

## Indian Ocean Networks and the Transmutations of Servitude

The Protector of Indian Immigrants and the Administration of Freed Slaves and Indentured Labourers in Durban in the 1870s

Kaarsholm, Preben

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# **Indian Ocean Networks and the Transmutations of Servitude: The Protector of Indian Immigrants and the Administration of Freed Slaves and Indentured Labourers in Durban in the 1870s**

Preben Kaarsholm (Roskilde University)

*Focusing on Durban and its harbour, the article discusses the importation of different kinds of transnational bonded labour into Natal in the last half of the nineteenth century, and examines the ways in which Southern African and Indian Ocean histories were intertwined in the processes that built the colonial state. The institution of the Protector of Indian Immigrants is highlighted as a central ingredient in state building, which served to give legitimacy in regulating the supply of labour. The early history of the Protector's work in the 1870s is given special attention as regards the introduction into Natal of freed slaves from the Indian Ocean coast, of indentured labourers from India, and of 'Amatonga' migrant workers from Mozambique. An 1877 murder case is discussed, which led to the forced resignation of a Protector, as it threatened to undermine the respectability of the institution. The article shows the continuities that existed between forms of servitude from slavery and forced labour through the recruitment of 'liberated Africans' and indentured Indians to more recent types of migrant and voluntary wage labour.*

Durban and its port were focal points for the contestations around citizenship and legitimacy that went along with early state building in Natal in the last half of the nineteenth century. Access to land and labour were central concerns for the Natal settlers, and as a British colony the forms of government introduced to regulate labour recruitment had to take standards of fairness and civilisation into account that would make the rule of the colonial state appear legitimate. Interests in land and labour were to some extent contradictory – on the one hand, there were too many Africans in Natal who were in the way of settler expansion, and who were too prosperous to be easily transformed into cheap labour. On the other hand, the Natal settlers also relied for supplies on the agricultural products of African farmers, and – as state building

progressed – came to depend on revenue contributed by Africans in the form of the hut tax, which presupposed prosperity among African households.<sup>1</sup>

While land distribution went ahead through the allocation of farms and designation of crown land and locations, the challenge of the supply of cheap labour had to be addressed in innovative ways. The abolition of the slave trade was an important ingredient in the legitimisation of British colonial expansion that served to set British colonial government apart from that of both the Portuguese and the Afrikaans-speaking Boers. Varieties of forced labour – *isibhalo* in Zulu – were drawn upon by some farmers and in connection with public works, and could be mobilised through the obligations of African chiefs who recognised the colonial state. But forced labour at low rates of pay was unpopular among both chiefs and labourers, and early forms of migrant labour were introduced to replace it. Thus the early importation of indentured 'Amatonga' labourers coming to Natal from Mozambique through Zululand and mediated through the 'white chief', John Dunn, represented an intermediary form that played an important role in the early development of the Natal sugar industry and prepared the way for larger-scale introductions of migrant labour.<sup>2</sup> Other supplies were the recruitment of 'refugees' from Zululand, which needed the approval of the Secretary for Native Affairs, or of labourers from Mauritius where Indian indentured labour had been imported to replace slaves since the 1830s.<sup>3</sup>

The port of Durban and the Indian Ocean networks within which the port was a hub came to play a crucial role in the development of new forms of labour supply, and the transformations of slavery and forced labour into voluntary wage labour. An intermediary form of labour supply was provided by the shipments of freed slaves –

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<sup>1</sup> The development of these contradictions is brought out brilliantly in Jeff Guy's book on *Theophilus Shepstone and the Forging of Natal* (Pietermaritzburg, University of KwaZulu-Natal Press, 2013). The significance of hut tax payments for colonial state revenues is explained in Patrick Harries, *Work, Culture, and Identity: Migrant Labourers in Mozambique and South Africa, c. 1860-1910* (London, James Currey, 1994), p. 20.

<sup>2</sup> Harries, *Work, Culture*, p. 19. In the mid-1870s, there are monthly accounts in the records of the Protector of Indian Immigrants from John Dunn and from W. Jackson, Immigration Agent at Lower Tugela, of 'emigrants coming to Natal through Zululand', and 'ferried across the Tugela' in numbers of usually between 300 and 500 per month. Pietermaritzburg Archives Repository (hereafter PAR), Indian Immigration Papers (II), 1/1, 1875-76.

<sup>3</sup> Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920* (London, Oxford University Press, 1974), p. 63. For permission to import Indian labourers from Mauritius into Natal, see e.g. PAR II, 1/1, 815/1876. For the employment of 'refugees' from Zululand, see e.g. 'refugee regulations' in minute from Theophilus Shepstone, PAR II, 1/1, 191/1876.

most commonly from Northern Mozambique – who were made available as indentured labourers for both public works and private employment. They arrived in Natal at a time from 1873, when there was a halt in the importation of Indian indentured labour for the sugar plantations, which had begun in 1860.

Like the freed slaves, the Indian indentured labourers arrived in Durban by ship, and were accommodated first at a 'depôt' at the Point. Both freed slaves and indentured labourers from 1872 onwards would be met on arrival by representatives of the Protector of Indian Immigrants, who had to come on board their ships of disembarkation to check health and sanitary conditions. Legally and administratively, they would then continue to be the responsibility of the Protector, whose powers were extensive and included those of a magistrate, initially adjudicating both disputes under the Masters and Servants Act and other civil cases as relating to e.g. marriage.<sup>4</sup>

It was the institution of the Protector of Indian Immigrants, which guaranteed the clear demarcation between the status of an indentured labourer and that of a slave, and which therefore provided legitimation of the colonial state's practices of expanding the supply of labour. Its establishment followed recommendations in the Report of the 'Coolie Commission' in 1872:

There is no doubt the term ['Coolie'] is galling, and a source of annoyance. We would suggest that the term 'Indian Immigrants' be substituted for that of Coolie in all official documents, and that the designation of 'Coolie Agent' be changed to that of 'Protector of Indian Immigrants.' On the whole, we are of opinion, as to the general condition of the Indians now in the Colony, that they are not and never have been subject to any systematic ill-treatment or oppression by their employers. Isolated and individual cases have doubtless occurred, but under the revised system of supervision we have recommended, even these, it is hoped, will disappear.<sup>5</sup>

The background to the appointment of the Coolie Commission and its recommendations was, however, serious enough. Among the Indian indentured labourers who had first

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<sup>4</sup> Nafisa Essop Sheikh, 'Labouring under the Law: Gender and the Legal Administration of Indian Immigrants under Indenture in Colonial Natal, 1860-1907' (Master's dissertation, University of KwaZulu-Natal, 2005), p. 29f.

<sup>5</sup> *Report of Coolie Commission, Appointed to Inquire into the Condition of the Indian Immigrants in the Colony of Natal* (Pietermaritzburg, Keith & Co. Printers to the Legislative Council, 1872), p. 13.

arrived in Durban in 1860 on the *Truro* from Madras and the *Belvedere* from Calcutta, many – on their return to India – had complained of the bad treatment they had received in Natal in terms of overwork, punishments, unhygienic accommodation, and poor food. Such complaints had been made with particular force by 387 labourers who returned to India on the *Red Riding Hood* in 1871 – 156 to Madras and 256 to Calcutta – having earned their right to a free return passage by having added a second five-year period of indenture to their original contracts.<sup>6</sup>

These complaints were passed on to the Government of India through its Protector of Emigrants at Madras, and came at an inopportune moment for planters and politicians in Natal, who were keen to have the importation of indentured labourers resumed, which had been suspended in Natal since 1866, when there was an economic downturn. Because of the complaints, the Government of India now insisted that the conditions of the Indian indentured labourers were investigated and that steps were taken to ensure that the complaints voiced by the returnees were taken into account.<sup>7</sup>

### **The Tasks of a Protector**

Historical models for the institution of the Protector of Indian Immigrants were the Protectors of Slaves that had been introduced in the Cape in the context of abolition from the late 1820s, and also in British plantation colonies like British Guiana (Demerara), Trinidad, St. Lucia and Mauritius.<sup>8</sup> Also in the Protectors of Immigrants that were already in place in Mauritius and British Guiana – and in French colonies like Réunion – and in the Protectors of Emigrants that had been appointed in India first by the East India Company in 1843.<sup>9</sup> Similarly, Protectors of Aborigines had been centrally placed within the development of a 'humanitarian imperialism' in Van Diemen's Land,

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<sup>6</sup> Ashwin Desai and Goolam Vahed, *Inside Indenture: A South African Story, 1860-1914* (Durban, Madiba Publishers, 2007), p. 75ff.

<sup>7</sup> *Ibid.*, p. 78.

<sup>8</sup> Tinker, *A New System*, p.14f. and 105; John Edwin Mason, 'The Slaves and their Protectors: Reforming Resistance in a Slave Society, the Cape Colony, 1826-1834', *Journal of Southern African Studies*, 17, 1 (March 1991), pp.103-128; Wayne Dooling, *Slaves, Emancipation and Colonial Rule in South Africa* (Athens, Ohio University Press, 2008), p. 85ff.

<sup>9</sup> Tinker, *A New System*, p. 77 and p. 105.

Australia and New Zealand, which – through George Grey – became an inspiration for British colonial policy in the Eastern Cape.<sup>10</sup>

The Coolie Commission had been presided over by the Attorney General of Natal, M. H. Gallwey and Major-General B. Pryce Lloyd, and in November 1872, under the new Law passed to implement the recommendations of the Commission, Pryce Lloyd was appointed as the first Protector of Immigrants in Natal.<sup>11</sup> Based in Pietermaritzburg, and a member of both the Natal Legislative and Executive Council, the Protector would have a Durban-based Deputy Protector. The obligations of his office included the inspection of ships on the arrival of immigrants, health and hygienic controls, inspection of accommodation and rations, as well as the moral guardianship of immigrants, including marriages and relations between male and female immigrants.<sup>12</sup> The Protector was meant to protect indentured labourers against over-exploitation, but would also have responsibilities vis-à-vis immigrants who had completed their contracts of indenture and had exercised their right to buy land in Natal as an alternative to a free passage back to India.

Most of all, the Protector of Indian Immigrants was meant to protect the colonial state and give it legitimacy. As an institution and symbol, the Protector would demarcate the difference between indentured labour as regulated by him on the one hand and slavery and forced labour on the other. This was particularly important to the British Imperial Government, within which Natal was a colonial subsidiary, and which in the 1870s was very actively involved in campaigns to suppress the slave trade along the African Indian Ocean coast. These campaigns were given much attention in British media and had the strong backing of church and civil society institutions like the Anti-Slavery Society and the Aborigines' Protection Society.<sup>13</sup>

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<sup>10</sup> Alan Lester and Fae Dussart, *Colonization and the Origins of Humanitarian Governance: Protecting Aborigines across the Nineteenth-Century British Empire* (Cambridge, Cambridge University Press, 2014), pp. 226-275.

<sup>11</sup> Law No. 12 of 1872. See Mabel Palmer, *Natal Regional Survey*, vol. 10: *The History of the Indians in Natal* (Cape Town, Oxford University Press, 1957), p. 37.

<sup>12</sup> Nafisa Essop Sheikh, 'Making the Personal Civil: The Protector's Office and the Administration of Indian Personal Law in Colonial Natal, 1872-1907', *Journal of Natal and Zulu History*, 23 (2006/6), pp. 43-72. Cf. Desai and Vahed, *Inside Indenture*, p. 74.

<sup>13</sup> James Heartfield, *The Aborigines' Protection Society: Humanitarian Imperialism in Australia, New Zealand, Fiji, Canada, South Africa, and the Congo, 1836-1909* (London, Hurst, 2011), pp. 233-291.

The impact of the slave trade in Portuguese East Africa to the north had been felt very directly in Zululand and Natal.<sup>14</sup> At the same time, the use of African women and children as slaves was common practice among Afrikaner trek farmers in the Klip River division and the North Eastern reaches of Natal.<sup>15</sup> The use of forced labour was also well-established – in particular in public works like road construction. This could be convict labour, but also took the form of *isibhalo* commandeered through chiefs, around which there was increasing controversy.<sup>16</sup> The need for labourers for public works became particularly urgent in Durban and Natal, as the economy picked up again in the 1870s after the depression, and projects to expand the Durban harbour, extend the Berea Road into a major highway from the coast to the interior, and the building of railways became politically prominent.

### **The Protector and the Freed Slaves from Mozambique**

Banastyre Pryce Lloyd took office as the first Protector of Indian Immigrants in 1872, but the importation of Indian indentured labourers was only resumed in July 1874, when three steamers arrived in Durban from Calcutta – the *Jason* with 619, the *Ailsa* with 499, and the *Blenheim* with 669 labourers on board.<sup>17</sup> This meant that the first indentured labourers to come under the Protector of Indian Immigrants were not actually Indians, but were the groups of freed slaves from Mozambique, who began to be landed in Durban from August 1873. This came about as the result of close collaboration between the Government of Natal and Dr John Kirk, the British Consul in Zanzibar, and his assistant, James Frederic Elton, who later became British Consul to Portuguese East

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<sup>14</sup> On slave labour at Delagoa Bay and Inhambane, see Harries, *Work, Culture*, p. 25. On Portuguese slaving and the *mfecane*, see Julian Cobbing, 'The Mfecane as Alibi: Thoughts on Dithakong and Mbolompo', *Journal of African History*, 29 (1988), pp. 487-519. Cf. Norman Etherington, *The Great Treks: The Transformation of Southern Africa, 1815-1854* (London, Pearson Education, 2001), p. 81f.

<sup>15</sup> Jeff Guy, *Theophilus Shepstone*, p. 42. The taking of slaves by the Boers was an important theme also in media coverage of the wars against the Pedi of Sekhukhuneland, see e. g. *Natal Mercury*, 25 January 1877, 'Slavery in the Transvaal.'

<sup>16</sup> *Ibid.*, 269, 374.

<sup>17</sup> PAR, CSO 613, 1244/1877 'List of Immigrant Ships which have arrived from Calcutta since the opening of Indian Immigration in 1874', 31 March 1877.

Africa, based in Mozambique Island, and for a period in 1873 was Deputy Protector of Indian Immigrants in Durban under Pryce Lloyd.<sup>18</sup>

The freed slaves from Mozambique became known later as 'Zanzibaris', being advertised to interested employers as 'liberated Africans from Zanzibar', but it was commonly understood at the time of their arrival that the majority of them were Makua speakers and had their origins in Northern Mozambique.<sup>19</sup> There was some ethnographic confusion, and the efforts made to employ Makua interpreters to communicate with them included 'a Native of Zanzibar of the Makoao [sic!] tribe who would interpret into Kafir.' At one point Dr Kirk was approached, but was unable to help find a Makua interpreter in Zanzibar.<sup>20</sup>

The first batch of 113 freed slaves arrived in Durban on 4 August 1873 on the HMS 'Briton'. This group, of whom 63 were children, had been liberated from a slave dhow in the Mozambique Channel, at the Majambo Port in Madagascar on 23 July 1873. The group in reports sent to the British Consul at Zanzibar was identified as consisting entirely of 'Makuas and Maganja' – all captured 'from a 75 mile coastline between Angoche and Port Makambo, where there was a colony of Arabs who monopolised the trade' controlled by 'a chief under Portuguese rule,' known as Umkuba Muntu.<sup>21</sup>

The second batch of 78 freed slaves did in fact arrive in Durban from Zanzibar in 1874, and had been part of larger group of 225 slaves whom the HMS 'Daphne' had been freed from a 182-ton dhow called 'Bandara Salam' that was 'destroyed' off the Madagascar coast, travelling – according to the consular report – 'from the Portuguese

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<sup>18</sup> John Kirk had been an expedition companion of Livingstone's, while Elton - before coming to Natal – was an officer in the Bengal Army, had taken part in the 'relief' of Delhi and Lucknow during the Mutiny, and subsequently fought in China. In Mozambique, Elton was a successor as British Consul to Lyons McLeod, who was prominent in the efforts to expose the post-abolition French trade in 'libres engagés' to Réunion. See Lyons McLeod, *Travels in Eastern Africa* (London, Hurst and Blackett, 1860), vol. one, chapter 15, pp. 303-341.

<sup>19</sup> PAR CSO 613, Government Notice No. 177 of 22 August 1873 from the Colonial Secretary, D. Erskine, thus refers to 'the "Mâkooas" recently brought by the H.M.S. *Briton*.' The term 'liberated African' dates back to the British abolition of the slave trade in 1807, and prominent in e. g. Sierra Leone's 'Liberated African Department' and 'Registers of Liberated Africans'. See Suzanne Schwarz, 'Reconstructing the Life Histories of Liberated Slaves', *History in Africa*, 39 (2012), pp. 175-207.

<sup>20</sup> PAR II, 1/2, 3590/1877, Letter from Murdoch McLeod, 26 December 1876, and letter from Dr Kirk to McLeod, 5 May 1877.

<sup>21</sup> Abdul Sheriff, 'The Origins of the "Zanzibari" Diaspora in Durban, South Africa', in K. K. Prasad and J.-P. Angenot (eds.), *TADIA The African Diaspora in Asia: Explorations on a Less Known Fact* (Bangalore, Jana Jagrati Prakashana, 2008), 560f. Cf. Z. K. Seedat, 'The "Zanzibaris" in Durban: A Social Anthropological Study of the Muslim Descendants of African Freed Slaves Living in the Indian Area of Chatsworth' (MA dissertation, University of Natal, Durban, 1973), 10.



possessions whence a slave trade with Madagascar has been actively carried on of late'.<sup>22</sup> They were in a bad shape, and 30 of them died on board the British man-of-war en route to Zanzibar, where they were taken in an emergency, since it was not possible to transfer them at Mozambique Island to a mail steamer bound for Durban. 'In this case, therefore, the liberated Africans did transit through Zanzibar for a short period. They were reported to have been Makua; and some of them spoke Portuguese fluently'.<sup>23</sup>

A third group were taken to Durban in 1876 – most of them again being taken through Zanzibar, but some apparently also directly from the Mozambique Channel. They were mostly Makua, and again the captain had wanted to transfer them to a steamer for direct transportation to Durban, but this not being possible, they were taken through Zanzibar as an emergency measure.<sup>24</sup>

A fourth group – also arriving in Durban in 1876 – were 'a mixture of freed Africans from several dhows captured further north near [the island of] Pemba,' and many of them 'part of a large gang that had been marched from Kilwa to Pangani'. Some of these seem to have been Ngindo or Yao-speaking and to have been taken as slaves in what is now Southern Tanzania, but their pre-slave origins are not clear.<sup>25</sup>

Finally, a fifth batch of 'Zanzibaris' arrived in Durban in April 1877.<sup>26</sup> According to Abdul Sheriff, 'they were part of a large group of 165 slaves freed from a dhow that was captured off Pemba Island.' Of these '77 were sent to Natal, 50 given to the UMCA [Universities' Mission to Central Africa], 30 to the Catholic Mission and eight were freed in Zanzibar... Two individually liberated Africans were sent to Cape Town'.<sup>27</sup> The circumstances surrounding the landing of this group of freed slaves were particularly cruel. The Protector's representative did not come on board their ship before the landing, and there was a dispute between different operators of the small steamers that were needed to take them from the outer anchorage across the bar to the Point. This led to a group of the freed slaves being held hostage for a time in the hot and narrow hold of

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<sup>22</sup> Sheriff, 'The origins', 562.

<sup>23</sup> *Ibid.*, 563.

<sup>24</sup> *Ibid.*, 563f.

<sup>25</sup> *Ibid.*, 564.

<sup>26</sup> Seedat, 'The Zanzibaris', 10f.

<sup>27</sup> Sheriff, 'The origins', 565.

one such steamer, until the dispute was resolved, extending the hardships they had already endured.<sup>28</sup>

Smaller numbers of freed slaves continued to arrive in Durban between 1877 and 1880, and altogether 508 freed slaves were sent to Durban, who 'originated from the same general area of Southern Tanzania, Northern Mozambique and Malawi, and a vast majority of them were freshly enslaved Africans'.<sup>29</sup> This may seem like a small number, but to put it into perspective, we should see it in comparison with other immigrant numbers. Thus, for example, in the Durban 'Mayor's Minute' for 1876-77, the following numbers are given for 'Immigrants [who] have arrived in the Colony during the past year, viz.: – English 429, French and Italians 124, Mauritius 833, From India 1639, Liberated Slaves 173, Total 3198'.<sup>30</sup> We can also compare with the numbers of 'Amatonga' labourers arriving through Zululand mentioned above of 300-500 per month in 1875-76, and with the total number of Indian indentured labourers arriving from Calcutta between 1874 and 1876 of 7,121, with 3,709 alone arriving in 1874.<sup>31</sup>

The 508 'Liberated Africans' were a small group in comparison with the 'Amatonga' and the Indians, but not a completely marginal one, and one which in the early 1870s was highly visible in Durban and surrounded by much attention, also because about a third of its members were children under the age of twelve.<sup>32</sup> While the

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<sup>28</sup> PAR II, 1/2, 1589/1877, 'Asst. Protector's [Louis Mason] reports to circumstances att. landing of liberated Africans off SS Natal', 23 April 1877.

<sup>29</sup> *Ibid.* 567. Cf. PAR CSO 613, 1272/1877, Return of Liberated Africans, discussed further below (re-classified after later utilisation as 3725/1877). Sheriff did not have access to the 'Return of Liberated Africans' and estimated that 285 came from what Gwyn Campbell has called the 'Southern complex' of the East African slave trade, focusing on Mozambique, Madagascar, and the Mascarene islands. By contrast 146 came from the 'Northern complex,' focusing on slave markets in Zanzibar (closed down in 1873) and the island of Pemba, while it was not possible for Sheriff to establish in the case of 77 of the 'Liberated Africans,' whether they originated in the Southern or Northern complex. My own research on the 'Return' leaves no doubt, however, that the 77 originated in the Northern complex, and that a total of 285 thus derived from the Southern complex and 223 from the Northern complex. The origins of the Durban 'Zanzibaris' may therefore well have been more mixed – more Northern, and less dominantly Makua – than has been assumed, though they all in due course became Makua speakers. Cf. G. Campbell, 'The East African Slave Trade, 1861-1895: The "Southern" Complex', *International Journal of African Historical Studies*, 22, 1 (1989), pp. 1-26.

<sup>30</sup> CSO 611, 3575, 'Twenty-Third Year. The Mayor's Minute for the Year Ended the 31st July, 1877', p. 3.

<sup>31</sup> PAR CSO 613, 1244/1877 'List of Immigrant Ships which have arrived from Calcutta since the opening of Indian Immigration in 1874', 31 March 1877.

<sup>32</sup> PAR CSO 613, 3725/1877, 'Report on R1272/1877' by Murdoch McLeod, 26 April 1877, with 'List of Employers of Liberated Africans'. Cf. PAR II, 1/2, R125/1877, 'Return of Liberated Africans of the Colony'.

children were mostly employed as 'domestic servants', half the adults were reserved for public works by the Government of Natal.<sup>33</sup> Being responsible for this group of freed slaves added to the high profile of the institution of the Protector of Indian Immigrants as providing the moral guarantee for a clear distinction being upheld between the conditions of indenture and those of slavery and forced labour.

The freed slaves were offered wages of 6 shillings per month for adult males and 4 shillings for adult women, rising by 1 shilling per year to respectively 10 and 8 shillings in the fifth year.<sup>34</sup> This compares favourably with the wages of 5 shillings per month offered to Indian indentured labourers, rising annually by half a shilling, and with women being paid 'half wages'.<sup>35</sup> The 'Liberated Africans' were also privileged in other ways in comparison with the Indian indentured labourers. They did not have carry passes, and they could not legally be flogged – flogging had been one of the main complaints from the returning Indians in 1871.<sup>36</sup> The flogging of Indian indentured labourers for offenses under the Masters and Servants Act had been outlawed in the legislation introduced in the wake of the Coolie Commission Report, but the Protector could still have Indians punished by flogging for crimes of seduction, adultery and the 'abduction of unmarried girls'.<sup>37</sup>

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<sup>33</sup> Originally all of them had been reserved for public works, see PAR CSO 613, Government Notice No. 142, [11 July]1873: 'The Administrator of the Government directs to be notified that in the event of freed slaves being received from Zanzibar, the Government will require the entire number received; at first to be employed upon the Harbour Works, the Public Wharves, the Roads, and other Public Works.' This was modified in PAR CSO 613, Government Notice No. 177, [22 August] 1873: 'In modification of the Government Notice No. 142 of 1873, dated 11th ultimo, His Excellency the Lieutenant-Governor has been pleased to direct that, in consideration of the very pressing general demand for labour, one-half only of such freed slaves as may be received from Zanzibar shall be reserved for the service of Government.' These two notices are included as 'Document 45' in Y. S. Meer, *Documents of Indentured Labour: Natal 1851-1917* (Durban, Institute of Black Research, 1980), p. 175f. Eventually, as it emerges from 'Return of Liberated Africans' of 1877 discussed below only 92 of the 508 freed slaves were employed on public works. The calculations of the Colonial Engineer showed that – because of the large proportion of women and children – 'slave labour would... be more expensive than the ordinary native labour of the Colony'. PAR CSO 613, 3725/1877, Minute from Colonial Engineer, 14 May 1877.

<sup>34</sup> Government Notice, No. 177, 1873

<sup>35</sup> Notice. Immigration Department, of 17 August 1874, signed by 'F. Elton, Acting Protector of Immigrants,' in Meer, *Documents*, p. 239. The Notice states further that 'On and after your arrival in Natal, there is a Protector of Immigrants ready to advise you at all times during your residence there.'

<sup>36</sup> CSO 602, 2663/1877, Response to Protector McLeod from Attorney General M. H. Gallwey 24./7.-1877

<sup>37</sup> Palmer, *The History of the Indians*, p. 38. Cf. overview of physical punishments imposed in *Report of Coolie Commission*, p. 7.

As far as the freed slaves and the children among were concerned, it was also stipulated on their arrival in 1873 that

It will be especially required by the Government that the apprentices shall be taught to read and write in the English language besides some useful trade or domestic occupation; and that they shall be gradually instructed in the great truths of Christianity. It is expected that they be trained to habits of cleanliness, and that their lodgings shall be separate from those of the Kafir servants of the country.<sup>38</sup>

Segregation was thus among the instruments – besides education, labour, discipline and regular contact with Europeans – through which the 'Liberated Africans' would be taken into trust and uplifted.

As the economy picked up in the 1870s, the Protector's office took on more general responsibilities as Protector of Immigrants, including also the labourers being brought in from Mauritius, Pondoland and Swaziland, and – as mentioned above – from Zululand through John Dunn, 'formally appointed Protector in Zululand of Migratory Labourers [whose] recruiting agents were to be licensed by the Secretary for Native Affairs, Theophilus Shepstone'.<sup>39</sup> It was also attempted to import labour from Réunion, but the wages offered were too low to attract any offers.<sup>40</sup>

Of special interest in connection with the freed slaves were the initiatives taken in collaboration with Frederic Elton, the British Consul at Mozambique Island, to bring into Natal other Mozambicans as migrant labourers. Labour agents were appointed and sent to Delagoa Bay (Bennet) and to Inhambane (Beningfield).<sup>41</sup> At Delagoa Bay, George Hayden Bennet had been a private labour agent before being employed by the Government of Natal. Reuben Widdows Beningfield was the son of the auctioneer Samuel Beningfield, who in the 1860s collaborated with Thomas Phipson, the Marshall

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<sup>38</sup> CSO 613, Government Notice No. 177, 1873

<sup>39</sup> Palmer, *The History of the Indians*, p. 33.

<sup>40</sup> *Ibid.*, p. 32. As the records show, the Protector of Immigrants' office processed many applications also from European immigrants. The assumption that it was more exclusively oriented towards Indian immigrants may be founded in the ways in which the archives documentation was re-organised and segregated in the course of the twentieth century. Maybe also in the way research on immigration in South Africa has had a primary focus on ethnicity and race.

<sup>41</sup> CSO 614, 3845/1877, Minute from Colonial Secretary to Lieutenant Governor on the appointments of Bennet and Beningfield.

of the Vice-Admiralty Court, around the sale of slave dhows that had been brought into the Port of Durban.<sup>42</sup>

Of the two labour agents in Mozambique, Beningfield at Inhambane was the more successful, and better at liaising with the Portuguese around the recruitment of 'Amatonga' labourers for Natal on the basis of the contractual agreements made by Elton. In Lourenço Marques, Bennet resented the competition from Beningfield and increasingly got himself into trouble through unauthorised recruitment, and smuggling labourers over land into Natal rather than shipping them. He would claim that these people were not Portuguese subjects – and therefore not subject to Portuguese regulations – sometimes introducing them as 'Natives from Zanzibar'.<sup>43</sup>

The Beningfields were among the first settlers to buy land on the Bluff opposite the Point at Durban's harbour, when – in 1851 – the Thuli under Chief Mnini were removed to the South Coast and the Mkhomazi River. Only four years earlier – in 1847 – the Thuli had been given the Bluff (or Bubulungu) as an 'aboriginal grant' by the Locations Commission.<sup>44</sup> Land on the Bluff was used for various purposes in connection with the freed slaves and indentured and migrant labourers. A lazaretto and tent camp were established there to provide for the cholera- and dysentery-stricken indentured labourers who arrived on the *Belvedere* from Calcutta in 1860.<sup>45</sup> Later Beningfield used the Bluff to accommodate Mozambican migrant labourers, whom he brought in from Inhambane, and groups of the freed Makua-speaking slaves from Mozambique also came to live there.<sup>46</sup>

In 1880 the Catholic St. Xavier's Mission bought land on the Bluff to establish a settlement and a school, and offered accommodation to freed slaves, who were Christians and had completed their indentures. In 1899 – to match this – a 'Mohammedan Trust' of Indian business men affiliated to the Grey Street Mosque in Durban bought from Reuben Beningfield a 43 acre plot at Kings Rest on the Bluff, which

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<sup>42</sup> R. N. Currey (ed.), *Letters and Other Writings of a Natal Sheriff: Thomas Phipson, 1815-76* (Cape Town, Oxford University Press, 1968), p. 102.

<sup>43</sup> PAR II, 1/3, 4397/1877, Penalty of £50 imposed on Mr Bennet for unauthorised importation of labour. On the negotiations conducted by Elton with the Portuguese, see PAR CSO 614, 3845/1877, Letter from Elton to Lieutenant-Governor with enclosures, 30 July 1877.

<sup>44</sup> Jeff Guy, *Theophilus Shepstone*, p. 101, p. 113, p. 195, p. 253.

<sup>45</sup> Desai and Vahed, *Inside Indenture*, p. 73.

<sup>46</sup> Reuben Beningfield is reported to have owned land also in Mozambique, and he continued to be active as a labour agent in Mozambique into the twentieth century. See Simon E. Katznellenbogen, *South Africa and Southern Mozambique: Labour, Railways and Trade in the Making of a Relationship* (Manchester, Manchester University Press, 1982), p. 53.

was given as *waqf* to 'the poor Muslims.' This became the home of the Muslim majority of the freed slaves – who became known as 'Zanzibaris' – until 1962, when they were removed to Chatsworth under the Group Areas Act. In 2004, then, this *waqf* land on the Bluff was given to a 'Zanzibari Development Trust' as post-apartheid land restitution, and plans for resettling it are still being negotiated.<sup>47</sup>

### **The Protector and the 'Return of Liberated Africans'**

The institutional practice of the Protector of Immigrants' office was influenced importantly by the personalities and biographies of the civil servants, who served as Protectors, as was demonstrated in the administration and scandalous dismissal of Murdoch McLeod in the late 1870s.<sup>48</sup>

Banastyre Pryce Lloyd – the first Protector of Indian Immigrants had a military background, spoke 'Hindoostani', and had fought in India in the campaigns following the Mutiny in 1857.<sup>49</sup> When Pryce Lloyd was appointed Colonial Secretary in 1874, Henriques Shepstone – a former 'Coolie Agent', who had given evidence to the Coolie Commission – followed him as Protector.<sup>50</sup> Shepstone was replaced in June 1876 with Captain Murdoch McLeod, who was forced to resign in October 1877, and was succeeded by Major Shapland Graves. Graves was Protector until 1883, and fought in the

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<sup>47</sup> Seedat, 'The "Zanzibaris"', p. 30f. Cf. Gerhardus Oosthuizen, *The Muslim Zanzibaris of South Africa: The Religious Expression of a Minority Group of Freed Slaves* (Durban, University of Durban-Westville, 1982), p. 16f.; Preben Kaarsholm, 'Zanzibaris or Amakhuwa? Sufi Networks in South Africa, Mozambique and the Indian Ocean', *Journal of African History*, 55 (2014), pp. 191-210.

<sup>48</sup> The discussion here links up with the focus on the centrality of civil servants' biographies in Uma Dhupelia-Mesthrie's article in the present collection on Clarence Wilfred Cousins as Chief Immigration Officer in Cape Town. See also the portrait of Harry Smith as administrator of immigration restriction and transformation of the geography of the port of Durban 'from vibrant hybridity to fortress' in Andrew MacDonald's 'Strangers in a Strange Land: Undesirables and Border Controls in Colonial Durban, 1897-c.1910' (MA dissertation, University of KwaZulu-Natal, Durban, 2007). Cf. the portrait of Charles Sievwright as a differently scandalised Protector in Alan Lester and Fae Dussart, 'Masculinity, "Race", and Family in the Colonies: Protecting Aborigines in the Early Nineteenth Century', *Gender, Place & Culture*, 16, 1 (2009), pp. 63-75.

<sup>49</sup> Palmer, *The History of the Indians*, p. 25. The succession of Protectors as given in Desai and Vahed p. 98f. is incorrect.

<sup>50</sup> *Report of Coolie Commission*, p. 36.

1879 Zulu War as an officer with the Natal Native Contingent.<sup>51</sup> He was followed by Louis Mason, who had been Deputy Protector already under McLeod, and who held the Protector position for twenty years until 1903, when A. Polkinghorne took over as the last Protector until the contracting of Indian indentured labourers stopped in 1911.

The first of the freed slaves thus arrived when Pryce Lloyd was Protector and busy developing the institution, and it was under McLeod in 1877 that the last big groups of 'liberated Africans' arrived, and that they were given the most intense administrative attention. Many of the Protectors and Deputy Protectors (including McLeod) had freed slaves allocated to them personally in indenture, mostly children who were 'apprenticed' as domestic servants.<sup>52</sup>

Responding to enquiries from London, the Lieutenant-Governor of Natal, Henry Bulwer, in April 1877 instructed the Colonial Secretary, F. Napier Broome, to ask the Protector of Indian Immigrants to prepare a 'Return of the Liberated Africans now in Natal, giving information as to numbers, ages, names, how employed, and by whom employed; it is also to be stated how far the Regulations in respect of the Education of the children have been carried out'.<sup>53</sup>

Captain McLeod at first reacted to this by sending in a list of employers of freed slaves accompanied by a report. He stated in the report that

3. Adults have been assigned to approved applicants, principally as agricultural labourers. It is evident from the eagerness with which they continue to be applied for that they give satisfaction to their employers. They appear to be very happy and comfortable themselves, and complaints of any sort are extremely rare, having generally arisen from the want of adequate interpretation. A few cases have occurred in which they have run away, even from the Depôt, and got as far as the Tugela in the attempt to make their way back to their own country, and some are still missing - supposed to be in the employ of others than those to whom they were assigned.

4. Children have been apprenticed to persons carefully selected from among the number of applicants, and as a rule so situated that the office can keep an eye upon them. They are being trained as domestic servants, and all who have received them speak in the highest

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<sup>51</sup> P. S. Thompson, *Black Soldiers of the Queen: The Natal Native Contingent in the Anglo-Zulu War* (Tuscaloosa, University of Alabama Press), p. 29.

<sup>52</sup> This can be seen from the 1877 'List of Employers of Liberated Africans' and 'Return of Liberated Africans' discussed further below.

<sup>53</sup> PAR CSO 613, 1272/1877, Minute from Lieutenant-Governor to Colonial Secretary, 3 April 1877.

terms of their docility and intelligence. They have it is true, the faults of their race and tender years, and occasionally require correction, but in no single instance has my interference been required.

5. The Regulations under which these people have been allotted and apprenticed, so far as I can ascertain from individual cases which come under my notice from time to time, and without a special turn of inspection, are complied with. The great difficulty with the children is to get them to learn English owing to the facility with which they pick up what may be called the patois of the country, 'Kitchen Kafir' - and of course until they have acquired a fair knowledge of our language, it is impossible to expect that the Regulations should be carried out in their entirety.<sup>54</sup>

The Protector had obviously not been going out of his way to protect, or keep track of his wards – if a more detailed report were to be required, McLeod would need more time. The Lieutenant Governor was not satisfied, however, and through the Colonial Secretary directed the Protector of Immigrants to complete the return,

adding thereto the term of service for which each Liberated Slave was bound on assignment, and the date of such assignment; also to report what means are taken to carry out the Regulations respecting their Education and visitation, how often they are visited and what means he has of visiting those in remote districts from the Dépôt, and how he communicates with them, not knowing their language; also to state how he would dispose of the 1000 more liberated slaves which he informed Dr Kirk he was ready to receive into Natal.<sup>55</sup>

McLeod finally submitted the 'Return of Liberated Africans' on 1 September 1877. It gives information of 502 freed slaves between the ages of 3 and 54, who had arrived in Durban between August 1873 and August 1877, including their 'No. in order or series', name, sex, date of arrival, ship, age 'at the date of assignment', date of assignment, 'to whom assigned', locality of assignment, period of assignment, rate of wages, how employed, births, deaths, desertions, and supplementary 'remarks' in some cases on

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<sup>54</sup> PAR CSO 613, 1272/1877, 'List of Employers of Liberated Africans' and 'Report on 1272/1877', 26 April 1877.

<sup>55</sup> PAR CSO 613, 1272/1877, Minute to Colonial Secretary from Lieutenant Governor, 9 May 1877. This is followed up in CSO 602, 2622/1866, Minute from Colonial Secretary Napier Broome, dated 13 July 1877, to 'The Protector of Indian Immigrants, D'Urban'.



transfers, dissolution of contract, death of a child, 'marriage to a free Makooa', or similar.<sup>56</sup>

The 'Return' was passed on to a two-person Government sub-committee, consisting of the Colonial Secretary and the Commandant of Natal, who discussed it in a report to the Lieutenant Governor, submitted on 2 October 1877. The Report took its point of departure in the letter to the British Foreign Office from Dr Kirk, the British Agent at Zanzibar, which had recommended that – if the freed slaves could not be accommodated at 'the Mission Stations in Zanzibar' – they could, to this mind, 'be nowhere so well disposed of as in Natal.' Overall, the sub-committee found this to be true, and 'the liberated slaves who have been brought to this Colony have been disposed of very easily and satisfactorily, finding employment beneficial to both the employers and the employed'.<sup>57</sup>

The sub-committee considered the number of deaths among the freed slaves – '65, 39 of which took place in the dépôt before assignment to employers' – 'could not be regarded as high... and that all due care is taken of, and proper medical attendance given to the Liberated Slaves, while they are in the hand of this Government.' It was also noted that '[t]here have been only 9 desertions, a fact which, it is submitted, goes far to prove the contentment of these people with their lot.'

At the same time, the sub-committee had reservations concerning the information, which was lacking in the 'Return' about the obligations to educate the children of the freed slaves and give them a Christian upbringing. 'With regard to the education which is being received by boys and girls, it is not believed that, except perhaps in some very few cases, there is any regular attendance at school.' There was a need for better information, and '[t]he Protector of Immigrants or the Magistrates of the districts should, we think, be instructed to make an annual visitation of these people.'

It was noted with satisfaction that '[a] Makoan interpreter is attached to the Protector's office and affords him the means of communicating with those of the immigrants who cannot speak Kafir or English.' With these provisos the importation of freed slaves to Natal should be continued, and 'the best way to test the demand would

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<sup>56</sup> PAR CSO 613, 1272/1877, 'Return of Liberated Africans', Immigration Department, Durban, 1 September 1877, signed Murdoch McLeod, Protector of Immigrants.

<sup>57</sup> This and subsequent quotations are from PAR CSO 613, 1272/1877, Report to His Excellency the Lt. Governor in Council, 2 October 1877.

appear to be to allow the supply to continue until we find some difficulty in dealing with it.' Overall, the arrangement was seen to have been huge success:

There are good grounds for believing that the people generally are contented, and in a condition superior to the ordinary Kafir, being more permanently employed, and very frequently in domestic service, and thus brought more into contact with civilizing influences than is, in ordinary circumstances, the native of the country ...

[T]he immigration of these people into Natal has been more beneficial in a material point of view than would have been their assignment either to Seychelles planters, or to East Coast Missionaries. In Natal... the liberated African has a chance of raising himself in the social scale, which he would scarcely have had in the Seychelles Islands, where land is scarce. On an East Coast Mission station, the liberated slaves' propinquity to the native life of his own race would have weakened any civilizing influences which might have been brought to bear upon him by the Missionaries. To such influences he is immediately subjected in a country in which he is a stranger and in a life which thoroughly transplants him from the sphere of his own customs and traditions.<sup>58</sup>

In other words – in Natal, the liberated slaves had found nothing less than a perfect home.

### **The Protector's Moral Authority Challenged**

By early October 1877, however, as the sub-committee's report on his 'Return of Liberated Africans' was being forwarded to the Lieutenant Governor, Murdoch McLeod tendered his resignation as Protector of Indian Immigrants at the command of the British Secretary of State for the Colonies, Lord Carnarvon. The follow-up to the 'Return' and the sub-committee's report, which consisted in a tightening and extension of rules

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<sup>58</sup> For a photographic register of liberated slaves, who were taken to the Seychelles, see Iconothèque historique de l'Océan Indien, *Exposition virtuelle – Esclaves libérés aux Seychelles, 1861-1872* (Saint-Denis de La Réunion, Département de La Réunion, [2014]), available at [http://www.ihoi.org/app/photopro.sk/ihoi\\_expo/publi?docid=91003](http://www.ihoi.org/app/photopro.sk/ihoi_expo/publi?docid=91003) – retrieved on 29 June 2015.

and regulations regarding the reception of freed slaves, was therefore enacted by the Acting Protector appointed to replace McLeod, Major Shapland Graves.<sup>59</sup>

Like his fellow Protectors Pryce Lloyd, Elton and Graves, McLeod had a military background, and as an officer with the 42nd Highlanders for 14 years had fought in both the Crimean War and in the Indian campaigns to suppress the 1857 uprising.<sup>60</sup> Like Pryce Lloyd, he spoke 'Hindoostani' – but not Tamil or Bhojpuri as did most of his Indian immigrant wards – and before being appointed Protector, McLeod had been employed in India as a 'special agent' of the Government of Natal to establish labour recruitment offices in Bombay, Calcutta and Madras, and prepare the resumption of the importation of Indian indentured labourers. Having set up agencies in Calcutta and Madras, he returned to Durban in July 1874 on one of the first ships – the S.S. *Blenheim* from Calcutta – that brought Indian labourers of the second round of imports.<sup>61</sup> He became Protector of Indian Immigrants in June 1876.

On 2 October 1877, however, he was informed in a minute from the Colonial Secretary, 'that his Excellency the Lieutenant Governor has been pleased to fix the 10th instead of the 1st Instant as the date upon which the duties of this office will be taken over by Major Graves of the 3rd Regiment.' McLeod replies to this on 9 October that he does not 'by any means wish it to be implied that I resign my appointment as Protector of Immigrants, or accept dismissal at the hands of the Natal Government.' He sees himself as having been appointed directly by the Secretary of State for the Colonies, and therefore 'may reasonably expect to receive a direct communication from his Lordship informing me of the grounds of my removal from office.' At the same time, he hopes that 'the acting appointment to one of the existing vacancies in the Service' may be conferred upon him, 'until his Lordship's final decision can be learnt'.<sup>62</sup>

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<sup>59</sup> PAR CSO 613, 1272/1877, Minute to Colonial Secretary from Lieutenant Governor, 3 November 1877; Minute from Colonial Secretary to Acting Protector of Immigrants, 7 November 1877; Minute from Acting Protector of Immigrants, 12 November 1877, signed S. Graves, Major, Act. Protector of Immigrants.

<sup>60</sup> The *Natal Mercury*, February 1877, see further below, note 52.

<sup>61</sup> Desai and Vahed, *Inside Indenture*, p. 83, which refers to the ship as the '*Blendail*'. The name of the Captain of the *Blenheim* was 'J. Blendail', see 'Ship List. S. S. *Blenheim*. Captain J. Blendail for Natal. The 12th June 1874 – 1st Voyage. Arrived 26th July 1874', 'Document 49' in Meer, *Documents*, p. 179.

<sup>62</sup> PAR CSO 586, 3858/1877, Minute to Colonial Secretary of 9 October 1877, signed Murdoch McLeod, Protector of Immigrants, in reply to 3706/1877, Minute from Colonial Secretary to McLeod.

The reply to this is given in a minute to the Colonial Secretary from the Lieutenant Governor, Sir Henry Bulwer, who writes:

Since Captain McLeod does not, to my surprise, appear satisfied that his services as Protector of Immigrants have been dispensed with by direction of the Secretary of State, but seems to think that it has been at the hands only of the Natal Government, it will perhaps be advisable that he should have a copy of the Despatch. When I received that Despatch, I was at Durban, and I immediately sent for Captain McLeod, in order I might communicate the contents of it in person, and spare him the pain of learning it by a formal official notification. Even after informing him of the Secretary of State's decision I was anxious to shew him as much consideration as possible in view of the position in which he was placed with a large family. I wished to give him as much time as I possibly could to make other arrangements for himself and his family. For this reason, and for this reason alone, I allowed him to continue to hold his office for as much as two months, which, I consider, was ample time to enable him to make the necessary arrangements for his future. The Secretary of State's decision, as I understood it, was final.<sup>63</sup>

The background to this remarkable turn of events was a murder case, which came before the Durban Circuit Court on 16 February 1877. The case threatened to undermine the moral authority of the institution of the Protector of Indian Immigrants, and once again to throw the Government of Natal's handling of the importation of indentured labourers into disrepute. It also threatened to reveal as hypocritical, racist and inefficient the administrative framework and 'rule of law' through which Natal as a British Colony handled its responsibilities for looking after the liberated slaves that were given into its care, and whom it had promised to educate and uplift through the experience of indentured labour. Apart from Captain McLeod, the murder case brought on to the stage other prominent members of the Natal political elite, including Harry Escombe, a future Prime Minister of Natal, M. H. Gallwey, the Attorney-General, and Charles Barter, who besides being newly appointed Resident Magistrate at Inanda was also the editor of the *Times of Natal*, one of the colony's four newspapers in 1877, which all provided coverage of the case in graphic detail.<sup>64</sup>

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<sup>63</sup> CSO 586, 3858/1877, Minute to Colonial Secretary of 18 October 1877, signed F. Henry Bulwer, LG.

<sup>64</sup> The other newspapers being *The Natal Witness* – which like the *Times of Natal* was Pietermaritzburg based, and whose editor in 1877 was the pro-Boer Francis Reginald Statham –

On 5 January 1877, Murdoch McLeod was called out on Protector's business to the Oakfield Estate – a sugar plantation near Verulam – where the local magistrate expected an 'outbreak' of unrest among the labourers. He went along, having in his pocket a small pistol, belonging to his wife, 'visited the place and found two men (one a policeman) insensible and that the Proprietor and his assistant had been driven into the Mill for refuge.' Having sorted out the disturbances, he returned through Verulam and found 'that 50 or 60 Coolies a day had been up at the Police Court and that this first week of the new Year they were always in a disturbed state'.<sup>65</sup>

Having left this 'scene of violence', Captain McLeod stopped to refresh himself at a 'roadside inn', where – according to the proprietor, Mr Stone – he 'remained half-an-hour' and had 'a small bottle of ale'.<sup>66</sup> Being asked by another customer at the inn to take good care of himself, he demonstrated that he was able to do so – and that his horse was able to 'stand fire' – by moving outside the inn, and firing his small pistol into the air. According to Mr Stone, the Protector of Immigrants 'was perfectly sober'.<sup>67</sup>

As he rode on, the night became dark, it started to rain, and five miles from the roadside inn he called at Uppersammy's Indian shop, situated at Red Hill, forty-four feet away from the main Verulam-Durban road. He stopped at the gate where he met the proprietor Vencatapah and an assistant of his called Narsimloo, and demanded entry to the shop. This was denied by Vencatapah, who told him that 'this is not a canteen - go away,' which McLeod did not want to do, and instead – having seen a woman inside the house – called out for her in 'Hindoostani.' He did this by shouting either – according to Narsimloo's original statement – 'Coolie, coolie, give a woman!' – or – as was claimed by McLeod – 'Ramathu, and the only meaning of that is "woman, come hither"'.<sup>68</sup> The impression by the Indians was that he was drunk and pursuing 'an immoral purpose,' whereas McLeod claimed that he had only lost his way in the dark, and – assuming the

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and the two Durban papers, *The Natal Mercury*, edited by another future P.M., John Robinson, and *The Natal Colonist and Herald*.

<sup>65</sup> CSO 586, 1026/1877, 'Original copies of papers detached from Captain McLeod's "Statement" and sent to Government House for the purpose of being sent home', attached to Minute from the Protector of Immigrants to the Colonial Secretary, 16 March 1877, enclosure G. 'Statement of Capt. McLeod, put in at the Trial'.

<sup>66</sup> *Ibid.*, enclosure D. 'Report of trial as published in the "Natal Mercury"' [with hand-written marginalia by McLeod], p. 3. The trial took place on 16 February 1877.

<sup>67</sup> *Ibid.*, p. 3.

<sup>68</sup> *Ibid.* p. 12.

two Indian men to be drunk – had wanted to ask directions from the woman, who - McLeod also claimed – 'is a horribly ugly old woman about 60 years old'.<sup>69</sup>

Accounts of what happened next differed. According to Narsimloo, McLeod had struck himself and Vencatapah with a sjambok, and McLeod had then produced his hidden pocket Derringer and shot Vencatapah through the head. According to McLeod, he had been attacked physically and struck by the two Indians, had produced his pistol to frighten them, but as Vencatapah tried to grab the pistol, it had gone off and killed the assailant.<sup>70</sup>

Narsimloo and the widow had then called for the help of two other Indians, Seekhundar and Pursooramon, who had 'arrested' McLeod, thrown him to the ground, and tied him to the veranda post 'in a very painful position,' in the process of which he sustained a number of cuts and bruises. They had subsequently gone to see Mr Gooch, who lived nearby, and who had a Dr Seaton and Mr Buchanan, a 'special constable of the county,' sent to look into the matter. These two untied McLeod and took him to the Durban gaol, where a charge of murder was brought against him, and where he was kept for four days, until released on bail.<sup>71</sup>

Language played a major role in the disagreement between the accounts of the incident. McLeod had spoken in 'Hindoostani' in which he was proficient from his time in India. He did not, however, understand the Tamil that was the first language of Vencatapah, his widow, and Narsimloo, who said at the trial that he – for his part – did not understand 'Hindoostani' very well. McLeod also claimed to have told the Indians in 'Hindoostani,' that he was their 'Hakim' – their ruler and magistrate, meaning the Protector of Immigrants – but this was denied by Narsimloo, who said he had only learnt the day after that the man, who had shot Vencatapah, was the Protector of Indian Immigrants. This confusion of languages was used to obscure the issue of whether McLeod had approached Vencatapah and his wife with an 'immoral' or 'improper'

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<sup>69</sup> *Ibid.*, marginalia on p. 4.

<sup>70</sup> This was contradicted by Dr Kretzschmar, the district surgeon for Verulam who testified at the trial, and who – on examining the dead body – found no traces of gunpowder blast, and that the bullet had gone through the head sideways, entering 'somewhat from behind.' Vencatapah could therefore not have been shot face-to-face at very close quarters. *Ibid.*, pp. 4 and 6. On Kretzschmar, see Meer, *Documents*, p. 240.

<sup>71</sup> *Ibid.*, enclosure B), 'Committal for Trial. To the Goaler of D'Urban' on charge of murder, signed Charles Barter, Resident Magistrate, 6 January 1877. The charge was changed before the trial to 'culpable homicide'.

purpose, and at one point, the presiding judge 'said it struck him that the evidence in the case was getting into a muddle, or, as it were, tied into a knot'.<sup>72</sup>

In his summing up, the Attorney General, M. H. Gallwey – someone with whom the Protector as part of his duties collaborated on a day-to-day basis – told the jury (all whose members were of course European males) – to 'dismiss from your minds the inequality of position between the prisoner and the deceased, and only look upon them as two human beings'.<sup>73</sup> A similar point was made by the Judge – His Honour Chief Justice Connor – in his summing up for the jury, saying that '[i]f ever it came to pass that justice was administered in their courts differently in the case of white men than it was in that of the black, then he would say farewell to the dignity of the administration of the law, as far as Natal was concerned'.<sup>74</sup>

As defending lawyer, Harry Escombe, however, managed to turn this point around, saying that '[w]e pride ourselves in dealing fairly with those under us, but we should also look to those who are our equals and above us; and I do not see why Capt. McLeod is to have less consideration because the man who was killed was an Indian'.<sup>75</sup> This provided the platform for extended testimonies on the contrasting characters of the white man accused and the Indian victim and witnesses, as well on the character of Indians in general. Thus Capt. Lloyd, a Member of the Legislative Council and a Justice of the Peace, testified that it was very reasonable to travel with a firearm, when moving between Verulam and Durban, as '[t]he Christian Indians I believe to be invariably bad. They are great liars, and not to be believed (laughter). I believe the coolies in this country to be worse than those in India. They are a most demoralised lot (sensation)'.<sup>76</sup>

In his summing up, Mr Escombe then used this difference in character to throw doubt on the value and truthfulness of the 'Indian evidence' presented, and on which alone the case against Captain McLeod was founded. He contrasted 'the character of this locality' and 'the character of the deceased man' with that of the Protector of Indian Immigrants':

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<sup>72</sup> *Ibid.*, enclosure D), pp. 7 and 9.

<sup>73</sup> *Ibid.*, p. 11.

<sup>74</sup> *Ibid.*, p. 16.

<sup>75</sup> *Ibid.*, p. 14.

<sup>76</sup> *Ibid.*, p. 8.

For nearly fifteen years Captain McLeod served with credit and distinction in Her Majesty's Army. He was in one of the most distinguished regiments of the army. He served first as an ensign, and afterwards as a captain, in the Crimea, and in the Indian campaign, for which services he wears the medal and the clasp; and it is well known that the position given to him in this country was in recognition of a well-spent life and a knowledge of the Hindostani character.<sup>77</sup>

That a man such as this should be convicted on the basis of 'Indian evidence' in the form of 'the statement of Narsimloo' was scandalous – Mr Escombe backed this up by quoting 'the historian Lord Macaulay' on the Indian:

'Courage, independence, veracity, are qualities to which his constitution and situation are equally unfavourable. His mind bears a singular analogy to his body. It is weak even to helplessness for purposes of manly resistance; but its suppleness and its tact move the children of sterner climates to admiration not unmingled with contempt... What the horns are to the buffalo, what the paw is to the tiger, what the sting is to the bee, what beauty, according to the old Greek song is to the woman, deceit is to the Bengalee. Large promises, smooth excuses, elaborate tissues of circumstantial falsehood, chicanery, perjury, forgery, are the weapons, offensive and defensive[,] of the people.' That is the opinion of Indian evidence, of one who ranks foremost amongst England's historians.<sup>78</sup>

The defending lawyer then spelt out 'the ruin to purse and reputation... disgrace and penury,' which a conviction building on 'the unsupported evidence of an Indian' would involve to Captain McLeod as 'a soldier - a man of honour' and his family.

The people attending the trial responded enthusiastically, and '[a]t the close of Mr. Escombe's address, the concluding portion of which was delivered in a most earnest and affective manner, there was loud applause in court'.<sup>79</sup> The presiding judge was perhaps less impressed, and in his summary referred to the somewhat unmanly character of the small pistol that had been used by Captain McLeod to shoot Vencatamy:

With regard to firearms, he thought that if gentlemen could not travel in Victoria County without being armed, it struck him that matters in that county ought to be altered. With

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<sup>77</sup> *Ibid.*, p. 15.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*



respect to the pistol which the prisoner was carrying, he must say that he looked upon a pistol of that sort as a base instrument, much after the kind of stiletto practice, which was at one time carried on by ladies... to carry a loaded pistol [hidden] in one's pocket was not fair to the man who carried it or to the man who was shot.<sup>80</sup>

This did not make much of a difference to the outcome of the trial, however, and it took the jury only ten minutes to arrive at a unanimous verdict of 'Not guilty':

[T]here was quite a demonstration in court after the verdict, and it was two or three minutes before the applause subsided. Captain McLeod, who had been in the dock all the morning, and who had conducted himself in a most becoming manner throughout the case, displaying great calmness, quitted the box, and after shaking hands with his advocate and the Attorney-General, left the court, receiving numerous congratulations from his friends as he made his way through the crowd.<sup>81</sup>

To these congratulations were added, after the trial, a written statement – submitted and signed in both Tamil and Hindi and with an English translation – on behalf of the 'Indian Association of Natal', assuring the Protector of their support:

We, the members of the Indian Association of Natal, thinking you will be grieved for the painful accident by which Vencatapah lost his life on 5th January 1877, and fearing that the Indian name may be used to cause you more annoyance and even to be removed from Natal to some other country, beg to assure you on behalf of the 10,000 Indians residing in Natal whose views we speak of their sympathy with you - and that they do still look up to you and know you to be their friend and protector - we have signed our names here in the hope that you will make any use which may benefit you of this small tribute of our respect and affection for you.

If our Association can serve you in any way by a direct appeal to the Secretary of State for the Colonies, you have only to command and it shall be done. We are certain that we can easily get the signature of every Indian, indentured or free.<sup>82</sup>

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<sup>80</sup> *Ibid.*, p. 16.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*, enclosure E) 'Original copy of the address in Tamil and Hindoo from the Indian Association of Natal' (n. d.). This document illustrates that there were also among the wards of the Protector those who collaborated, and found it in their strategic and civic interest to loyally support the institution.

This was submitted together with McLeod's statement to the Lieutenant Governor of 16 March 1877 to be forwarded to the Secretary of State for the Colonies in London.

As we saw, in spite of the acquittal and the appeals of his supporters, the outcome was that McLeod was fired, and the British Secretary of State for Colonies was not impressed by his argument

'4. That I was harshly dealt with in having been committed for trial on a charge of murder on the affidavit of a single Indian Coolie, the servant of a Coolie... I beg to point out the social status of a Coolie in this Colony. For the repression of crime under Law 15 of 1869, these people in the Boroughs are compelled to keep indoors after the Curfew at 9 P.M until 5 A.M. Under Law 2 of 1871, Sec. 27, any policeman, estate holder etc. can apprehend any Indian free or bound, whom he may find without a pass....<sup>83</sup>

He was sacked, though, with a humanitarian delay until 10 October, which helped to draw away immediate attention from the case. His dismissal followed a series of despatches from Lieutenant-Governor Bulwer to Carnarvon, the first of which was sent on 11 January immediately after McLeod's arrest, followed by a second one on 16 January when he was granted leave of absence.<sup>84</sup> On 18 March a detailed report on the court case was sent to Carnarvon, together with minutes from meetings of the Natal Executive Council on 28 February and 9 March, where 'the proceedings' of Captain McLeod had been 'condemned'. It was found 'indiscreet and injudicious in the last degree' that an Indian immigrant should have met his death

across his own threshold at the hand of, and during a struggle with, the officer especially appointed for the protection and management of the Indian immigrant population, though the event arose in no way out of their official relations, and that the event can scarcely fail to affect injuriously the relations between the Indian immigrant population, on the one side, and this officer, as well as the Government whose officer he is, on the other side.<sup>85</sup>

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<sup>83</sup> PAR CSO 586, 1026/1877, 'Minute Paper. Protector of Immigrant's Statement relative to his late trial for culpable homicide,' dated 16 March 1877.

<sup>84</sup> PAR Government House (GH) 1220, Copies of Despatches to Secretary of State for the Colonies, 1876 Dec 5 to 1879 Apr 15, no. 10 of 11 January 1877 and no. 17 of 16 January 1877.

<sup>85</sup> PAR GH 1220 Copies of Despatches to Secretary of State for the Colonies, 1876 Dec 5 to 1879 Apr 15, nos. 56 and 57 of 18 March 1877.

In conclusion, Bulwer recommended the replacement of McLeod as Protector, and he had already on 7 March 1877 been removed as a member from both the Legislative and the Executive Council. This, however, was all hushed up as much as possible, and it took until October 1877 until Major Graves was formally appointed Acting Protector to replace McLeod.<sup>86</sup>

Between March and October 1877 – besides completing the 'Return' – McLeod came to the fore as a more activist Protector and got into confrontations with both the colonial authorities and individual settlers. In March, he has a major disagreement with the Durban Town Clerk – whose name ironically was Cooley – around an application from an association of Muslims in Durban to be exempted from the Vagrancy Act and to be allowed to be out in the streets after nine o'clock at night during their celebration of 'Mavlud Sharif.' In a letter submitted in Arabic script, 15 Muslims complain that they are being 'treated as slaves instead of freeborn subjects', and – in spite what he had written in quote above – McLeod supports them in the face of the Town Clerk's refusal of their request, only to be rebuked by the Lieutenant Governor.<sup>87</sup> In September, just before his dismissal, he takes action against a planter called Harrison at Avoca for mistreatment of his Indian workers.<sup>88</sup>

He may also have tried to settle accounts with some of those who were instrumental in his downfall, but the archive only allows brief and opaque glimpses into the possible consequences of the case for its 'subaltern' actors. Thus 'Vellowpah', a paid witness used by Escombe in McLeod's trial, mysteriously disappears, and in June 1877, an Indian called 'Narsimloo' – who may or may not have been the one on whose testimony McLeod was accused of murder and imprisoned – is given a fine in the Protector's Court with McLeod as one of the witnesses. Since Narsimloo cannot pay the fine, he is sentenced to one month's imprisonment, with the sentencing signed by the Resident Magistrate of Inanda, Charles Barter – the same Magistrate, who in January had had McLeod imprisoned on the charge of murder.<sup>89</sup>

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<sup>86</sup> PAR II, 1/2, 65/1877, Minute from Colonial Secretary to McLeod, 7 March 1877; II, 1/3 411/1877 Minute from Colonial Secretary to McLeod, 2 October 1877.

<sup>87</sup> PAR II, 1/3, 1305/1877, Minute from McLeod, 26 March 1877 with enclosures and responses.

<sup>88</sup> PAR II, 1/3, 3643/1877, Minute from McLeod to Colonial Secretary on Harrison's obstructing the Protector.

<sup>89</sup> PAR II, 1/2, 61/1877, Disappearance of Vellowpah; II, 1/2, 201/1877, Minute from McLeod of 14 June 1877 concerning Narsimloo with sentencing sheet of Protector's Court of same date.

In the media of the time, the trial of Captain McLeod was treated as 'the great case' and 'the great talk of the town', was given very full coverage, and debated in letters from readers in both *The Natal Mercury* and *The Natal Colonist* in Durban, and *The Natal Witness* and *The Times of Natal* in Pietermaritzburg. At the time of the trial, the newspapers were mostly supportive of McLeod, though the *Natal Witness* and its editor, Francis Reginald Statham, were concerned about violence being condoned, even if the question of race is disregarded. In this respect, *The Witness* was highly critical of especially *The Mercury* – that 'great colonial mouthpiece,' which seems to be 'entirely satisfied in the verdict' of acquittal.<sup>90</sup> In October 1877, however, when McLeod is dismissed, there were only minute notices in all four papers.<sup>91</sup> Following his fall from grace, Captain McLeod disappears also from the archival record, only to resurface briefly in late 1877, when Major Graves as Protector reprimanded him for not having paid £ 16 outstanding in 'passage money' on two indentured 'Coolies' and one liberated slave boy - money McLeod had still not paid by the end of 1878.<sup>92</sup>

The challenge to the moral authority of the Protector institution was thus diffused, and – as far as the 'Liberated Africans' were concerned – new rules stipulating regular visitations were introduced to repair the cracks in its legitimacy. As for the Indian indentured labourers, the Protector continued to be predominantly an instrument of regulation at the disposal of employers rather than a protector of labourers. If the Protector tried to interfere with employers at the complaint of labourers, his efforts were usually ineffective – as in the attempts during the long reign of Louis Mason as Protector from 1883 to 1903 to change practices at the Reynolds Brothers' sugar states on the South Coast.<sup>93</sup> The *Report of the Indian Immigrants' Commission, 1885-7* (the Wragg Commission) backed this up by noting that '[t]he Indian has brought to Natal his

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<sup>90</sup> *The Natal Witness*, 20 and 23 February 1877. On F. Reginald Statham as editor of *The Witness*, see Simon Haw, *Bearing Witness: The Natal Witness, 1846-1996* (Pietermaritzburg: The Natal Witness, 1996), pp.99-106.

<sup>91</sup> *The Natal Mercury*, 13 October 1877; *The Natal Witness*, 12 October 1877; *The Natal Colonist*, 12 October 1877 and 29 October 1877; *The Times of Natal*, 10 October 1877.

<sup>92</sup> PAR II 1/3, 560/1877 and 1388/1878, Correspondence with Captain McLeod. In November 1878, the money had still not been paid, and the new Colonial Secretary, A. M. Mitchell, wrote in a minute that 'As he now has a good Govt. Appt. I submit that he should be called upon to pay us this money.'

<sup>93</sup> Philip Warhurst, 'Obstructing the Protector', *Journal of Natal and Zulu History*, 7 (1984), pp. 31-40.

love of litigation and a portion of his skill in fabricating false cases', and supported the Reynolds brothers in their refusal to collaborate with the Protector.<sup>94</sup>

The Wragg Commission recommended that 'the officer, who discharged the duties of Protector of Immigrants, ought to be able to speak either Tamil, the language of the majority of Immigrants from Southern India, or Hindustani, spoken by most of the men sent from the Calcutta agency.'<sup>95</sup> But the Commission also found that the very widespread and not very clearly defined jurisdiction of the Protector vis-à-vis civil and personal law cases involving Indians (including cases of marriage and divorce regarding also polygynous unions) was justified.<sup>96</sup> These powers were codified and transferred to magistrates with the passing of Act 25 of 1891, which 'simultaneously recognised and acknowledge custom and intervened in it by defining its limits in the Colony'.<sup>97</sup>

It was only under the last Protector, J. A. Polkinghorne, from 1903 to 1911 – himself an employer and a sugar farmer – that the power of planters began to be more seriously and effectively challenged by the office of the Protector.<sup>98</sup> But by then the importation of indentured labour was already coming to an end, and the aspirations of Indians, former slaves, and other groups of immigrants were taking on new forms in the context of the Union of South Africa.

## Epilogue

The struggles of the indentured labourers for recognition and citizenship were continued into the new century as racial segregation became increasingly embedded in South African legislation. The aspirations of South African Indians found an early focus in the battles to protect the rights of 'expired' indentured labourers to stay on and buy land, as these came under attack. It was in this context that Mohandas Gandhi came to the fore as a political campaigner, and that former indentured labourers and 'passenger' or 'Bombay' Indian traders were able to unite around a joint set of aspirations. This involved the fight to have Indians recognised as eligible for 'imperial citizenship', which

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<sup>94</sup> *Report of the Indian Immigrants Commission, 1885-7*, Pietermaritzburg 1887, 'Document 58' in Meer, *Documents*, p. 255.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, Chapter III, pp. 258-266.

<sup>97</sup> Sheikh, 'Making the Personal Civil', p. 64.

<sup>98</sup> Desai and Vahed, *Inside Indenture*, p. 125.

again could involve the acceptance of a differentiation of rights and obligations between Indian and African South Africans.<sup>99</sup> The port of Durban featured prominently in this struggle, as e.g. in January 1897 when – on Gandhi's return from India – there were mass demonstrations of White colonists against him, led by Harry Escombe – by then Attorney General and Minister of Defence in John Robinson's Natal Government – and attempts to have him lynched.<sup>100</sup>

On their side, the 'Liberated Africans' who had moved from being slaves to indentured labourers in Durban developed new strategies to be differentiated from 'the ordinary Kafirs of the Colony,' and to be exempt from paying the Poll Tax, and from being settled residentially in African townships. Identification as Muslims and as 'Zanzibaris' became an important ingredient in their struggles, which were supported by influential groups of Indian Muslims, including the Trust owning and administering the Juma Masjid mosque in Durban's Grey Street.<sup>101</sup> The high point of these aspirations came with the Group Areas Act in the late 1950s, when the 'Zanzibaris' were recognised by the Government as 'Other Asiatics' and, in a sense, honorary Indians, and – when they were forcefully removed in 1962 from the Bluff at Durban's harbour – were sent, not to African Umlazi, but to the new Indian township of Chatsworth.

Since the end of Apartheid and the democratic transition of 1994, this alliance between the descendants and representatives of two Indian Ocean networks of bonded labourers – brought together in the late nineteenth century under the administration of the Protector of Indian Immigrants – has disintegrated. Increasingly, the 'Zanzibaris' have turned to an identification as 'Amakhuwa', and have re-vitalised their roots and links in Northern Mozambique, and their historical past as African slaves. This has involved a turn against Indian paternalism as exemplified in the disputing claims for land restitution at the Bluff launched respectively by the Zanzibari Civic Association and the Juma Masjid Trust. It has also involved the development of new political visions and aspirations of dual and transnational citizenship that include a re-configuration of the

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<sup>99</sup> Pradip Kumar Datta, 'The Interlocking Worlds of the Anglo-Boer War in South Africa and India', in Isabel Hofmeyr and Michelle Williams (eds), *South Africa and India: Shaping the Global South* (Johannesburg, Wits University Press, 2011), pp. 56-81.

<sup>100</sup> Hofmeyr, *Gandhi's Printing Press: Experiments in Slow Reading* (Harvard, Harvard University Press, 2013), p. 54; Duncan Du Bois, *Labourer or Settler? Colonial Natal's Indian Dilemma, 1860-1897* (Durban: Just Done Publishing, 2011), p. 162. Escombe went on to become Prime Minister of Natal from February to October 1897.

<sup>101</sup> Kaarsholm, 'Zanzibaris or Amakhuwa?', p. 193f.

Indian Ocean networks within which migration and understandings of identity have developed.<sup>102</sup>

The geography of Durban and its port continues to play an important practical and symbolical role in these re-configurations, with new groups of South Asian migrants coming in from India, Pakistan and Bangladesh and new linkages being formed along the coast to the north with Maputo and further to Ilha de Mozambique and the East African coastal continuum. This links Southern Africa to the much wider, global world of Sufi Islamic networks and cultural connections, of which both Durban Indian and Amakhuwa South Africans are active members. In this way, Southern African and Indian Ocean histories have become more intertwined than ever. At the same time the new transnational linkages of globalisation have brought with them still further transmutations of servitude in the form of a re-emergence of labour agents and non-unionised contract labour as well as redundancies and mass unemployment.

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<sup>102</sup> Preben Kaarsholm, 'Diaspora or Transnational Citizens? Indian Ocean Networks and Changing Multiculturalisms in South Africa', *Social Dynamics*, 38, 3 (2012), pp. 454-466.