CRITICAL ANALYSIS OF THE IMPACT OF VIOLENT STRIKES IN SOUTH AFRICAN WORKPLACE

BY

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ABSTRACT

Violent strikes in the South African workplace present a complex challenge with far-reaching implications for businesses, employees, and the broader economy. This research investigates the multifaceted impacts of such strikes, focusing on their immediate and long-term consequences. Through a qualitative approach, mostly relying on primary and secondary sources of law, observations, primary and secondary research filtered through own personal lens, the study reveals a significant decrease in productivity, heightened employee absenteeism, and increased turnover rates following violent strikes. The psychological effects on employees are profound, leading to a pervasive environment of fear and reduced morale. Financial repercussions for organizations include direct costs such as property damage and indirect costs like lost work hours and legal fees.

The study also highlights the role of socio-economic factors, historical context, and labour relations dynamics unique to South Africa. The findings underscore the urgent need for effective conflict resolution mechanisms, comprehensive safety policies, and mental health support systems to mitigate the adverse effects of violent strikes. Recommendations include fostering a culture of dialogue and collaboration between employers, employees, and unions, and implementing robust training programs to manage and prevent workplace violence. This research aims to contribute to the development of strategies that enhance workplace resilience and safety in the South African context.

DECLARATION BY STUDENT

I **Mathye Dingaane** hereby declare that, I am the sole author, composer and that this is entirely my original work in design and in execution, and that all materials contained herein have been duly acknowledged.

I further declare that this mini dissertation for the degree of Masters of Laws (LLM) in Labour Law at the University of Limpopo hereby submitted has not been prepared for another examination or work either in its entirely or excerpts thereof.

MATHYE D

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SIGNED BY MATHYE D **DATED AND SINED: 6 JANUARY 2024**

DEDICATION

First and foremost, all credits and praises to the **Almighty God** and **my Ancestors** for the will to see this through, for wisdom, knowledge and understanding. I thank my Parents **Mathye Evans** and **Mathye Mmapula**, with the extension to all my family members, the symbol of love and giving.

I am dedicating this thesis to four (4) beloved people who have meant and continue to mean so much to me. Although they are no longer of this world, their memories continue to regulate my life…

Foremost, in a go, my Grandfather "**Rabolane Mohale Phineas"**, and my Uncle aka "Dad", "**Mathye Collins**", your love for me knew no bounds and, you taught me the value of hard work. Thank you so much for rescuing me from the wrong path of life, the values you instilled within me continues to channels my life, I will never forget you.

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Fourthly, I also want to remember my deceased partner "**Boima Merriam Lerato**" whose life was also cut short by a car accident at the tender age of 22 in March 2022. May you find peace and happiness in Paradise! It is what it is, not what it out to be.

I love you all and miss you all beyond words, continue to rest peacefully.

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1 CHAPTER ONE- INTRODUCTION AND GENERAL OVERVIEW

1.1 INTRODUCTION

A strike is accordingly defined in terms of section 213 of the Labour Relations Act (LRA) as, "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between the employer and employees".[1] Violent strike relates to the use of force resulting in damaging property or causing injury or possibly death to people and or any form of intimidation or threat against any person/persons in an attempt to force the employer to accede to employees' demands to elicit changes for employment conditions such as wages, benefits, job security, and management practices.[2]

In South Africa (SA), there is a constitutional right to strike which is in accordance with the provisions of section 23 of the Constitution of the Republic of South Africa, 1996 (Constitution).[3] However, the right to strike like any right in the Bill of Rights is not absolute; hence, it is within the same context that there are limitations placed on constitutional rights. Section 36 of the Constitution provides for the limitation clause. However, the limitation placed on any constitutional right should be reasonable, fair, and justifiable in an open and democratic society based on human dignity, freedom, and equality.[4]

Again, a strike as defined by the LRA must be in line with the statutory requirements provided in section 64 of the LRA to be legal and protected, and if the alleged strike does not comply with such requirements, it will not enjoy the protections afforded by the LRA and thus, it will be deemed as an unprotected strike. Furthermore, protected strikes could lose their statutory protection whenever they turn out to be violent depending on their circumstances. In the case of *Tsogo Sun Casino v Future of South African Workers Union & Others,* the Labour Court provided that it can be persuaded that such protections afforded to legal strikes should be forfeited in certain circumstances, such as when the unruly conduct

[1] Section 213 of the Labour Relations Act 66 of 1995.
[2] Kgosimore, DL 'Workplace Violence (A Criminological Analysis of a Violence Labour Strike in South Africa' (01 January 2007) < https://hdl.handle.net/10520/EJC28934 > accessed 22 July 2023.
[3] Section 23 of the Constitution of the Republic of South Africa 1996.
[4] Section 36 of the Constitution of the Republic of South Africa 1996.

and violence during such protected strike is of such nature that renders the engaged strike dysfunctional to collective bargaining.[5]

The possibility of resorting to the strike protest remains the pillar of the collective bargaining mechanism in South African labour relations. A strike action that contains unruly behaviour and violent conducts of employees is detrimental to the legal foundation's principles upon which labour relations in this country are founded and to the economy at large. It is worth mentioning that the main aim or goal of a strike is to persuade or push the employer by means of peaceful withdrawal of labour in order to give in to the striking employees' demands. Although at some point a certain degree of disruption of business is likely to happen, it is unacceptable to force employers and other employees through violence to give in to the union or striking employees' demands as this would render their conduct unlawful. Any unruly conduct of that nature significantly undermines the fundamental values and principles alongside what the Constitution and other labour regulations were founded.[6] It is important to further note that violence during both protected and unprotected strike action is therefore unacceptable, it is not functional to collective bargaining and is discouraged in terms of both international and national labour laws.[7] The impact of violent strikes remains the epicentre of this dissertation.

1.2 HISTORICAL BACKGROUND

South Africa has a long history of violent strikes, as employees always believed that striking is a better means of exercising their rights, raising concerns, obtaining better working conditions, and to be heard. Violent strikes are not a new occurrence in South African labour relations history since it was common during the struggle against apartheid. During the apartheid era, it was easier to understand because due to the apartheid system Black workers had no constitutional right to engage in a strike and indeed the absence of the constitutional right to strike and further, the absence of collective bargaining processes may itself lead to outbreaks of violence which may otherwise have been avoided or properly

[5] *Tsogo Sun Casinos t/a Montecasino v Future of SA Workers Union & Others 2012 (33) ILJ 998 (LC*).

[6] Tenza, M 'An Investigation into the Causes of Violent Strikes in South Africa: Some Lessons from Foreign Law and Possible Solutions' (2015) 19 < http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072015000100011 > accessed 03 April 2023.

[7] Masiloane, DT 'Guaranteeing the Safety of Non-striking Employees during Strikes: (The Fallacy of Policing)' (01 January 2010) < https://hdl.handle.net/10520/EJC29040 > accessed 22 July 2023.

controlled.[8] That appears as the evident of reasons why workers had to engage in violent strikes.

However, since the advent of democracy in 1994, institutionalised ways and procedures have been found which includes the collective bargaining and other legal mechanisms that can be utilized to address the issues of strikes connected with violence. Strikes are recognized and permitted in South Africa, however one can question; what then has continued to cause employees to resort to physical violence against employers and or other employees and or their properties during the subsistence of striking? Are employees also contesting the new political order that emerged after 1994? Strikes, unruly behaviour, and violent conducts usually result in a watershed or turning point in the labour relations system.[9]

The achievement of democracy in SA is mostly correlated to the extension of government and political participation establishing third parties' organisations to intervene against inhuman conducts displayed whilst resolving disputes. The Labour Relations Amendment Act,[10] introduced pertinent amendments to curb violent protracted strikes, particularly section 150A (4) which empowers the Director to appoint the panel in terms of section 150A (3), if there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the strike through the threat or use of violence or the threat of or damage to property.[11]

Post-1994, the attainment of democracy, industrial relations became fully institutionalised under the new government and industrial relations regime. According to Chinguno, violent strikes remain a significant phenomenon in our labour relations such as the 2006 security guards strikes whereby over 60 employees were killed when strike turned into violent and many other similar violent strikes.[12] The repertoire of collective violence of the past

[8] Webster, E 'Crossing the Picket Line: Violence in Industrial Conflict – The case of the Afcol Strike' (1990) Industrial Relations Journal of South Africa (Vol 11) 4, 15-35 < https://www.csvr.org.za/crossing-the-picket-line-violence-in-industrial-conflict-the-case-of-the-afcol-strike/ >accessed 06 April 2023.

[9] Chinguno, C and Chiwota, E 'Strike Violence Crisis of Workplace Regime' The SA Labour Bulletin (2021) (Vol 36) 5 < https://www.southafricanlabourbulletin.org.za/wp-content/uploads/2021/11/3.-Strike-violence.pdf > accessed 06 April 2023.

[10] Labour Relations Amendment Act 6 of 2014.

[11] Section 150A (4) of the Labour Relations Amendment Act 6 of 2014.

[12] Strike by Security Guards Belonging to the South African Transport and Allied Workers' Union (SATAWU) Security Guards, Striking for Better Pay (25 March 2006) < https://www.iol.co.za/news/south-africa/security-strike-bring-chaos-countrywide-270694 > accessed 13 May 2023.

established as a tradition, conflict violence, and struggle in South Africa to become part of the country's industrial relations practice.[13]

Violence in strikes works, it has worked in the past and it will work today, this is the justification and rationale of majority of employees engaging in violent strikes in South Africa. According to Chinguno, in his address to critically discover the core causes of the tragedy that occurred in *Marikana* in August 2012, Chinguno highlighted the basis of employees' violence during strikes and asserted that; violence is one of the means in which employees come together for a common cause. Further, it is also a means of collectively challenging an order of inequality, exploitation, and a response to structural violence in the labour processes. Chinguno emphasised that some aspect of the strike repertoire is the attainment of authority; mostly it is in response of the fragmentation of the work force, which undermines collective bargaining.[14]

The Constitution enshrines basic human rights that are the pillars of our democracy. However, the ramifications of violent conducts in strikes over the years have violated these basic human rights that the Constitution seeks to uphold. This assertion is supported by a consideration of the violent strike actions that have taken place over the years. In recent years, SA has experienced an increase in strikes and protests that have been engulfed by violent behaviour and civil unrest such as; the Marikana massacre whereby 34 miners were killed on 16 August 2012 during a six-week wildcat strike in Rustenburg.[15]

1.3 PROBLEM STATEMENT

The South African Constitution provides clear guidelines and regulations for employment relations.[16] In addition, the LRA is the counter piece to workplace or employment laws and all subsequence legislations are subordinate to it. This to note, the right to strike is well captured in section 23 of the Constitution. This constitutional provision is amplified by section 64 of the LRA that provides that every employee has the right to strike. This right

[13] Strike by Security Guards Belonging to the South African Transport and Allied Workers' Union (SATAWU) Security Guards, Striking for Better Pay (25 March 2006) < https://www.iol.co.za/news/south-africa/security-strike-bring-chaos-countrywide-270694 > accessed 13 May 2023.

[14] Chinguno, C 'Explaining Violence in Strikes' (17 April 2014) < https://mg.co.za/article/2014-04-17-marikana-seminar-unpacks-violent-strike-action/ > accessed 04 May 2023.

[15] Connolly, L 'African Journal on Conflict Resolution (2013) (Vol. 13) 2 < https://www.ajol.info/index.php/ajcr/search/authors/view?givenName=L&familyName=Connolly&affiliation=&country=&authorName=Connolly%2C%20L > accessed 22 July 2023.

[16] Section 23 of the Constitution of the Republic of South Africa 1996.

like any other right is limited. Moreover, for the strikers to attain the status of a legal and or protected strike, their right must be exercised peacefully and without any violence and in compliance with the provisions of chapter IV of the LRA. In addition, there are substantive and procedural requirements to be complied with as provided in the LRA. Consequently, strike actions that are not in compliance with LRA provisions will be unprotected and participants will face some adverse consequences.[17]

It is the main, the primary purpose of the LRA to advance economic development, enhance social justice, labour peace, and democratisation of the workplace by fulfilling the primary objectives of the Act.[18] This notwithstanding, violent and unruly behaviour during strikes remains a huge challenge in South Africa and as time progresses, this conduct is becoming more prevalent and alarming. Violent strikes in the workplace have significant devastating effects on the country's economy, people's lives in general and on investments.

To this end, it is argued that the Constitution and the LRA are based on peaceful strike action.[19] Hence, it is within this context that the study critically analyses and evaluates the genesis, causes, impacts and possible solutions to curb the extension of violence during strikes and advance available reconciling methods.

1.4 LITERATURE REVIEW

The use of violence during strikes affects not only the strikers or picketers, the employer and their business, but it also affects innocent members of the public, non-striking employees, the environment and the economy at large. In addition, striking workers visit non-striking workers' homes, often at night, threaten them and in some cases, assault or even kill

[17] Chapter IV of the LRA 66 of 1995.

[18] The Objectives of LRA (Section 1 of the LRA 66 of 1995) Namely: to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution, including; the right to fair labour practices; to form and join trade unions and employer's organisations; to organise and bargain collectively and to strike and lock out, To provide a framework for regulating the relationship between employees and their unions on the one hand, and employers and their organisations on the other hand. At the same time, it also encourages employers and employees to regulate relations between themselves; to promote orderly collective bargaining, collective bargaining at sectoral level, employee participation in decision-making in the workplace and the effective resolution of labour disputes.

[19] Shakti, J 'A Critical Analysis of Violent Strikes in South Africa' (2020) < https://researchspace.ukzn.ac.za/handle/10413/19071 > accessed 03 April 2023.

workers who are acting as replacement labour.[20] This point to the fact that many workers and their families' living conditions remain unsafe and vulnerable to harm due to violent strikes. In *Security Services Employers Organisation v SA Transport & Allied Workers Union (SATAWU)*, it was reported that about 20 people were thrown out of moving trains in the Gauteng Province; most of them were security guards who were not on strike and who were believed to be targeted by their striking colleagues. Two of them died, while others were admitted to hospitals with serious injuries.[21] Violent strikes amounts to the abuse of the right to strike and is the antithesis of constitutional values. Much has been written about violent strikes and the Courts have recognised it as being a 'scourge' and made it plain that they should not as a society be subjected to 'the tyranny of the mob'.[22]

The main reason for the connection between the engagement of replacement labour during a strike as a recourse for employers and violent strike is that striking employees are tempted to assume and conclude that they cannot inflict economic harm against the employer when the business of the employer is permitted to continue with production or to render services whilst strikers are without remuneration. Moreover, the use of replacement labour triggers unruly behaviour as well as violent conducts as employees get frustrated that their replacement employees are working whilst they are on strike. Experience displays that violent behaviour mostly occurs when non-striking workers and strikers come into contact with each other in a heated labour dispute.[23]

The LRA provides for persons who have experienced or suffered losses due to strike action that is not in line with section 67 of the LRA to be compensated by the transgressing employees.[24] Violent strike actions results in a number of work hours lost, which ultimately affects production, which impacts the economic output of the business and as a result, negatively affects the fiscal status of the business. In *Algoa Bus Company v SATAWU* for example, the company sued the union and employees for a financial loss suffered due to the

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[20] Karl, VH 'Institutionalisation, Strike Violence and Local Moral Orders' (January 2010) < https://www.researchgate.net/publication/236803952_Institutionalisation_strike_violence_and_local_moral_orders > accessed 22 July 2023.

[21] *Security Services Employers Organisation and others v SA Transport & Allied Workers Union (SATAWU) and others* 2007 (23) (J453/06, J509/06) (ZALC).

[22] *South African Transport & Allied Workers Union v Garvis & others* (2007/11) [2011] 152 ZASCA.

[23] Shakti, J 'A Critical Analysis of Violent Strikes in South Africa' (2020) < https://researchspace.ukzn.ac.za/handle/10413/19071 > accessed 03 April 2023.

[24] Le Roux 'Claims for Compensation Arising from Strikes and Lockouts: Common Law and the LRA' 2013 23 Contemporary Labour Law 1 15.

unprotected strike action. The Court held that employers are entitled to claim compensation for losses actually suffered during an unlawful strike action.[25]

According to Tenza, "lack of a mandatory secret ballot requirement before strike action is also causing the disorderly and violent strike actions since a secret ballot before the strike takes place will ensure that the strike action has the support of the majority of the union members". Therefore, "lack of mandatory ballot requirement in our bargaining system or labour relations, the use of replacement labour during strike action as recourse, and the failure of the system to regulate protected strike action accompanied by violence significantly harm the economy".[26] The ballot by members before the strike action took place was a prerequisite under the old LRA. A ballot by members meant that all members of the union who were eligible to vote must vote either in favour of or against a proposed strike.[27]

An unprotected strike has a negative effect on employment and may result in the dismissal of employees.[28] Generally, the LRA prohibits the dismissal of employees if the reason for their dismissal is participation in a protected strike. However, despite this prohibition, the employer may dismiss employees if they commit misconduct during a strike or on the basis of operational requirements.[29] Since it is expected that the employer will not make production or profit during a strike as a result of work stoppage, he or she may put forward economic conditions that have turned around since the commencement of the strike as a reason to cut down his or her workforce. In this regard, the employer justifies dismissal based on operational requirements. In *SACCAWU v Pep Stores*, the Court held that it is permissible for an employer to retrench employees where their misconduct has given rise to a genuine operational requirement.[30]

South Africa has one of the highest unemployment rates in the world and when strikes increase, it decreases the economic activities in the country. The effects of striking, especially violent strikes will be felt in the immediate and long-term as violent strikes are recurrent in some sectors and their effect may naturally have a long impact. The South African economy is vulnerable and violent strikes harm the country's investment reputation

[25] *Algoa Bus Company v SATAWU and Others* 2014 (8) BLLR 786 (LC).
[26] Tenza, M 'The Effects of Violent Strikes on the Economy of a Developing Country: a Case of South Africa' (2020) 42(3) Obiter < http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532020000300004 > accessed 03 April 2023.
[27] Section 65 (2) (b) of the Labour Relations Act 28 of 1956.
[28] Section 67(5) of Act 65 of 1995.
[29] Section 188 and 189 of Act 65 of 1995.
[30] *SACCAWU v Pep Stores* (1998) 19 ILJ 1226 (LC).

in the international arena. Economists state that the effects of violent strikes on the economy are difficult to calculate but, are detrimental to the country and its workers, and negatively impact the Gross Domestic Product (GDP).[31]

Mloyi posits that the violent strikes results in negative outcomes which include disinvestments, economic loss and looting of nearby property, moreover, the environment is damaged by air pollution when the employees decide to burn tyres and other immovable property and this becomes a health hazard.[32] Given all the resources and labour relations mechanisms for representation, conciliation, mediation and arbitration, disputes of interest between employees and employers ought to be orderly and civil rather than disorganised, inhuman, and bloody. One would assume that with the National Economic Development and Labour Council (NEDLAC), the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Courts, labour tribunals, government departments, employer bodies, industrial councils, registered and recognised trade unions, Non-Government Organisations (NGOs), Universities and think tanks, disputes would be resolved out more amicably.[33]

Rycroft opines that the phrase 'functional to collective bargaining' is grounded in the constitutional understanding of a strike, namely, that it is for the purposes of collective bargaining, hence, if the strike is destructive of that purpose, it then becomes a cause for concern with dire consequences for the economy and social stability inside and outside the workplace.[34] Within the workplace, violent strikes fuel tension and create friction in the employer's workforce as those who are out on strike tend to attack non-striking employees, thereby preventing them from discharging their contractual obligations.[35] This calls into question the justifiability of the conduct of the strikers and whether the right to strike supersedes the rights of the non-striking employees and other workers; such as replacement

[31] Servest 'Labour Unrest and Industrial Action in South African Workplace' (4 April 2018) < https://www.servest.co.za/labour-unrest_strike-intervention/ > accessed 24 July 2023.

[32] Mloyi, K 'A critical Analysis of the Causes of Violent Misconduct during Strikes and Pickets in South Africa' (2012) Masters Dissertation from the University of Johannesburg < http://hdl.handle.net/102000/0002 > accessed 07 April 2023.

[33] Motala, M 'On Strikes and Violence in South Africa' (8 Jul 2014) < https://sacsis.org.za/site/article/2063 > accessed 05 April 2023.

[34] Rycroft, A 'Can a Protected Strike Lose Its Status' (2012) 33 ILJ at 821.

[35] Tenza, M 'Is the Employer Compelled to Provide Safe Working Conditions to Employees during a Violent Strike' < http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072021000100009 > accessed 05 April 2023.

labour ,not to be subjected to any form of unruly behaviour and violence whether public or private, or restricts their right to freedom of association or freedom of movement.[36]

There are contributing factors that might increase the levels of violence in strike actions, such as lack of ballot requirements, the use of replacement labour and failure by our institutions to deal with protracted violent strike actions. The Labour Court does not have any exclusive power to intervene or stop unprotected strike action unless an affected party approaches it. To reduce these violent strikes, the LRA should include an amendment.[37]

Strikes normally affect the working relationship between the employer and employees, and as a result service delivery is reduced. The above proves that violent strikes normally occur when there is a heated labour dispute irrespective of the impact on the economy, employment, human life and so on. However, lessons should be learned from different scholars and other countries in an attempt to curb the strikes associated with violence. The labour laws should be upgraded to cater for violent strikes within the workplace with the aim of dealing with the impact of violent strikes that hampers the economy and further statutes that empower the Labour Court to stop violent strikes within the country ought to be promulgated.

1.5 AIMS AND OBJECTIVES

The study is aimed to reflect on the genesis of violent strikes in South African workplace and to analyse all the contributing factors (being social, economic, and political) and further analyse the consequences of partaking in such violent strikes. It considers the negative impact of violent strikes in the workplace, employment relationship, on the economy, to social and lives in general. The study is further aimed at reviewing the relevant legislations within our constitutional and labour context aimed to curb violent strikes.

The foremost objective of this study is to identify the root causes of violent strikes in the South African workplaces and to suggest for possible and available solutions to curb such strikes or to mitigate its impact where prevention is not possible. The study concludes by identifying past and recent lessons and further look into the future with positive solutions on how to mitigate the impact of violent strikes if not completely curtail it.

[36] Section 12 (1) (c) of the Constitution of the Republic of South Africa 1996.
[37] Calitz, J 'South African Mercantile Law Journal' (2016) 440.

1.6 SIGNIFICANCE OF THE STUDY

The main purpose of this study is to analyse the impacts of violent strikes within the workplace and create an awareness on how it impacts the workplace, employment, the economy, social and lives in general and further such strikes are detrimental to the legal regulatory foundations upon which labour laws in this country are founded on, and to the country's economy at large.

It remains difficult to address the issue of violent strikes in SA using the existing labour laws; hence, the recommendations to the study are aimed at proposing different mechanisms that will assist to root out strike related violence. The study will benefit law students, non-law students, employers and employees, job seekers, government, non-government organizations, policy makers, investors, and all citizens of the Republic. Further, the study will also enhance government to overhand and review the labour laws to cater for industrial actions that are characterised by violent conducts and the unruly inhuman behaviour of strikers. Thus, the study will be beneficial to all citizens within the Republic for it recommends different mechanism aimed to curb the root of violent strikes which is one of the fundamental values upon which the Constitution was founded.

1.7 RESEARCH METHODOLOGY

The research methodology adopted in this study is qualitative method, mostly relying on primary and secondary sources of law, observations, primary and secondary research filtered through own personal lens. The study considers practical and theoretical limitations in analysing and interpreting the data. A thorough analysis was employed to consider the genesis of the research problem, its impact on different aspects within the country and possible solutions in an attempt to reform and improve the labour laws within South Africa.

1.8 ORGANISATION OF STUDY

The research is comprised of five interrelated chapters organised as follows. Firstly, chapter one is an introductory chapter which provides a thorough comprehensive of what the study entail. It introduces the study and provides a guide to the methodology, aims and objectives adopted by the study as well as the limitation of the study. Secondly, chapter two gives the genesis and historical background of violent strikes in the South African workplace as well as the right to strike. It looks specifically at the government approach to the regulatory

frameworks within the labour industry during the pre-colonial and apartheid era until the attainment of democracy. This chapter further acknowledges all the developments and changes brought about by the recent amendments in the LRA and regulations throughout the years that appears to be short of addressing the elements of violence during strikes. Thirdly, chapter three interrogates the legislative regulatory framework or laws and regulations governing the right to strike within the workplace in South Africa. It looks at the constitutional standards of the right to strike and other enabling legislation. Fourthly, chapter four analyses the impact of violent strikes within the county and how it affects various aspects of the citizens' daily lives, including the negative impact on employment, business confidence and all risks of economic stagflation including the impact on the economy and investment opportunities within South Africa. Lastly, chapter five provides the conclusion that is drawn from the entire study and makes recommendations for the lesson learned throughout the study and possible ways to curb the escalating numbers of violent strikes in South Africa.

2 CHAPTER TWO - HISTORICAL ACCOUNT OF VIOLENT STRIKES IN SOUTH AFRICA

2.1 INRODUCTION

South Africa comes from a history in which workers, more especially Africans, have been denied the freedom to participate in strike actions without fear of repercussions. Employers always regarded any strike participation by employees as a delictual conduct, if not an illegal act (criminal). A history in which participating in a strike was considered a breach of contract, giving employers authority to dismiss any striking employees. Violent strikes in South Africa have significant historical origins that may be traced back to the country's apartheid era and subsequent democratic transition.[38]

Strike-related violence has a long history in South Africa. Workers believed and reasoned that going on strike was a way for them to assert their rights and get improved working conditions. Violence was considered an important strategy during the apartheid era since it was sometimes deemed as the only way to get certain demands furnished considering its ability to deliver certain results at fast; subsequently, it has remained common in the post-apartheid era.[39]

Violent strikes are growing more and more regularly in South Africa, affecting businesses, employees and their families, eventually the economy at large and all the sectors within the country. These strikes are now becoming more hazardous to the economy and society as a whole. Employers have renewed their calls for changes to labour laws and improved law enforcement following the latest strike in the steel industry in 2021. Due to lack of law enforcement, most large strikes today are extremely violent. Employers have limited protection from violence and intimidation as a result of insufficient legislative intervention and ineffective prosecution of perpetrators.[40]

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[38] SA history online 'Strikes and Industrial Actions' < https://www.sahistory.org.za/archive/strikes-and-industrial-actions > accessed on 02 September 2023.

[39] Msimang, S 'The Legacy of Violence in the Struggle for South Africa" (2020) < https://africasacountry.com/2020/12/the-legacy-of-violence-in-the-struggle-for-freedom-in-south-africa > accessed on 03 September 2023.

[40] Brown, J 'Why Strikes are so Violent (Killing, intimidation and destruction in NUMSA strike lead to more calls for labour law changes and better enforcement)' (October 2021) < https://www.businesslive.co.za/fm/fm-fox/2021-10-21-why-strikes-are-so-violent/ > accessed 03 September 2023.

When South Africa attained democracy in 1994, there was a clear vision of a better nation with a new legislative approach to labour relations. However, the number of violent strikes that have taken place since the attainment of democracy in this country in recent years appears to have crushed hopes for a better South Africa.[41] As a result, this chapter analyses the genesis and background of violent strikes in the workplace and the government approaches throughout the years in an attempt to curb violent industrial actions.

2.2 HISTORICAL ACCOUNT

As of the 1900s, violent strikes in SA were countless due to employee's dissatisfaction with working conditions. Strikes were used by workers to advance their interests against the influence of employers and to contest managerial authority.[42]

In 1913 for example, a strike broke out because of how poorly mineworkers were treated.[43] Sympathisers in the mining and railway industries became involved in the said strike. The strikers struck the non-striking workers with clubs to prevent them from entering the mines in an effort to compel the mines to close. This tactic worked as the mines were shut down to ensure workers safety. The overly violent strike led to multiple arrests, legal proceedings, and the deportation of the strike's organisers in the United Kingdom (UK) and Australia. Employees' dissatisfactions were attributed to job fragmentation, in which employees' job descriptions were altered to make room for the hiring of Black workers who were paid less.[44]

During apartheid, the South African government implemented a system of institutionalised racial segregation and discrimination, limiting Black South Africans' rights and opportunities. Apartheid became official policy in South Africa when the National Party enacted a series of laws aimed at segregating society along racial lines. Employees organised strikes and protests to demand better working conditions, higher wages, and ending discriminatory practises, and the labour movement played a critical role in opposing these repressive policies. Apartheid resistance in South Africa had several forms, ranging from peaceful rallies

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41. Tenza, M 'The Effects of Violent Strikes on the Economy of a Developing Country: a Case of South Africa' (2020) 42(3) Obiter < http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532020000300004 > accessed 03 April 2023.

42 Bendix, S 'Industrial Relations in the New South Africa' (1996) (3 Ed) 75.

43 Admin 'African Mineworkers Strike, New Kleinfontein Mine in June' (1913) < https://www.radiofreesouthafrica.com/1913-mineworkers-strike/# > accessed 24 May 2024.

44 Thelen, G 'Copper Strike 1913-14: Military history of the upper Great Lakes) < https://ss.sites.mtu.edu/mhugl/2015/10/11/the-houghton-county-copper-strike-of-1913-14/> assessed on 15 October 2023.

and boycotts to violent struggle. Individuals and groups as diverse as activists, students, workers, and political organisations spearheaded these movements.[45]

Strikes were frequently met with oppressive force by the government in the 1970s and 1980s, resulting in deadly conflicts between demonstrators and security forces.[46] The 1976 Soweto Uprising, in which students and workers challenged the use of Afrikaans as a medium of instruction in schools, was the most prominent event during this time period. The protests triggered a harsh police crackdown, resulting in multiple deaths and injuries. The institutionalised racism at the heart of apartheid policy inflicted significant scars on South African society that are still felt today.[47]

Throughout the early 1990s democratic transition, many people hoped for better labour conditions and greater economic equality. Though the truth has been more complicated, despite legal measures to protect workers' rights, numerous socio-economic difficulties persist, such as significant unemployment, income inequality, and insufficient access to essential services. These structural challenges have exacerbated continuous labour conflicts and strikes, some of which have turned violent. Dissatisfaction with salaries, bad working conditions, and a lack of good communication between employers and workers can all contribute to escalating tensions, resulting in outbursts of violence during strikes.[48]

It is crucial to highlight that not all South African strikes have been violent. Negotiation and peaceful protests remain viable tools for resolving labour conflicts, and much progress has been made via communication between labour unions, employers, and the government. Understanding the background events of South Africa's violent strikes gives perspective for the ongoing issues faced by employees and employers, as well as highlighting the importance of continued efforts to improve labour laws, employment conditions and foster constructive communication in the workplace.

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[45] Cassar, C 'The Origins of Apartheid: How Institutionalized Racism Took Hold in South Africa' (March 2023) < https://anthropologyreview.org/anthropology-glossary-of-terms/apartheid-racial-segregation-based-on-institutionalised-racism/ > accessed 05 October 2023.

[46] Kulik, RM 'The 1976 Soweto Uprising' < https://www.britannica.com/event/Soweto-uprising > accessed 24 May 2024.

[47] Forgeard, V 'The Road to Freedom: What Happened in the 1970s and 1980s in South Africa' (2023) < https://brilliantio.com/what-happened-in-the-1970s-and-1980s-in-south-africa/ > accessed 05 October 2023.

[48] Facing History & Ourselves 'Introduction: Transition to Democracy' (August, 2018) < https://www.facinghistory.org/resource-library/introduction-transition-democracy > accessed 10 October 2023.

2.3 LEGISLATIVE FRAMEWORK

During the colonial years, apartheid era, and present-day democracy, the legislative framework surrounding violent strikes in South Africa has undergone significant changes. It is worth noting to look closely into this periods or eras for better understanding.

2.3.1 Pre- colonial era

During the colonial era, South Africa was under British rule. The legislative framework was characterized by oppressive labour laws that favoured employers and limited the rights of workers. Strikes were often deemed illegal, and authorities responded forcefully to suppress workers uprisings. The 1924 Industrial Conciliation Act was introduced to regulate labour relations, but it still heavily favoured employers.[49] Violence in strikes continued in the decades that followed and in order to quell the militancy of African workers, the state was forced to enact more oppressive measures following the African Mine Workers' Strike of 1946, which seriously challenged both the capitalist system of society as a whole and its profits.[50]

The 1950 Suppression of Communism Act[51] had as one of its goals weakening the labour movement. However, it was the Native Labour (Settlement of Disputes) Act of 1953,[52] a vicious piece of anti-worker law that was created precisely to quell the rising tide of militancy among African workers and prevent the expansion of African trade unions. Although this Act made any strikes by African workers illegal, the workers persisted in defying the law and never gave up their most important tool in the fight against the ruling class which is the right to withhold their collective labour force.[53]

Despite the Native Labour Act, African workers went on about 435 strikes between 1954 and 1960, thus, by 1960, only ten of the Works Committees established by the Act were still in operation. Thousands of workers were charged, tried, and sentenced to fines or prison. This alone shows that the workers were determined to use the strike weapon as one of the ways

[49] The Industrial Conciliation Act 11 of 1924.
[50] African Mine Workers' Strike of 1946 < https://www.sahistory.org.za/article/1946-african-mineworkers-strike > accessed 02 September 2023.
[51] The Suppression of Communism Act 44 of 1950.
[52] The Native Labour (Settlement of Disputes) Act 48 of 1953.
[53] SA history online 'Strikes and Industrial Actions' < https://www.sahistory.org.za/archive/strikes-and-industrial-actions > accessed on 02 September 2023.

to question the nature of their exploitation, despite the harsh laws the state had passed to punish them.[54]

2.3.2 Apartheid era

Apartheid's legal framework widened the gaps between different racial groupings. The government passed legislation restricting Black employees' ability to unionise and to engage in strikes. Part of South Africa's apartheid system of racial segregation was the Industrial Conciliation Act of 1956 (later renamed the Labour Relations Act, 1956),[55] the primary objective of the Act was to separate the trade-union movements along racial lines, with the aim of weakening them. It forbade the registration of any new mixed unions and mandated that any existing mixed unions have racially distinct branches and all-white executive committees; the act segregated trade unions along racial lines, giving preferential treatment to white unions, to outlawed political affiliations for unions and forbade strikes in "essential industries" for both Black and White workers.[56] Another Act which was passed in response to a wave of strikes in 1972 and 1973 was the Black Labour Relations Regulation Amendment Act which was passed and included a limited right to strike. Previously Black workers had been completely prohibited from striking.[57]

The Labour Relations Amendment Act was introduced to cover all Black workers, including local and foreign migrants and commuters, the Act gave Black workers the right to organise and abolish job reservation.[58] However, it clamped down on unions' involvement in politics for example, prohibiting any union, federation, or employers' organisation from giving financial assistance to a person involved in an illegal strike. Additionally, strict regulations were established to forbid any direct affiliations or financial ties between political parties and labour unions, whether they were registered or not, as well as to outlaw providing financial support to members of unregistered unions that went on strike. The 1981 Labour Relations Act further restricted the rights of Black workers, making it difficult for them to organize and engage in collective bargaining.[59]

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[54] SA history online 'Strikes and Industrial Actions' < https://www.sahistory.org.za/archive/strikes-and-industrial-actions > accessed on 02 September 2023.
[55] The Industrial Conciliation Act 28 of 1956.
[56] The Industrial Conciliation Act 28 of 1956.
[57] Black Labour Relations Regulation Amendment Act 70 of 1973.
[58] The Labour Relations Amendment Act 57 of 1981.
[59] Malley, O 'The Heart of Hope – Apartheid Legislation'< https://omalley.nelsonmandela.org/index.php/site/q/03lv01538/04lv01828/05lv01829/06lv01976.htm > accessed 02 September 2023.

South Africa during the apartheid era (1980s) attempted to draw changes to the law regulating collective bargaining and industrial action. It further confirmed the power of the Court to pronounce upon bargaining rights. As an example, the Industrial Court, amongst other things, was not empowered to restrain the commission of unfair labour practices as it had no jurisdiction over unfair labour practices. Although trade union and collective-bargaining rights for Black workers were initially created by labour legislation announced in 1981, these rights were insufficient. In particular, political laws virtually outlawed the right to strike, which is essential for unions to apply the moral pressure of the majority against non-strikers. This right was lacking from labour legislation. Additionally, since lawfully striking workers were not protected from dismissal, the statute did not grant unions the right to strike. Like all other Black South Africans, Black labourers had no political rights, including the right to vote. Employers frequently showed hostility towards union activities despite the new labour laws, and political persecution surely worsened industrial strife.[60]

During the 1980s in South Africa, strikes were regularly accompanied by violence. Police frequently assaulted and arrested striking individuals. Striking workers violently harassed, beaten, and occasionally murdered non striking workers. Labour analysts blamed the high levels of worker violence on the conditions under which trade unions were organised and engaged in collective bargaining during the apartheid era, specifically the failure to fully institutionalise industrial conflict and more broadly the absence of political rights, which imbued industrial action with a strongly political dimension.[61]

The history of labour relations in South Africa, particularly when it comes to violent strikes, is to some extent a reflection of the national's historically racially divided past. During the 1980s, trade unions fought for social justice and political goals such as the end of apartheid. The growth in size and proportion of the South African trade union movement has been spectacular in a relatively short period of time. It has led to changes in employment practises as well as the assumption that unionism and broader political movements are inseparable. The government amended the Labour Relations Act of that time, making it more difficult for trade unions to go on strike. The government utilised repression, which fuelled greater protests and labour unrest. Trade unions were the strong force in South

[60] Holdt, KV 'Institutionalisation, Strike Violence and Local Moral Orders' (2010) < https://www.researchgate.net/publication/236803952_Institutionalisation_strike_violence_and_local_moral_orders > accessed 03 September 2023.

[61] African Mine Workers' Strike of 1946 < https://www.sahistory.org.za/article/1946-african-mineworkers-strike > accessed 02 September 2023.

Africa in the fight to end apartheid, strikes became very violent and in response, employers and the government made a concerted effort to contain union activity.[62]

Due to the increased number of strikes in the years since, the Labour Relations Act was amended to return it to its pre-1988 state. Negotiations between the state, the South African Employers Consultative Committee on Labour Affairs (SACCOLA), Congress of South African Trade Unions (COSATU), and the National Council of Trade Unions (NACTU) resulted in the Amended Act. This established a pattern of labour laws that were the result of negotiations between the main parties. Strikes by trade unions supplied the push for legislative reform.[63]

The struggle during the colonial years and the struggle against apartheid resulted in one of the most significant democratic revolutions of the 20th century. Given the violent nature of apartheid and the critical role of armed struggle in the history of liberation movements, the fact that South Africa's negotiated transfer of power in the early 1990s did not result in a racial slaughter is especially striking. The end of apartheid was an African success story; South Africans created a pluralistic state based on ethnic, linguistic, religious, and cultural variety to address institutionalised racism and intolerance. South Africa established one of the most progressive Constitution in the world, ensuring the human and civil rights of all its citizens.[64]

2.3.3 Democracy

After the end of apartheid and the transition to democracy, significant changes were made to the legislative framework surrounding strikes. For an example, the Constitution of the Republic of South Africa, 1993, also known as the Interim Constitution, was enacted at the end of apartheid to manage the transition period. It established the groundwork for a liberal democracy, universal adult suffrage, and a charter of rights for the first time. The Interim Constitution promotes a better life for all citizens and binds the state to respect, protect, promote, and fulfil every South African's right. It was utilised as a legal guidance in Court

[62] Barret, J & Mullins, F 'A South African Trade Unions: a Historical Account 1970-1990' (1990) < https://www.bls.gov/opub/mlr/1990/10/art3full.pdf > accessed 07 September 2023.
[63] Finnemore, M & Van Rensburg, R 'Contemporary Labour Relations' (1999) 42 2nd Edition.
[64] South African History online 'Overcoming Apartheid'
< https://overcomingapartheid.msu.edu/unit.php?id=65-24E-1 > accessed 15 September 2023.

and within our legal system to ensure that all individuals are treated with equal dignity and respect, regardless of colour, culture, or gender.[65]

The 1995 Labour Relations Act marked a fundamental shift by recognising the rights of all workers, regardless of race to join trade unions, participate in collective bargaining, and strike, as long as defined procedures were followed. To facilitate conflict resolution between employers and employees, the Act established the Commission for Conciliation, Mediation, and Arbitration (CCMA). Workers' rights to strike are better protected under the current legislative framework, as defined in the Labour Relations Act of 1995 and later amendments. However, it also sets precise criteria and methods that must be followed, such as providing employers notice, engaging in negotiation and mediation, and following specific dispute resolution procedures.[66]

It is vital to emphasise that the legal structure alone does not prevent or control strike violence. The propensity for violence is frequently fuelled by socio-economic conditions, grievances, and the dynamics between employers, employees, and law enforcement.[67] This to note, understanding the evolution of the legislative framework over time helps to contextualise the history of workers' rights and the ongoing issues in South Africa in sustaining harmonious labour relations.

2.4 AMENDMENTS TO THE LRA AND REGULATIONS

The recent amendments to South Africa's Labour Relations Act (LRA) and regulations seek to address various aspects of violent strikes.

2.4.1 Promoting peaceful dispute resolution

Recent amendments to the LRA have emphasized the importance of promoting peaceful resolution of labour disputes. The focus is on encouraging parties to engage in negotiation, mediation, and other alternative dispute resolution mechanisms to resolve conflicts without resorting to violence. The aim is to provide a platform for constructive dialogue and

[65] Vukuzenzele 'Constitution: The Foundation of Our Democracy' (October 2013) < https://www.vukuzenzele.gov.za/constitution-foundation-our-democracy > accessed 20 October 2023.

[66] SA history online 'Strikes and Industrial Actions' < https://www.sahistory.org.za/archive/strikes-and-industrial-actions > accessed on 02 September 2023..

[67] Coetzer, N 'A New Remedy for Violent Strikes' < https://labourguide.co.za/general/a-new-remedy-for-violent-strikes#: > accessed 20 October 2023.

resolution.[68] These techniques seek to promote fair and efficient dispute settlement, reduce the need for costly litigation, and preserve harmonious industrial relations. The LRA balance the interests of employers, employees, and trade unions. Its broad requirements promote fair labour practices, effective conflict resolution, and industrial harmony. Employers and employees must both grasp the LRA in order to successfully manage the workplace's intricacies.[69]

2.4.2 Strengthening protections

Protections are being strengthened; efforts are being made to increase legal protections for both workers and employers during strikes. This involves ensuring that the right to strike is exercised legally with certain limits for protection and without harming lives or property. Regulations outline the responsibilities of both parties involved in order to maintain order and prevent violence during strikes.[70] The LRA establishes a clear framework for the rights and obligations of employers and employees. Employers have the right to run their businesses, but they must also respect the rights of their employees. Similarly, employees are entitled to fair treatment, a safe working environment, and protection from unfair dismissal.[71]

2.4.3 Addressing grievances and disputes

Recent developments have attempted to address the underlying causes of labour conflicts and grievances, which can escalate to violence during strike action. Amendments to the LRA focus on improving systems for handling issues at work and establishing effective dispute resolution procedures. These include easier access to mediation, conciliation, or arbitration procedures.[72] The LRA sets channels for resolving employment disputes through organisations such as the CCMA. This comprises mediation, arbitration, and conciliation

[68] Jordaan, B 'Highlights of the LRA Amendment Bill < https://www.labourwise.co.za/labour-articles/lra-amendments > accessed 20 October 2023.

[69] Barter, H 'Understanding the Labour Relations Act: Its Pivotal Role in South African Labour Law' < https://www.bartermckellar.law/employment-law-explained/understanding-the-labour-relations-act-its-pivotal-role-in-south-african-labour-law > Accessed 24 May 2024.

[70] Jordaan, B 'Highlights of the LRA Amendment Bill < https://www.labourwise.co.za/labour-articles/lra-amendments > accessed 20 October 2023.

[71] Schulenburg, P 'A Comprehensive Guide to Understanding the Labour Relations Act' (July 2023) < https://pagelschulenburg.co.za/understanding-the-labour-relations-act/#:~:text= > Accessed 24 May 2024.

[72] Jordaan, B 'Highlights of the LRA Amendment Bill < https://www.labourwise.co.za/labour-articles/lra-amendments > accessed 20 October 2023.

services, which offer a faster and less formal alternative to long and costly Court processes.[73]

2.4.4 Enhancing communication and awareness

Efforts have been undertaken to improve communication and awareness among all strike participants. This could include offering better instructions and information on workers', employers', and trade unions' rights and obligations during strikes. Improving understanding and awareness can assist to reduce misunderstandings and keep violence at bay.[74] The Labour Relations Act is an important tool for promoting economic development and social cohesion in South Africa. It provides a platform for workers to negotiate better wages and working conditions and protects their right to strike if negotiations break down. It creates a very vital awareness of rights and obligations.[75]

2.5 LEGISLATIVE SHORTFALLS

For a long time, South Africa's industrial relations have been characterised by violent strikes. There are few mechanisms in place to prevent violent strikes, even though their effects are visible all over the country. It is apparent from the above that South African laws fall short of properly addressing the elements of violent strikes in the workplace. While efforts to promote peaceful resolution and enhance rights have been made, there are still limitations or gaps in successfully dealing with the specific issues brought about by violent strikes. To ensure that legislations governing violent strikes are adequately enforced, greater enforcement methods may be required. Furthermore, the effectiveness of deterrent measures such as sanctions or disciplinary actions to discourage violence during strikes need to be reviewed.[76]

More preventive steps should be implemented to prevent violence in the first place. This could include identifying and addressing underlying causes of strike escalation, such as bad working conditions, inequity, or a lack of effective communication channels. Mediation and

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[73] Jordaan, B 'Mediation and Conciliation in Collective Labour Conflicts in South Africa' < https://link.springer.com/chapter/10.1007/978-3-319-92531-8_19 > Accessed 24 May 2024.

[74] Jordaan, B 'Highlights of the LRA Amendment Bill < https://www.labourwise.co.za/labour-articles/lra-amendments > accessed 20 October 2023.

[75] Teuteberg, S 'Know Your Basic Rights in the Workplace' < https://www.lrs.org.za/2020/01/27/know-your-basic-rights-in-the-workplace/ > Accessed 24 May 2024.

[76] Horak, M 'Misconduct during Strike Action' (June 2021) < https://ceosa.org.za/misconduct-during-strike-action/ > accessed 20 October 2023.

alternative conflict resolution techniques could benefit from more support and resources. This should entail educating mediators, offering mediation services, or creating specialised channels to address workplace disagreements and grievances before they escalate into violence.[77]

2.6 CONCLUSION

Summarily, the South African laws do not impose criminal sanctions on strikers or protest action participants who do not comply with legal provisions that regulate strikes. Rather, strikers are protected from dismissal and civil action if they comply with the requirements of the statute, and only deprive them of protection if they do not comply. Addressing these flaws will necessitate a thorough examination of existing labour laws and regulations, as well as potential improvements. To establish an effective legislative system that addresses violent strikes in the workplace, it is critical to analyse the specific demands and constraints of the South African setting.

[77] Gould, C 'Lessons in Preventing Violent Protest in South Africa' < https://issafrica.org/iss-today/lessons-in-preventing-violent-protest-in-south-africa > accessed 20 October 2023.

3 CHAPTER THREE– LEGISLATIVE FRAMEWORK PROHIBITING VIOLENT STRIKES

3.1 INTRODUCTION

The right to strike is drawn from International Labour Organisation Conventions 87 of 1948 and 98 of 1949, both of which South Africa ratified and accepted. South Africa has implemented its obligations as a member of these Conventions by section 23 (2) (c) of the Constitution, which states that every employee has the right to strike. International law and South African law both recognise the right to strike as a fundamental right.[78]

The right of employees to strike is an integral component of their freedom of association and is one of the tools available to trade unions when collective bargaining fails. Without the protection of the right to strike, employees cannot freely exercise the right to freedom of association. The majority of strikes in South Africa are carried out by trade unions during the collective bargaining process, when trade unions and employers are unable to reach an agreement on specific matters of common interest. Strikes can take various forms; they might be partial or complete, and they can be protected or unprotected.[79]

A strike, whether protected or not, will have consequences. Although the right to strike is protected and employees are permitted to strike if the requirements have been fulfilled, employees should not commit misconduct during their strike action. In South Africa, violence during both protected and unprotected strikes has become a major concern. This chapter examines how the right to strike is defined under South African legislation and international law. Further, it provides explanations of the different types of strikes as well as the limitations of the right to strike and as a result, examines the legal protection of employees' right to strike in South African labour law.

[78] Nene, T 'Legislative Protection of the Right to Strike and Lockout' (09 March 2022) < https://ceosa.org.za/legislative-protection-of-the-right-to-strike-and-lockout/ > accessed 21 October 2023.

[79] Budeli, M 'Understanding the Right to Freedom of Association at the Workplace: Components and scope' (2010) Vol 31/1 Obiter 16–33 at 27–28.

3.2 THE RIGHT TO STRIKE AND THE LEGAL FRAMEWORK

These legislative framework deals with strike as defined in South African labour law legislation, the right to strike as guaranteed in the South African Constitution, the Labour Relations Act, and other enabling legislations and further discusses the limitations on the right to strike.

3.2.1 Definition of strike

A strike is defined by the LRA as, "partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee ".[80]

An analysis of the definition of strike demonstrates that a strike is made up of three components:

- Firstly, a series of steps that employees must take; there must be a refusal to work, a delay of work, or an obstruction to work,

- Secondly, the above-mentioned actions must be undertaken by employees working together,

- Lastly, the requirement is that employees' concerted action be for a specific purpose, such as resolving a grievance or resolving a dispute over an issue of mutual interest between the employer and employees.[81]

These three essential elements which constitute a strike were objectively emphasised in the case of *Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Ltd*. The Court stated that the first requirement for a valid and legal strike is that there must be a refusal to perform work; secondly, the refusal must be undertaken by employees; and lastly, such refusal of work must be purposed to resolve a matter of mutual interest as stated by

[80] Section 213 of the Labour Relations Act 66 of 1995.

[81] Le Roux, PAC 'What Constitutes a Strike: (Contemporary Labour law)' (June 2016) (25)11 < https://www.workplace.co.za/issues/cll2511.pdf > accessed 21 October 2023.

the LRA. In regard to the first element, the refusal to perform work can be carried out partially or completely.[82]

3.2.2 Types of strikes

Some characteristics can be retrieved from the definition of a strike, and if these characteristics are not present, the strike will not be protected. As a result, the definition of a strike emphasises the distinction between lawful and unlawful strikes.

3.2.2.1 Lawful strike

The phrase 'lawful' strike which is also known as 'protected' strike action refers to a legal strike that complies with the provisions of the LRA. The LRA has established precise processes that must be followed in order for a strike to be protected and if these specified procedures are not followed, employees lose the protection entrusted to the right to strike. This procedure is regulated by section 64 of the LRA, which specifies two legal procedures that must be followed in order to guarantee strike protection. Firstly, it requires that the issue in dispute should be referred for conciliation to a bargaining council with jurisdiction or to the CCMA. Secondly, that the required notice of the intended strike action be given to the other party to the dispute. The most essential consequence of a protected strike action is that the employees who participate in one may not be dismissed by their employer.[83]

3.2.2.2 Unlawful strike

Unlawful strike which is also referred to as an unprotected strike is contained in section 68 of the LRA. These are strikes that do not follow the procedures outlined in section 64 of the LRA. If a strike is prohibited by section 65 (1) of the LRA, it is also unprotected. Participation in an unprotected strike, according to Item 6 of Schedule 8 of the Code of Good Practice, constitutes misconduct and may warrant dismissal. The most important consequence of the unprotected strike is that, the strikers may be dismissed, however, the dismissal must be

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[82] *Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty)* Ltd (1998) (J2162/98) ZALAC 27.

[83] Sattar, FA 'Procedural Requirements for a Strike' < http:/? www.kmgattorneys.co.za/Docs/Article%2020procedueal%20Requirements%20for%20a%20strike.pdf > accessed 22 October 2023.

both substantively and procedurally fair and participation in such strikes may attract civil sanctions for those involved in the strike action.[84]

The Labour Appeal Court addressed the terms of Item 6, in the *County Fair Food v FAWU & others* case and concluded that our Courts have frequently stated that engaging in an illegal strike constituted serious and unacceptable misconduct. In this case, the employees refused to comply with numerous ultimatums to return to work. As a result, the Court concluded that "the facts showed that the Union and the employees displayed a complete disregard to the consequences of their actions on either the business of the employer or the employment relationship". The Court found that the sanction of dismissal was appropriate in the circumstances.[85]

3.2.3 The right to Strike

In South Africa, the right to strike is a constitutionally protected labour right. It is enshrined in the country's Constitution, particularly in the Bill of Rights. Section 23 of the Constitution of the Republic of South Africa, 1996, grants all employees the right to fair labour practices. Further, to be precise, section 23 (2) (c) grants all employees the right to strike.[86] This constitutional protection emphasizes the importance of the right to strike as a fundamental labour right. This recognition and protection are enshrined in the country's Constitution and other various labour laws and regulations within the Republic of South Africa.

The primary piece of legislation governing labour relations in South Africa is the Labour Relations Act (LRA). The right to strike is governed by the LRA, which provides a legal framework for industrial action, strikes, and lockouts. The LRA sets out the legal requirements and procedures for strikes and industrial action. It defines what constitutes a strike, including the right to strike, dispute resolution mechanisms, collective bargaining, and unfair labour practices. It outlines the processes to be followed for the strike to be deemed protected, the procedure for notifying employers and trade unions, and provides mechanisms for dispute resolution.[87]

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[84] Erasmus, I 'Protected and Unprotected Strikes' (May 2021) < https://ceosa.org.za/protected-and-unprotected-strikes/ > accessed 22 October 2023.
[85] *County Fair Food v FAWU & others* 2017 (CA02) ZALAC 9.
[86] Section 23 of the constitution of the Republic of South Africa 1996.
[87] Schulenburg, P 'A Comprehensive Guide to Understanding the Labour Relations Act' (July 2023) < https://pagelschulenburg.co.za/understanding-the-labour-relations-act/#:~:text= > Accessed 24 May 2024.

The LRA provides guidelines and procedures for the lawful exercise of the right to strike,[88] including:

- Dispute Resolution: The Act outlines processes for resolving labour disputes through conciliation, mediation, and arbitration before a strike can occur.

- Notice and Procedures: It requires certain procedures to be followed before a strike, such as providing written notice of the intention to strike, allowing parties to engage in negotiations, and obtaining a certificate of non-resolution from the Commission for Conciliation, Mediation, and Arbitration (CCMA) before commencing a strike.

- Protected Strikes: The LRA safeguards the right to participate in protected strikes, ensuring that employees are protected from dismissal or disciplinary action for participating in lawful strikes.

- Limitations and Exclusions: Certain categories of workers, such as essential service workers (e.g., police officers, healthcare workers), are restricted from striking to maintain essential services. Different regulations govern their right to strike to balance their essential role with their labour rights.

- Industrial Action: The Act also covers various forms of industrial action beyond strikes, such as picketing and lockouts, regulating their conduct and legality. The legislation aims to balance the rights of employees to strike with the broader public interest and the maintenance of essential services, ensuring that strikes are conducted within a framework that promotes fair labour practices and effective dispute resolution. Understanding the legalities surrounding industrial actions, such as strikes and lockouts, is essential for maintaining lawful and fair labour practices in the workplace.[89]

[88] Section 64 of the LRA 66 of 1995.

[89] Barter, H 'Industrial Action in South African Labour Law: Navigating the Legal Landscape' < https://www.bartermckellar.law/employment-law-explained/uq5mzi4bg99yaypgciad2664nh1agm#:~:text=In%20South%20Africa%2C%20industrial%20action%2C%20including%20strikes > Accessed 24 May 2024.

3.3 LIMITATIONS ON THE RIGHT TO STRIKE

In South Africa, while the right to strike is constitutionally protected and there are several limitations and regulations around its exercise. Apart from the general limitation contained in section 36 of the Constitution, the limitation of the right to strike is catered by other subordinate legislations.[90] The LRA further impose substantive and procedural limitations on the right to strike and as such, the right to strike can only be exercised if the substantive and procedural requirements as set out in Chapter IV of the LRA have been adhered to. Furthermore, the LRA restricts the right to strike by requiring pre-strike procedures, prohibiting strike action over certain issues in dispute, and prohibiting certain employees from striking.[91]

3.3.1 Substantive limitations of the right to strike

Substantive limitations refer to restrictions on the content or subject matter of the right to strike in addition to procedural limitations or requirements. In the case of *CWIU v Plascon Decorative (Inland) (PTY) LTD*, the Court ruled that the definition of a strike in the LRA is extensive and comprises of several elements, namely, stoppage of work by employees and for the stated purpose.[92] In South Africa, while the right to strike is constitutionally protected, there are substantive limitations that include:

- The partial or complete concerted refusal to work, or the retardation or obstruction of work.

A contract of employment binds an employee to provide services to the employer in exchange for remuneration. When an employee stops working or refuses to work, this is an element of a strike. The work stoppage must be for work that the employee is contractually obligated to complete and is legal. Work "retardation" or "obstruction" is also included in the definition which happens when employees slow down production.[93] In the case of *National Union of Mineworkers v Chrober Slate (Pty) Ltd*, the mine workers excavated slate but refused to allow it to be loaded by drivers until the employer provided a front-end loader to assist, which the Court determined was an obstruction of work. An obstruction of work

[90] Section 36 of the Constitution of the Republic of South Africa 1996.
[91] Subramanien, DC and Joseph, JL 'The Right to Strike Under the LRA 66 of 1995 and Possible Factors for Consideration that Would Promote the Objectives of the LRA' (2019) (22) 31 < https://www.saflii.org/za/journals/PER/2019/31.html#_ftn189 > accessed 18 November 2023.
[92] *CWIU v Plascon Decorative (Inland) (PTY)* LTD (1998) 12 BLLR 1191 (LAC).
[93] Bendix, S 'Industrial Relations in the New South Africa' (1996) (3 Ed) 75.

occurs when off-duty employees block access to company premises or intimidate fellow workers from performing their duties.[94]

- It must be a collective action or a concerted effort.

An individual employee cannot go on strike alone, there must be two or more employees who down tools. Their action will constitute a strike only if they act with a common purpose: they must have agreed to act in concert.[95] In the case of *Schoeman and another v Samsung Electronics (PTY) LTD; the* Court held that an individual employee cannot go on strike alone. The definition of strike makes provisions that the strike has both individual and collective elements. With regard to the individual elements, an individual employee has the right to decide whether to participate in the strike or not, and with regard to the collective aspect, the individual employee has the right to participate collectively in the strike action.[96]

- By persons who are or were employed by the same employer or by different employers.

The striking employees must have been employed by the same employer or by different employers; however this provision of "different employer" makes it possible for employees employed by different employers to embark on a strike. This is known as a secondary strike which is regulated by section 66 of the LRA.

- For the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between the employer and employees.

This is normally the core purpose of a strike. It is critical to highlight that the objective of a strike is dual- it must be to remedy a grievance between an employer and an employee, or it must aim to resolve a dispute between the employer and the employee. A matter of mutual interest is thus a subject between the employee and the employer. The term "matter of mutual interest" can refer to a wide range of topics that impact the employment relationship and allow employees to strike. In the case of *Floraline v SASTU*, the Labour Court held that for a strike as defined in section 213 of the LRA to exist or to be recognised, there must be a

[94] *National Union of Mineworkers v Chrober Slate (Pty) Ltd* (2008) 29 ILJ 388 (LC).
[95] CWIU v Plascon Decorative (Inland) (PTY) LTD (1998) 12 BLLR 1191 (LAC).
[96] *Schoeman and another v Samsung Electronics (PTY) LTD* (1997) 10 BLLR 1364 (LC).

purpose for embarking on a strike. In this case, the Court held that there was no strike, since, although there was a stoppage of work, there was no purpose or demand.[97]

In the case of *Pikitup (SOC) Ltd v South African Municipal Workers Union on behalf of Members & Others,* the Court accepted Grogan's definition of a mutual interest, which is "any matter that affects employees in the workplace, whether directly or indirectly and may thus form the subject matter of strike action". According to the Labour Appeal Court, mutual interest problems must be related to the employment relationship.[98]

3.3.2 Procedural requirements for strikes

Procedural limitations refer to the regulations and procedures that govern the execution of the right to strike. The LRA has established precise processes that must be followed in order for a strike to be protected, and if these specified procedures are not followed, employees lose the protection assigned to the right to strike. These procedural requirements are outlined in section 64 of the LRA.[99]

- Dispute Resolution Procedures:

Parties involved in a labour dispute are required to first go through mediation, conciliation, or arbitration processes (referral for conciliation to a bargaining council with the necessary jurisdiction or to the Commission for Conciliation Mediation and Arbitration (CCMA)), before resorting to a strike. The dispute resolution framework is critical to the right to strike since it aims to resolve conflict before employees participate in strike action. In keeping with its core goal of resolving disputes, the LRA has built dispute resolution mechanisms that are quick and easy to access. These procedures aim to facilitate dialogue and find a resolution without the need for strike.[100]

The Labour Relations Act states that if conciliation fails or a 30-day period has passed since the dispute was referred to the council or the CCMA for conciliation or a certificate issued stating that the dispute remains unresolved, the employees or their trade union must give the employer at least 48 hours' notice if the employer is a private employer or 7 days' notice

[97] *Floraline v SASTU* 1999 (J 886/97) ZALC 79.
[98] *Pikitup (SOC) Ltd v South African Municipal Workers Union on behalf of Members &* Others 2014 35 ILJ 983 (LAC).
[99] Section 64 (1) – (5) of the LRA 66 of 1965.
[100] Sattar, FA 'Procedural Requirements for a Strike' < http:/? www.kmgattorneys.co.za/Docs/Article%2020procedueal%20Requirements%20for%20a%20strike. pdf > accessed 22 October 2023.

if the employer is the State before embarking on a strike. The Act clearly requires such notice to be in writing.[101]

- Notice Requirements:

Prior to engage in any strike, there is a requirement for workers or unions to provide notice to the employer or relevant authorities within a specified timeframe. This notice period allows for negotiations or attempts at resolving the dispute before the strike occurs.[102] In the case of *Western Platinum Ltd v National Union of Mineworkers and Others*, the Court held that a strike notice stating that the strike will begin on Wednesday, 15 March at or before 15:00 complied with the provisions of section 64 (1) (b) because the notice indicated the date of the strike's commencement and gave the employer some indication of the time of the strike's commencement, although the strike did not commence at the exact time.[103]

3.3.3 Essential services

Section 213 of the LRA defines 'essential services' as 'a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population'.[104] Therefore, employees working in a sector that is deemed an essential service may not go on strike or engage in any strike action activities. Section 65(1) (d) (I) of the LRA states that no person may take part in a strike if that person is engaged in an essential service.[105]

Section 72 of the LRA provides that the legal recourse for employees engaged in essential services is for the parties to negotiate and enter into a minimum service agreement which regulate the level of service provided by workers in an essential service, and once such an agreement is concluded, and then employees can engage in strike action. If there is no minimum service agreement in place, section 74 of the LRA provides a dispute resolution

[101] Sattar, FA 'Procedural Requirements for a Strike' < http:/? www.kmgattorneys.co.za/Docs/Article%2020procedueal%20Requirements%20for%20a%20strike. pdf > accessed 22 October 2023.

[102] Sattar, FA 'Procedural Requirements for a Strike' < http:/? www.kmgattorneys.co.za/Docs/Article%2020procedueal%20Requirements%20for%20a%20strike. pdf > accessed 22 October 2023.

[103] *Western Platinum Ltd v National Union of Mineworkers and Others* (2000) 21 ILJ 2502 (LC).

[104] Section 213 of the LRA 66 of 1995.

[105] Section 65 (1) (d) (I) of the LRA 66 of 1995.

mechanism for employees who are not allowed to strike (referral of a dispute to the relevant Bargaining Council or the CCMA for adjudication and resolution).[106]

3.4 CONSEQUENCES OF UNLAWFUL STRIKES

For a strike to be deemed "protected", the LRA stipulates certain provisions and procedures that must first be complied with, and if a strike violates or fails to conform to the LRA's prescribed requirements and procedures, such strike is "unprotected". Employers can discipline employees who participate in unprotected strikes; however, they are bound by procedural requirements of the LRA which requires them to follow correct and fair procedures for any disciplinary action ought to be taken against any employee.[107]

According to section 67(8) of the LRA, strikers may be delictual and contractually liable for offences committed during a strike. They may also be interdicted from continuing with the strike if the strike is unlawful or turns violent. Strikers who disrupt the peace may be dismissed for misconduct if this is justified, and they may also be criminally charged. Employees lose the protections provided by labour laws during an unprotected strike, making them vulnerable to legal actions, engaging in any activities of unprotected strike can have severe consequences for employees, including potential dismissal.[108]

3.5 CONCLUSION

As provided and noted above, the right to strike as guaranteed by the Constitution and regulated by the LRA is only lawful and protected if the substantive and procedural requirements have been met. Section 64 of the LRA expands on the right to strike as provided to everyone, however, this right is conditional to compliance with the specified preliminary requirements. The breadth of those eligible to strike is broader in the Constitution than in the LRA. This is because the Constitution refers to all workers. In contrast, the LRA relates to all employees, which have several limitations as per the definition of strike as catered for in section 213 of the LRA. Thus, understanding the difference between protected and unprotected strikes is critical for South African

[106] Gungadeen, C 'Essential Services: A Restriction on an Employees' Constitutional Right to Strike' < https://ceosa.org.za/essential-services-a-restriction-on-an-employees-constitutional-right-to-strike/ > accessed 28 November 2023.

[107] Shepherd, R 'Strike Action: The Proper Procedure to Follow' < https://www.golegal.co.za/protected-strike-procedure/ > Accessed 19 November 2023.

[108] Barter, H 'Protected vs. Unprotected Strikes in South African Law: A Comprehensive Guide' < https://www.bartermckellar.law/employment-law-explained/protected-vs-unprotected-strikes-in-south-african-law-a-comprehensive-guide > accessed 19 November 2023.

employers and employees as can have serious consequences for employees, including potential dismissal.

4 CHAPTER FOUR – THE IMPACT OF VIOLENT STRIKES IN SOUTH AFRICA

4.1 INTRODUCTION

Violent strikes in South African workplaces have serious impacts or consequences. They frequently cause production disruptions, damage infrastructures, cause injuries to people and/or deaths, as well as create an atmosphere of fear and instability. They also have long-term effects on the economy, investors' confidence, and employee-employer-union relationships.[109] Furthermore, such strikes aggravate social tensions while exhausting government resources to deal with the aftermath and resolve underlying grievances.

In a democratic country like South Africa, the freedom to strike is essential. However, it becomes difficult if such strikes occur too frequently, causing economic damage and the loss of jobs, which are the primary sources of income for many families. The consequences of violent strikes affect a variety of industries. Most crucially, the economy suffers as a result, and poverty becomes the result.[110] As provided in the previous chapter the Constitution and the Labour Relations Act are premised on peaceful strike action, this chapter analyses the impact that violent strikes have, considering all social, political, and economic factors.

4.2 THE NATURE AND EXTENT OF THE IMPACT OF VIOLENT STRIKES

Violent strikes in the workforce harm a country's reputation and competitiveness in the global market. Such strikes project an image of labour unrest and instability, discouraging potential investors and harming commercial partnerships. They further harm South Africa's status as a reliable supplier. Labour strikes have significant negative effects on the economy, as evidenced by the case of South Africa. Violent strikes have far-reaching and detrimental effects that extend beyond the immediate labour disputes, the impact extend to economic, social, political, and legal aspects of our country.[111]

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[109] Shakti, J 'A Critical Analysis of Violent Strikes in South Africa' (2020) < https://researchspace.ukzn.ac.za/handle/10413/19071 > accessed 03 April 2023.

[110] Essay Basics 'Advantages and Disadvantages of Violent Strikes' < https://essaybasics.com/blog/advantages-and-disadvantages-of-strikes-essay-sample/ > accessed 28 November 2023.

[111] Norton, D and Lagesse, L 'Strike Action and Parliamentary Inaction are Damaging our Economy' < https://mg.co.za/thought-leader/2023-10-20-strike-action-and-parliamentary-inaction-are-damaging-our-economy/ > accessed 28 November 2023.

4.2.1 Impact on employment

Violent strikes in the workplace have severe consequences affecting both individuals and organizations. Physical injuries, psychological stress, damage to property, loss of production, heightened tensions among employees, strained employer-employee relationships, legal ramifications, and a negative impact on the company's reputation are all possible consequences of violent strikes. Furthermore, they result in financial implications/losses as a result of halted activities, or the costs involved with repairing damage caused by violent strikes.[112] Violent Strikes have a tremendous impact on both the employers and employees in various ways.

4.2.1.1 Impact on the employer

Violent strikes have a negative impact on employers in various ways, including financial losses, harms employer's reputation, affect productivity and strain the employee-employer relationship.

4.2.1.1.1 Financial loss

Strikes lead to financial losses due to halted operations, decreased productivity which leads to lower profitability, and potential damage to property and they are regarded as threats to free enterprise and social order. The employer is likely to lose money due to delayed service to clients or to lost production time such as the Marikana miners strikes in 2012 which led to a tragic incident where 34 miners were killed by police during a confrontation, and as a result the financial repercussions of the strike were substantial as there was a decline in share value and the company could not meet its annual production targets.[113]

4.2.1.1.2 Reputational harm

Companies suffer from negative publicity and harm to their reputation, affecting customer trust and investor confidence. Violence during a strike creates a negative public perception about the employer. It portrays the company as an unsafe or unstable workplace, leading to

[112] Ahlawat, S 'Consequences for Unlawful Strikes and Lockouts' < https://subhashahlawat.com/blog/consequences-unlawful-strikes-and lockouts#:~:text=Engaging%20in%20an%20unlawful%20strike%20can%20have%20serious,to%20replace%20striking%20workers%20permanently%20in%20some%20cases > Accessed 28 November 2023.

[113] Israelstam, I 'What is the Impact of Strikes for Employers and Employees' < https://www.skillsportal.co.za/content/what-impact-strikes-employers-and-employees > accessed 28 November 2023.

distrust among customers, stakeholders, and the general public. Media coverage of violent strikes can be detrimental, potentially sensationalizing the negative aspects of the company's management practices or labour relations. A company's brand image also suffers, as the violent strike in most instances contradict its values or corporate social responsibility initiatives. This could lead to a loss of consumer trust and loyalty. Overall, violent strikes significantly tarnish an employer's reputation, impacting various stakeholders and potentially affecting the long-term success and growth of the company. [114]

4.2.1.1.3 Reduction of Productivity

Disruption caused by violent strikes can significantly reduce productivity, affecting the company's output and profitability. Operations may come to a halt or experience severe disruptions during violent strikes, impacting the completion of tasks and projects. Even after a strike ends, employees might face emotional distress, fear, or safety concerns, leading to increased absenteeism, reduced focus, and lower engagement. Management's attention and resources may be diverted from regular business operations to address the aftermath of the violent strikes, affecting productivity and strategic planning, such as the 2014 labour strike in the mining sector that had profound effects on productivity, the strike lasted 5 months, involving major companies such as Anglo American Platinum and Impala Platinum that led to a prolonged halt in operations.[115] In summary, the disruptive nature of violent strikes directly impedes workflow, creates distractions, and instil a sense of uncertainty that significantly reduces productivity within the organization.[116]

4.2.1.1.4 Employee-Employer Relations

Strikes can strain relationships between management and employees, leading to a breakdown in trust and communication. Instances of violence during strikes can erode trust and respect between the workforce and management. Employees might perceive the company as insensitive or uncaring about their concerns, while employers might view the employees as disruptive or aggressive. The breakdown of communication channels often occurs during and after violent strikes, making it challenging for both parties to understand each other's perspectives and needs, one notable example is the Marikana miners strike of

[114] Rajalakshmi, R 'The impact of strike to an organization'< https://www.projectguru.in/the-impact-of-strike-t-an-organization/#: > accessed 28 November 2023.

[115] 2014 South African Platinum strike < https://www.sahistory.org.za/article/2014-south-african-platinum-strike-longest-wage-strike-south-africa> accessed 31 31 January 2025

[116] Editology 'Negative Effects of Strikes on the Economy of South Africa' < https://editology.co.za/negative-effects-of-strikes/#:~:text=Strikes > Accessed 28 November 2023.

2012, where prolonged industrial action and violent clashes led to mass dismissals and even fatalities.[117] A negative shift in the employee-employer relationship can affect the overall company culture, leading to decreased employee morale, loyalty, and a lack of commitment to the organization. Post-strike, resolving disputes and conflicts becomes more challenging as both sides might be entrenched in their positions, making it difficult to find common ground for reconciliation. Violent strikes can severely strain the relationship between employees and employers.[118]

4.2.1.2 Impact on employees

As much as violent strikes impact the employer, they on the other side have tremendous negative impact on employees on several aspects, including remunerations or income; they lead to job insecurity and further have an impact on the work environment.

4.2.1.2.1 Loss of income

Violent strikes can lead to significant income loss for employees leading to financial instability. During a violent strike, work operations normally cease completely, causing employees to lose their regular wages for the duration of the strike. Employees participating in strikes may not receive any payment for the time they are absent from work, impacting their income for that period. Prolonged strikes also lead to job termination or layoffs, especially if the company faces financial strain or restructuring due to the strike's impact, resulting in a more prolonged loss of income for affected employees. Along with lost wages, employees participating in strikes might also lose access to employer-provided benefits such as health insurance or retirement contributions, further impacting their financial situation.[119] The financial repercussions of participating in a violent strikes have a lasting and significant impact on the income and financial stability of the employees involved.

4.2.1.2.2 Job security

Violent strikes lead to job insecurity or layoffs if the company faces financial strains or structural changes. Violent strikes disrupt company operations and lead to financial losses

[117] Twala, C 'The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa'< https://www.saccps.org/pdf/1-2/SAPSS%201(2)%20Twala.pdf> Accessed 01 February 2025.

[118] Coetzer, N & Mulligan, T 'What do the Courts Say about the Reinstatement of Violent Strikers' < https://www.golegal.co.za/employee-strike-violence/ > Accessed 29 November 2023.

[119] Adminaffirm 'The Effects of strikes on Businesses and Employees' < https://affirmativeportfolios.co.za/the-affects-of-strikes-on-businesses-and-employees/ > accessed 29 November 2023.

which may result in loss of employment for some employees, particularly if the company needs to downsize or restructure due to the strike's impact on its viability. Employees who actively participate in violent strikes may be viewed unfavourably by the employer, potentially impacting their reputation within the company, and influencing future career opportunities or promotions. After a violent strike, it may take time for the company to recover financially and operationally, which can delay hiring new employees or reinstating normal business operations, further impacting job security.[120] Overall, violent strikes can create an atmosphere of instability, fear, and uncertainty regarding job security for employees, directly affecting their long-term career prospects within the organization.

4.2.1.2.3 Work Environment

Tensions and conflicts arising from strikes may negatively affect the overall work environment, causing stress and emotional strain among employees. The occurrence of violence during strikes can instil fear and create a tense atmosphere within the workplace. Employees might feel unsafe or anxious about returning to work, impacting their mental well-being. The trust relationship between employees and management can suffer significantly. Such incidents can create rifts among co-workers, making it challenging to rebuild a cohesive and collaborative working environment. Witnessing or experiencing violence during strikes can lead to decreased morale among employees. It can affect motivation, enthusiasm, and commitment to their work, impacting overall productivity.[121]

4.2.2 Impact on the economy

Violent strikes can have broader economic implications for a country. Strikes in key industries can disrupt production, distribution, and services, impacting the overall economy. For instance, strikes in sectors like transportation, manufacturing, or utilities can disrupt supply chains, leading to shortages and affecting economic output. The halt or slowdown of operations due to strikes can lead to decreased productivity, impacting the Gross Domestic Product (GDP) of the country. Ongoing or recurrent violent strikes can undermine investor

[120] Tenza, M 'Is the Employer Compelled to Provide Safe Working Conditions to Employees during a Violent Strike' < http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072021000100009 > accessed 05 April 2023.

[121] Louw, L 'SA law is Clear About Work and Civil Unrest' < https://www.businesslive.co.za/bd/opinion/2021-07-15-sa-law-is-clear-about-work-and-civil-unrest/#google_vignette > Accessed 28 November 2023.

confidence in the country's stability, potentially deterring foreign investments and impacting the business environment.[122]

South Africa's primary source of income is employment; the state is highly reliant on income taxes collected from working individuals. Violent strikes might lead to job losses or reduced hiring, impacting the employment rate and contributing to increased unemployment in affected sectors or regions.[123] The government might intervene or incur additional costs to manage and address the impact of violent strikes, which can strain public finances or divert resources from other critical areas. Smaller businesses within the affected industries might struggle to survive the economic repercussions of strikes, leading to closures or financial difficulties. Overall, violent strikes can have a cascading effect on various economic aspects of a country, affecting growth, employment, investor perception, and the overall stability of the economy.[124]

4.2.3 Impact on political landscape

Violent strikes significantly impact the political landscape of a country in several ways. The government's reaction to violent strikes can shape public opinion and perception of its effectiveness. It may need to intervene, take measures, or negotiate with stakeholders to address the underlying issues, influencing public trust in the government's ability to handle social unrest. Global events and societal issues have gotten increasingly entwined with politics in recent years. People's participation in political rallies and discussions has increased, and there has been a rise in public awareness of politics' influence and possibility for change.[125]

How the government handles violent strikes can affect its popularity and support among the population. Mismanagement or failure to address the issues that led to the strikes can lead to public discontent or criticism of government policies. Violent strikes may compel the government to consider policy reforms or legislative changes aimed at addressing labour

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[122] Rajalakshmi, R 'The impact of strike to an organization'< https://www.projectguru.in/the-impact-of-strike-t-an-organization/#: > accessed 28 November 2023.

[123] Tenza, M 'The Effects of Violent Strikes on the Economy of a Developing Country: a Case of South Africa' (2020) 42(3) Obiter < http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532020000300004 > accessed 03 April 2023.

[124] Ask South Africa 'What is the Impact of Labour Strikes' < https://asksourthafrica.com/what-is-the-impact-of-labour-strikes:, > Accessed 29 November 2023.

[125] The Politics Watcher 'The Impact of Politics on Society' (28 February 2023) < https://thepoliticswatcher.com/pages/articles/congress/2023/2/28/impact-politics-society) > accessed 28 February 2024.

issues, worker's rights, or improving industrial relations. How a country deals with violent strikes can influence its image on the global stage. Political unrest caused by such strikes might affect diplomatic relations or international perception, impacting trade, investments, and foreign policies. Conflict has been a part of the history of South Africa's political and economic fabric.[126]

The handling of violent strikes and its aftermath can become a significant factor influencing public opinion during normal circumstances and worst part during elections, potentially impacting electoral outcomes and the political landscape. In summary, violent strikes can significantly impact political factors, including government response, public opinion, policy changes, social stability, international relations, and even electoral dynamics within a country.

4.2.4 Impact on social aspects

Violent strikes can have far-reaching effects on various social factors within a country. Strikes marked by violence can strain relationships between different segments of society, creating divisions among workers, management, and communities affected by the strikes. Violent strikes may lead to mixed public perceptions, with some supporting the cause and others condemning the violence. It can affect the level of solidarity and support among different social groups towards the striking workers or the affected industry.[127]

Strikes impacting essential services or industries can disrupt daily life for communities, affecting access to services, transportation, and goods. This disruption can affect the overall well-being of individuals and families. Violent strikes impact the quality of life for those involved and for the general public. Loss of income, disruption of services, and social tensions can lead to increased stress, anxiety, and decreased overall well-being. Many protesters believe disruptive tactics are the only way to attract the government's attention. The loss of income due to strikes can affect families, leading to financial strain, potential hardships, and difficulties in meeting basic needs, affecting the overall social fabric.[128] In

[126] Political Economy 'History of Conflict and Its Impact on South African Development' (February 2019), < https://politicaleconomy.org.za/2019/02/history-of-conflict-and-its-impact-on-south-african-development/> accessed 29 February 2024.

[127] Tenza, M 'The Effects of Violent Strikes on the Economy of a Developing Country: a Case of South Africa' (2020) 42(3) Obiter < http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532020000300004 > accessed 03 April 2023.

[128] Chiwarawara, K 'Violent Protests in South Africa: Understanding Service Delivery Protests' (Sep 2023), < https://www.tandfonline.com/doi/full/10.1080/02589346.2023.2257502, > accessed 30 February 2024.

essence, violent strikes can impact social cohesion, community well-being, public perceptions, and the discourse around socio-economic issues, influencing various aspects of social life and interactions within a country.

4.3 CONCLUSION

Violent strikes carry negative implications due to various reasons. They pose risks to the safety and well-being of individuals involved, including protesters, bystanders, law enforcement, and others caught in the conflict. Violent strikes often result in property destruction, vandalism, and economic losses, impacting communities and businesses negatively. They can overshadow peaceful protests, divert attention from the cause, and undermine the legitimacy of non-violent forms of resistance. Participants in violent strikes may face legal repercussions, tarnished reputations, and challenges in future activism or advocacy efforts due to their involvement in violent actions.

South Africa's history of apartheid and ongoing struggles for social justice and equality can fuel tensions leading to violent strikes as a form of protest against perceived injustices. Violent strikes disrupt economic activities, impacting industries, businesses, and the livelihoods of workers, exacerbating economic challenges in affected regions. They sometimes signal dissatisfaction with government policies, leadership, or perceived lack of progress in addressing systemic issues, potentially leading to broader political unrest. Addressing the root causes of these strikes often requires comprehensive measures addressing socio-economic disparities, effective governance, and inclusive policies aimed at building a more equitable society.

5 CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

As derives from the study, it is apparent that due to the previous government's illegitimacy and their clear refusal to engage in peaceful democratic transition negotiations, violence became the only option South Africans could express their demands. Violent strikes in the South African workplace are often symptomatic of deeper socio-economic issues such as inequality, poverty, and historical grievances. While strikes can be a legitimate form of expressing grievances, resorting to violence undermines the intended message and has severe consequences for both workers and employers.[129]

In SA, there is no single or easy way to reduce violent strikes. The attainment of this objective necessitates a multifaceted and intricate strategy, involving the collaboration of all stakeholders impacted by strike violence, including trade unions, employers, employees, and the government acting in both its capacity as a stakeholder and the representative of South African citizens. These stakeholders must engage in sincere discussions, debates, and dialogues aimed at reaching a mutually beneficial and agreeable solution or solutions to reduce violent strikes.[130]

5.2 CONCLUSION DRAWN FROM THE STUDY

Assessing the effectiveness of existing labour policies and mechanisms for dispute resolution in South Africa requires a multi-faceted approach. Effective assessment and improvement of labour policies and dispute resolution mechanisms in South Africa requires a holistic approach that addresses legal, institutional, socio-economic, and historical factors while promoting dialogue, collaboration, and social justice.

5.2.1 Legislative framework

South Africa has robust labour legislation, including the LRA that provides a framework for collective bargaining, dispute resolution, and the right to strike. However, there are gaps in implementation or enforcement that need to be addressed. The LRA offers strikers

[129] McCleland, D 'Violence During Strikes: What are the Underlying Causes and Solution' < http://thecasualobserver.co.za/violence-strikes-underlying-causes-solution/ > accessed 04 March 2024.

[130] Paton, C 'Effective Action can be Taken to Reduce Long/Violent Strikes' < https://www.leader.co.za/article.aspx?s=6&a=5052 > accessed 07 April 2024.

protection against termination and civil action if they abide by the statute's requirements, and it deprives them of protection if they do not. Instead of imposing criminal penalties on strikers or protest participants who violate its provisions, the LRA offers protection against both. Individuals who adhere to the legislative provision are safeguarded, while those who do not adhere are not.[131]

5.2.2 Trade unions

Trade unions play a crucial role in representing workers' interests and negotiating with employers. Assessing their effectiveness involves evaluating their ability to mobilise and represent workers, engage in meaningful collective bargaining, and resolve disputes peacefully. In the long history of labour relations, the time has come for trade unions to bear responsibility for the deeds of its members. Trade unions have glibly washed their hands of the violent conducts of their members for far too long.[132]

5.2.3 Dispute Resolution Mechanisms

The government sought all parties to uphold the rule of law as guaranteed by the Constitution and voiced its worry over violence, intimidation, and lawlessness. In addition, it urged strikers to follow established protocols that are spelt out in labour laws and avoid using violence and intimidation in place of wage discussions and dispute resolution processes. South Africa has various mechanisms for resolving labour disputes, including the Commission for Conciliation, Mediation, and Arbitration (CCMA). Evaluating their effectiveness entails examining accessibility, efficiency, fairness, and the ability to address underlying grievances.[133]

5.2.4 Employer Practices

Assessing the role of employers involves examining their adherence to labour laws, engagement in fair labour practices, and willingness to negotiate and address workers' concerns. Employers should acknowledge that the main objective of introducing violence

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[131] Nene, T 'Legislative Protection of the Right to Strike and Lockout' (March 2022) < https://ceosa.org.za/legislative-protection-of-the-right-to-strike-and-lockout/ > accessed 30 March 2024.

[132] Ashersons Attorneys 'Strike Violence (Trade Union in Trouble)' < https://www.ashersons.co.za/articles/strike-violence-trade-union-in-trouble/ > accessed 30 March 2024.

[133] Sibanyoni, J 'Labour Disputes and labour legislation' < https://www.gov.za/blog/labour-disputes-and-labour-legislation > accessed on 30 March 2024.

during strike is to ensure that the strike impacts negatively on the employer thus, necessitating a speedy resolution from both sides.[134]

5.2.5 Addressing underlying issues

To address the underlying issues contributing to violent strikes, there needs to be a focus on addressing socio-economic inequalities, improving working conditions, addressing historical grievances, and promoting dialogue and collaboration between employers, workers, and government stakeholders. Engaging with communities, civil society organizations, and other stakeholders is essential for understanding and addressing the broader socio-economic context in which labour disputes occur. The sudden upsurge in strike violence and intimidation is indicative of a changed dynamic.[135]

5.3 RECOMMENDATIONS

To curb violent strikes in the South African workplace, several recommendations ought to be considered:

5.3.1 Invest in conflict resolution skills

Conflict resolution skill entails finding peaceful and mutually acceptable resolutions to disagreements, reducing tension, and restoring a spirit of collaboration and understanding among the parties engaged in an unresolved issue. Provide training and support for both employers and workers in conflict resolution, negotiation, and communication skills to facilitate constructive dialogue and prevent escalation to violence. This skilful and frequently methodical technique helps to keep problems from growing into more serious conflicts or important concerns, resulting in a more harmonious and productive environment.[136]

5.3.2 Strengthen Legal Framework

Ensure effective implementation and enforcement of labour laws to protect workers' rights, promote fair labour practices, and hold employers and trade unions accountable for their

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[134] Tenza, M 'Is the Employer Compelled to Provide Safe Working Conditions to Employees during a Violent Strike' < http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072021000100009 > accessed 05 April 2023.

[135] McCleland, D 'Violence During Strikes: What are the Underlying Causes and Solution' < http://thecasualobserver.co.za/violence-strikes-underlying-causes-solution/ > accessed 04 March 2024.

[136] Santhosh 'Why is Conflict Resolution Training in the Workplace Important' < https://www.culturemonkey.io/employee-engagement/conflict-resolution-training/ > accessed 07 April 2024.

actions. Employers have a legal and ethical responsibility to comply with the country's labour legislation to protect the rights and well-being of their employees. Compliance with labour regulations in the workplace is more than just a legal requirement; it is also an essential step towards ensuring fairness, employee well-being, and organisational success.[137]

5.3.3 Promote social dialogue

Foster a culture of constructive engagement and collaboration between employers, workers, trade unions, and government stakeholders through regular forums, consultations, and joint initiatives to address grievances and find mutually beneficial solutions. Good communication and effective engagement with all stakeholders can prevent anger and violence.[138]

5.3.4 Address socio-economic inequalities

Implement policies and programs to address underlying socio-economic inequalities, including poverty, unemployment, and unequal access to education, healthcare, and housing, which often fuel labour unrest and lead to violent strikes.[139]

5.3.5 Enhance dispute resolution mechanisms

Improve accessibility, efficiency, and fairness of dispute resolution mechanisms such as the Commission for Conciliation, Mediation, and Arbitration (CCMA) to facilitate timely and peaceful resolution of labour disputes.[140]

5.3.6 Promote responsible leadership

Encourage responsible leadership among employers, trade unions, and government officials by promoting transparency, accountability, and ethical conduct in labour relations and

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[137] Labour Law in Your Pocket 'Ensuring Compliance with Labour Laws in the Workplace: A Vital Imperative for South African Employers' < https://www.laboured.org.za/ensuring-compliance-with-labour-laws-in-the-workplace-a-vital-imperative-for-south-african-employer/ > accessed 07 April 2024.

[138] Gould, C 'Lessons in Preventing Violent Protest in South Africa' < https://issafrica.org/iss-today/lessons-in-preventing-violent-protest-in-south-africa > accessed 07 April 2024.

[139] De Rebus 'Adding Fuel to the Fire – What is the Remedy to Curb Violent Strikes' < https://www.derebus.org.za/adding-fuel-to-the-fire-what-is-the-remedy-to-curb-violent-strikes/ > accessed 07 April 2024.

[140] Jordaan, B 'Mediation and Conciliation in Collective Labour Conflicts in South Africa' < https://link.springer.com/chapter/10.1007/978-3-319-92531-8_19 > Accessed 24 May 2024.

decision-making processes. In today's complicated and fast changing environment, leadership plays a crucial role in reducing workplace violence across all industries.[141]

5.3.7 Address historical grievances

Acknowledge and address historical grievances, including those stemming from apartheid-era policies, through meaningful reparations, reconciliation processes, and inclusive socio-economic development initiatives.[142]

5.3.8 Promote non-violent conflict resolution

Encourage the adoption of non-violent conflict resolution strategies and principles, including mediation, dialogue, and negotiation, as preferred methods for addressing labour disputes and promoting social cohesion.[143]

5.4 CONCLUSION

Curbing violent strikes in the South African workplace involves a multi-faceted approach that addresses both the root causes of the violence and the immediate triggers. Addressing these issues requires a holistic approach that involves improving labour relations, enforcing and revising laws, enhancing working conditions, and engaging the community. Through these measures, it is possible to create a more stable and peaceful work environment. By implementing these recommendations comprehensively and collaboratively, stakeholders can work towards curbing violent strikes in the South African workplace while promoting fair labour practices, social justice, and economic stability.

[141] Belton, J 'Leadership's Crucial Role in Preventing Workplace Violence: A Holistic Approach' < https://www.linkedin.com/pulse/leaderships-crucial-role-preventing-workplace-judith-belton-phd > accessed 07 April 2024.

[142] Farber, K 'Labour Strike' < https://eddy.com/hr-encyclopedia/labor-strike/ > accessed 07 April 2024.

[143] Haunts, S 'Conflict Resolution in the Workplace' < https://www.pluralsight.com/courses/conflict-resolution > accessed 07 April 2024.

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