29 workers diagnosed with silicosis, 1 005 with pulmonary tuberculosis and 367 with noise induced hearing loss.¹⁰³

The compound/hostel system is in the process of being abandoned and today mining companies pay live out allowances for workers and have facilitated family accommodation schemes to cater for some of the workers living near the mines.¹⁰⁴ Union leaders are now in control of housing but “[L]ike foreign shareholders and local royalty owners, these union leaders, using their monopoly over jobs and housing, have tapped into the demand for employment to enrich themselves.”¹⁰⁵ Evidently it is because of the paltry salaries that many miners are paid that they cannot afford to live in better conditions.¹⁰⁶ A clear example is the living conditions in Marikana's informal settlement, Nkaneng which has been described as follows: “[t]he whole ‘town’ is a lethal, breathing health hazard, foul-smelling and foetid with transmittable disease”.¹⁰⁷ It is a “huge sprawling, under-serviced, filthy, roadless, densely populated and environmentally anarchic shanty settlement”.¹⁰⁸ Other studies have found that 20-30% of residents in these informal settlements in the area around Marikana are HIV positive.¹⁰⁹ It is these conditions, slowly spread over time, and of which mining corporations and government authorities are clearly aware of but have left unresolved,¹¹⁰ that have ‘slowly’ contributed to the discontent that suddenly erupted at Marikana. To this

102 Mining IQ, Mining in South Africa, <http://www.projects iq.co.za/mining-in-south-africa.htm> (last accessed on 15 August 2015).

103 Figures from the Department of Mineral Resources' Annual Report, 2011-2012.

104 *Ashman and Fine*, note 49.

105 *Breckenridge*, note 9, p. 151.

106 The issue of fostering a coherent community identity around the mineral towns is problematic. For example, Lonmin mine is in the North-West Province (the region of the Batswana people), but more than half of the workforce is not from the North-West Province (coming from the Eastern Cape, and foreign countries like Mozambique). The Bench Marks Foundation, Communities in the Platinum Minefields: Policy Gap 6, http://www.bench-marks.org.za/research/rustenburg_review_policy_gap_final_aug_2012.pdf (last accessed on 2 September 2015). In such cases, a sense of community is lost. Although this migrant labour system has served the mining industry well, it has *slowly* but steadily created a rift between locals and foreigners and much of the locals' anger that has brewed over time has been manifested through a string of xenophobic attacks against foreigners in South Africa in recent years.

107 *Philip Frankel*, *Between the Rainbows and the Rain: Marikana, Migration, Mining and the Crisis of Modern South Africa*, Johannesburg 2013, p. 27.

108 *Frankel*, note 107, p. 128. See also *Leon*, note 23, pp. 184-185. See further *Crispen Chinguno*, Marikana: Fragmentation, Precariousness, Strike Violence and Solidarity, *Review of African Political Economy* 40 (2013), p. 641.

109 *Ashman and Fine*, note 49. See also *Breckenridge*, note 9, p. 152.

110 For instance, Lonmin's representative has conceded that the living and working conditions around Marikana are bad and that they contributed to the discontent that led to the eventual massacre. Marikana Commission of Inquiry, note 6, pp. 527-528.

end it is clear that mining in South Africa, tainted as it is by apartheid policies, laws and practices, is facilitating continuing structures and activities that constitute forms of environmental injustice and slow violence. In sum then, even though the country has formally transitioned to a non-racist constitutional democracy, the vestiges of environmental injustice and slow violence remain, particularly in the mining industry.¹¹¹

E. A critique and conclusion

In what remains of this article, we critically reflect on several key themes that emerged in the discussion above. While we do not necessarily provide answers to the questions that have been raised, or solutions to the problems that we have highlighted, the discussion might serve as an indication of critical issues that government and the mining industry could consider in any future efforts that seek to counter environmental injustice and slow violence.

Also an environmental issue

When Marikana is mentioned, the issue that usually surfaces is the killing of the miners by the police during a strike. Yet, focusing on the killings alone hides the underlying causes of the massacre and the many subsequent human rights infringements that flowed from it. The strike had many deeper roots traceable to the living conditions and poor quality of life of the miners and their communities as a consequence of decades of mismanagement, neglect and exploitation.¹¹² As well, assuming that the miners were striking solely because of wages ignores the underlying systemic causes of the massacre of which environmental injustice and slow violence are a part. This illustrates the point that in any regulatory space it is difficult to separate environmental issues from broader socio-economic and labour issues. Where workers embark on industrial strike action to agitate for better labour conditions, these will usually be underpinned and should be informed by the many direct and indirect environmental conditions that influence health and well-being, including the ability to improve livelihoods. We therefore believe there are convincing reasons for greater attention to be paid to environmental justice concerns, especially insofar as they relate to socio-economic conditions of miners, in future mining labour disputes.

A paper tiger?

The Marikana massacre occurred under a democratic post-apartheid dispensation that was designed to consign such events to the dustbin of history. The Constitution, its arsenal of rights and subsequent legislation, including a growing culture of constitutionalism as a re-

¹¹¹ Kidd, note 7, p. 300.

¹¹² See Breckenridge, note 9, p. 156. See also Leon, note 23, p. 184. See further Ndlovu, note 63, p. 47.

sult of the foregoing, was not able to prevent the massacre from happening. This suggests that it is one thing to have a new constitutionally founded juridical order on paper, but quite another to operationalize this order and to actually make it work in a setting where the legacies of apartheid prevail, where neoliberal corporate interests continue to flourish, and where government is sometimes turning a blind eye and even directly infringing itself, through the brutal use of force, the human rights of marginalised sectors of society. The success of South Africa's infantile constitutional democracy will depend, among others, on the political will and ability of all state institutions to respect and to enforce the rule of law, as well as on greater commitments from private sector actors, including mining corporations, to give practical effect to the Constitution's transformative vision. Had these institutions done so from the start, the Marikana massacre arguably would not have happened.

Coloniality

Some of the drivers behind Marikana's environmental injustice, racism and slow violence are nestled in the idea of 'coloniality' which has been developed as a framework of analysis whereby present political and governance ideologies, hegemonies and realities are compared to former colonial times. Coloniality refers to long-standing patterns of power that emerge as a result of colonialism, but that define culture, labour, intersubjective relations, and knowledge production beyond the limits of colonial administrations.¹¹³ Although a state could claim independence from the control of another state, neo-colonial structures and ideologies have proved more difficult to eradicate.¹¹⁴ Coloniality is a mindset that could still be embedded in post-colonial government structures and it is a direct remnant of the colonial mentality that also characterised apartheid.¹¹⁵ Ndlovu-Gatsheni argues that South Africa is in a state of coloniality and believes that even though there was formal political liberation in 1994, many people have not seen meaningful changes to their living and broader socio-economic conditions as a result of this state of coloniality.¹¹⁶ As noted earlier, the apartheid government's mineral policy rested on exploitation, environmental injustice and racist practices of slow violence. Vestiges of such practices, as this article has noted, can be seen in how the government either has ignored or failed to address the many injustices that contributed to the strike and ultimately, the Marikana massacre. There is accordingly an urgent need for South Africa to liberate itself from the deeply entrenched historical shackles of colonialism and apartheid if it were to avoid remaining in the pervasive trap of coloniality, which, unless addressed, is likely to continue and to aggravate incidences of environmental injustice and slow violence in the country.

113 *Anibal Quijano*, Coloniality and Modernity/Rationality, *Cultural Studies* 21 (2007), pp. 168-178.

114 See generally *Quijano*, note 113, p. 171.

115 *Nelson Maldonado-Torres*, On the Coloniality of Being, *Cultural Studies* 21 (2007), p. 243.

116 *Ndlovu-Gatsheni*, note 75, p. 435.

Neoliberalism

Neoliberalism is a growing concern in South Africa, negatively impacting as it does, on the environment, labour and broader socio-economic rights and interests. While the neoliberal mindset has always been part of South African corporate fabric, Karon notes that there was a deal between the ANC and corporate capital just before liberation that ensured that the “ANC would leave the basic structure of the apartheid-era economy untouched in exchange for a few seats in the boardroom.”¹¹⁷ When neoliberalism operates in a country, there are usually three players: the government, corporate capital and the people. In the Marikana case, all three were present. The people were opposing corporate might, and the state used its authority and security machinery as a means to safeguarding its own vested interests and corporate interests from which it continues to benefit. As a case in point, in the aftermath of Marikana, official government figures and business analysts (arguably also pointing to an alliance of purpose between government and corporate power) alluded to the short-term loss of investor confidence and stock prices which could be expected as a result of the strikes.¹¹⁸ Rodny-Gumede notes that of the 52 articles that headlined the damage that the strike had done to the economy, 43 blamed the striking miners and protesters.¹¹⁹ Clearly, the media, government and Lonmin “followed the logic of neoliberalism, which seeks to appropriate for immediate private profit whatever has been built up and sustained over generations for the common good.”¹²⁰

This dire situation is mostly facilitated through labour control whereby workers often have little power because they desperately need work;¹²¹ a situation that is readily exploited by mining corporations at the expense of these workers. It is hardly surprising then that environmental and socio-economic concerns that underpin protest actions are often swept under the carpet as immediate concerns of economic value are instead protected. Arguably then neoliberal exploitation of human and natural resources by mining corporations, especially when government supports them, is a direct cause of environmental injustice and acts of slow violence against marginalised miners. While it is unrealistic to expect that the neoliberal mind-set will diminish anytime soon in South Africa (considering how deeply it is entrenched in the country’s economic, social and political structures), there is something to be said for at least better protecting the basic human rights of people against those neoliber-

117 *Tony Karon*, *As South Africa Reels from Mine Shootings, Social Inequality Threatens to Undo the Post-Apartheid ‘Miracle’*, *Times*, 22 August 2012.

118 *Nash*, note 4, p. 388.

119 *Rodny-Gumede*, note 25, pp. 359, 363.

120 *Nash*, note 4, p. 388.

121 Within the theory of coloniality, labour control was one of the effective drivers of colonialism, with most natives of colonialized lands receiving very little or no pay at all. See generally *Anibal Quijano*, *Coloniality of Power, Eurocentrism, and Latin America*, *Nepantla* 1 (2000), p. 538.

al practices that continue to exploit human and environmental capital.¹²² South Africa has a strong Constitution and an elaborate Bill of Rights that provide the necessary legal justification and tools at the highest juridical level to realise this undertaking. Proper observance of, respect for, and the will to use these constitutional remedies, among others, could enable government, the corporate world and society at large to counter the most harmful human rights-directed vagaries flowing from neoliberal human and environmental exploitation.

Government and the corporation: a tenuous relationship

Related to the foregoing point, Marikana illustrated that where government has vested interests in the mining industry, it might become a matter of the fox guarding the henhouse. What should have been a protective and caring government tasked with carefully and fully executing various constitutional and statutory obligations with respect to miners at Marikana, has instead emerged as one of the main culprits in the saga, especially to the extent that government has vested interests in the neoliberal and exploitative corporate world. A media report in 2011 estimated that roughly three quarters of South African government ministers had financial interests outside their civil service posts and that about 60% of all the members of parliament had financial interests outside parliament.¹²³ Needless to say, conflicts of interests are due to occur. For example, Ramaphosa's company, Shanduka is reported to having been paid US \$ 360 000 per year for providing consulting services to Lonmin.¹²⁴ This is in addition to Ramaphosa having been the single largest individual shareholder in Lonmin as well as having been a member of its board of directors.¹²⁵ As was detailed in the report of the Marikana Commission of Inquiry, Ramaphosa sent a series of emails to the Police and Minerals Ministers and to Lonmin well before the Marikana massacre. Some of the illustrative statements include the following:

*"The terrible events that have unfolded cannot be described as a labour dispute. They are plainly dastardly criminal and must be characterised as such. There needs to be concomitant action to address this situation."*¹²⁶

"Dear all, I have just had a meeting with Susan Shabangu [Minister of Mineral Resources] in Cape Town. One, she agrees that what they are going through is not a

122 See for a classic discussion on the link between the corporation, government, human rights protection and neoliberalism, *Anna Grear*, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity*, New York 2010.

123 See *Karon*, note 117.

124 *Bond and Mottiar*, note 3, p. 297.

125 *Peter Alexander*, *Marikana*, *Turning Point in South African History*, *Review of African Political Economy* 40 (2013), p. 613. Ramaphosa had a 9.1% stake in Lonmin at the time. *Adelman*, (note 7), p. 248.

126 *Marikana Commission of Inquiry*, note 6, p. 423.

labour dispute, but a criminal act. She will correct her characterisation of what we are experiencing. Two, she is going into cabinet and will brief the President as well and get the Minister of Police, Nathi Mthethwa, to act in a more pointed way."¹²⁷

This involvement of politicians, fuelled as they are by a government that is under pressure to provide more economic space to emerging black capital development (just as the previous National Party supported apartheid era capitalists), creates an "impression of an uncomfortably close relationship between government and business."¹²⁸ However, such empowerment efforts through affirmative action initiatives like Broad-Based Black Economic Empowerment (BBBEE) are said to be failing more than 20 years into post-apartheid South Africa. BBBEE is a post-apartheid government driven initiative that seeks to promote equitable economic participation.¹²⁹ Unfortunately, in some ways BBBEE "does not question the logic of capitalism but merely suggests who must be at the helm of it (a black capitalist rather than a white capitalist)."¹³⁰ The associated practices where mining royalties are paid to tribal authorities that own mining land and BBBEE beneficiaries can also come with dire consequences.¹³¹ As Franken notes, such practices encourage rent seeking and favours between corporations and politicians which only further entrench neoliberal practices.¹³²

*Rather than involve themselves in the fraught politics of local government, the mines have picked their allies on the national stage, offering them substantial shareholdings in exchange for influence and protection. In this they have, to date, successfully immunized themselves from the law's requirements for consultative planning and investment in the ongoing living requirements of the poor around the mines.*¹³³

Some tribal authorities that are located in mining areas have become incredibly wealthy because of royalties and shareholding schemes in the post-apartheid order.¹³⁴ An example is the Royal Bafokeng tribe that lives in the area of Marikana and which is considered the

127 Marikana Commission of Inquiry, note 6, p. 424.

128 Adelman, (note 7), p. 248.

129 See generally section 2 of the *Broad-Based Black Economic Empowerment Act* 53 of 2003.

130 Ndlovu, note 63, p. 51. See also *Murombo*, note 100, p. 35, who notes that there is capitalist curse rather than a resource curse.

131 Breckenridge, note 9, p. 157.

132 Breckenridge, note 9, p. 158.

133 Breckenridge, note 9, p. 158.

134 These authorities are now known as traditional councils in terms of section 3 of the *Traditional Leadership and Governance Framework Amendment Act* 41 of 2003 as amended by the *Traditional Leadership and Governance Framework Amendment Act* 23 of 2009. These tribal authorities are set up in traditional communities and some of these tribal authorities have the capacity to negotiate mining royalties for the minerals that are located within their community (this must be done on behalf of the community). They are, by implication, political in nature.

richest ethnic tribe in Africa today.¹³⁵ The Royal Bafokeng tribal authority is paid close to ZAR 1 billion annually through its Royal Bafokeng Holdings and is now considered the BBBEE partner of choice.¹³⁶ As such, one of the real concerns that is raised by Marikana is that the Bafokeng tribal authority and other tribal authorities with access to royalties and corporate-government partnerships have become dominant players in the South African capitalist base, with considerable holdings in diversified economic fields, while “the problems of securing the basic conditions of public health and workplace safety for the people who work in the platinum mines – almost all of them non Bafokeng migrants – have actually worsened in this period”.¹³⁷ On this point, Marikana has illustrated that politics and corporate power often overlap to create the conditions for exploitation and ultimately for environmental injustice to occur and for slow violence to build up. As neoliberalism increases its assault on human and environmental resources, so does the resistance by the poor and those affected by neoliberal practices also increase.¹³⁸ It would undoubtedly be preferable were government and corporate actors more critically to engage with one another and the broader South African society about the skewed effects of neoliberal growth paradigms, of which BBBEE is an example, and to reform these with a view to ensuring greater equity in the distribution of benefits to disenfranchised people. While no one should question the dire need to empower previously disadvantaged people in a deeply unequal South African society, all efforts directed at creating socio-economic equality must take cognisance of the rule of law and the need to transform society through a constitution, which at its core must respect, protect and fulfil all basic human rights, and avoid, remedy and eradicate all forms of environmental injustice and slow violence in the process.

135 See *Commy Pusch*, BAFOKENG: Africa's Richest Ethnic Group, <http://connection.ebscohost.com/c/articles/99437854/bafokeng-africas-richest-ethnic-group> (last accessed on 1 September 2015), p. 544. The Royal Bafokeng Tribe through the Royal Bafokeng Holdings are known to hold a significant share in Anglo Platinum and they are also listed on the Johannesburg Stock exchange. See *Ashman and Fine*, note 49.

136 *Breckenridge*, note 9, p. 159. See also *Inge Kriel*, A Rich Nation of Poor People: Land and Ethnicity in a Village of the Royal Bafokeng Nation, http://www.aegis-eu.org/archive/ecas2007/papers/34-593-Kriel-Inge_Boundaries-of-consciousness-consciousness-of-boundaries.pdf (last accessed on 12 September 2015), p. 13, where it is noted that in 2006 the wealth of the Royal Bafokeng Holdings was approximately R20 billion (\$3 billion).

137 *Breckenridge*, note 9, p. 161.

138 *Nixon*, note 1, p. 4.