

Safety First



Profits Later

Genocidal Effects of Dereliction of Duty by Mining in SA

Author: Mike Fafuli

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Policy & Research Unit





South Africa gloats about its mineral reserves with the desire to lure global investors to pounce upon this beautiful abundance .It hopes that this will create jobs so that government can be able to fight poverty and unemployment including inequality. The elegance of furnished products from gold ,platinum and diamond amongst others have maintained the latitude to offset the diabolical effect of mining industry in South Africa and this is the living face of the industry .

The mining industry on the contrary contributes to inequality, death, injury, disease, environmental degradation, and misery. This is the killing face of the industry which is a consequence of dereliction of duty by the employers .It is imperative to unpack this and subsequently agitate for robust interventions by trade unions and decisive legislative interventions by government to reconstruct the ugly face and prevent it from reincarnation .

Contribution to the economy and job creation

Mining in South Africa is considered one of the key economic drivers and creator of job opportunities .In 2009 the industry contributed 8.8% to the country`s Gross Domestic Product (GDP).In the same period it indirectly contributed 10% of GDP. According to the South African Chamber of Mines this created close to 1 million jobs.

Out of this 1 million half (500 000) of it would be directly employed by mining while the remaining half (410 000) would be indirect employment through suppliers of goods and services. Although in 2011 the mining industry contributed 5.2% to the total South African GDP. It is generally counted amongst the leading employers in South Africa.

The gruesome face of the industry

But along the glitz and glamour of precious metals and the exciting nationalization discourse prompted by the newly found economic freedom fighters gallivants inaudibly a brutal killer left loose by decades of corporate neglect, TB¹. Linked to it are silicosis, respiratory effects, plus HIV AIDS. These consequences of the dereliction of Duty of Care have conscripted the powerless workers to endure undue perils as part of abridged ways to profiteering by mining industry.

¹ Tuberculosis (TB) is a disease triggered by germs. These germs are contagious meaning they spread from one person to the other by air and it commonly affects lungs. While it is treatable people still die from it in Southern Africa and Asia.

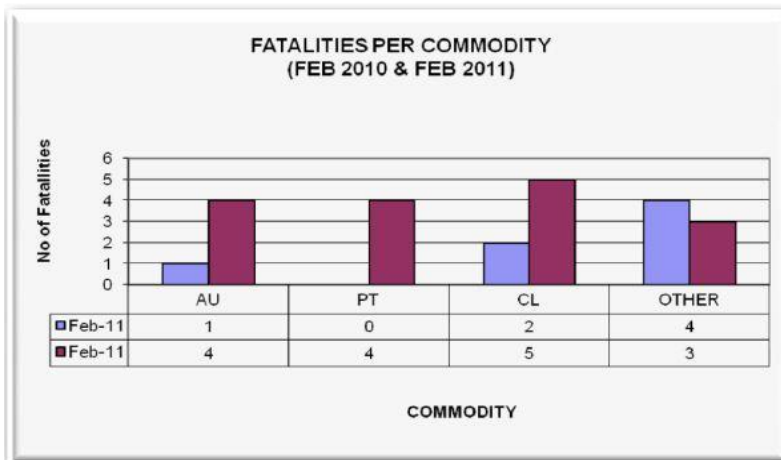


The rate of fatalities, injuries, disease, and potential effects of acid mine drainage present the gruesome face of a killing industry .For example 69 000² mineworkers were killed due to mine incidents between 1900-1993 and one million had been injured in this period. On 4 December 2007, the National Union of Mineworkers organized a strike .Over 60 mines were hit by the strike with 240 000 workers responding to the call. On 04 October 2011 organized another strike to highlight the rate of fatalities .The wanton fatalities in mining, occupational diseases and environmental degradation show an industry complicit in occupational genocide.

Health and Safety in mining

The Presidential Health and Safety Mining Report released in 2009 revealed that the mines in South Africa were only 66% safety compliant. In 2010 about 1 126 injuries were recorded while in 2011 the figure reduced to 711. Advocate Paul Mardon –Head of Health and Safety at Solidarity Union indicates that fatalities in Platinum mines increased by 140% in 2011.

To prevent occupational slaughter was expensive and as part of cost saving measures the mining industry invested little proportional to the risks .The endemic fatalities and growing occupational diseases have racial undertones besides their given class character. It should not be surprising given the historical symbiotic relationship between mining and apartheid state.



Mining fatalities

‘From the graph below, gold number of fatal accidents has increased by 300%, platinum by 400%, and coal by 150% and other mines has a reduction of 25 %’³.

An Oxford led Research Study suggested that the mining industry in Africa could possibly be linked to almost 760,000 new TB infections per year given effects of silica dust, poor living and crowded conditions and the prevalence of HIV AIDS. These conditions have effected a cumulative destructive effect on workers. The latter conditions

² Fanie Heyns : Monday, 24 January 2011 ,’More than 69 000 mine workers died between 1900 and 1994 and more than a million were seriously injured, the commission reported. On average, 742 miners were being killed per year and more than a million seriously injured’ (Digging Deep Monday, 24 January 2011)

³ Source: Mining and the OHS Report February 2011.

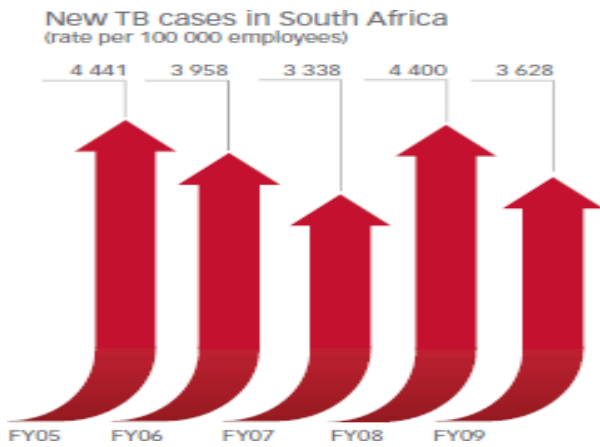


present a disastrous scenario that largely engulfed black workers. So the genocidal thread has been predominately racist in character.

Many mining workers directly employed underground will not leave to see retirement age without bodily harm .They will either be killed, injured, or fall sickly. Engulfed by either of these conditions because the industry has invested little historically to a successful fight.

The spread of occupational diseases and duty of care

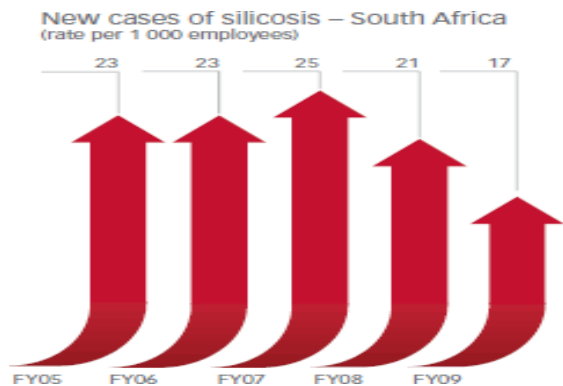
Source: Harmony –Occupational health in SA



An Oxford University led study indicates that spouses, children, and friends of those who contracted disease by working in the mines have the possibility of being infected given that these diseases are contagious. In 2010 TB killed 1,300,000 people in the world while 9,400,000 were found to have contracted the disease. According to World Health Organization about 30% constituted Africa `s diagnosis data base.

The South African Chamber of Mines by own admission designated that ‘2 984 of every 100 000 mineworkers develop TB’. Albeit the general view that 7 000 per every 100 000 workers develop the disease. While the South African National Health Department highlights a scope between 3000 and 7000 per 100 000 annually. The Chamber of Mines lopsided outlook may not obscure the industry`s complexity in the careless regard for black lives. After all it is its responsibility to defend its members.

Source: occupational health in SA mining (Harmony)



In 2009 the world had about 10 million orphans whose parents died due to the TB endemic mainly in developing countries .The World Health Organization considered Swaziland as having high rate TB infection with 1 200 per 100 000 of the population infected .In Lesotho particularly Maseru hospitals between 35% to 45% TB

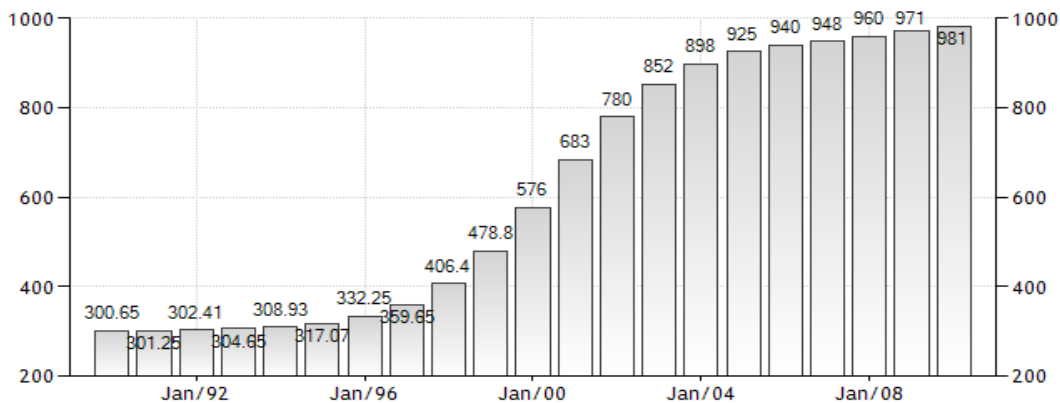


suffers would have worked in South African mines. This is the cross-border effect of South African mining.

According to Lancet Laboratories Dr. Pillay a Microbiologist about 400 000 South Africans are annually diagnosed with TB. This is clearly an occupational catastrophe with serious regional and social consequences. As far as 1998 studies in the mining industry showed that those suffering from silicosis were around 300 000. In this scenario alone mining could be liable for a massive civil claim by former mineworkers if they prove the link between their illness and employment.

Deputy President Mr. Kgalema Motlanthe with the Health Minister Dr. Aaron Motsoaledi launched a strategic TB Curbing Plan in Carletonville in March 2012. Carletonville is a gold mine area and gold miners constitute the key group of the target population. The aim was to encourage mine workers to embrace testing to ensure those infected could get timely treatment. The plan will have miners screened and tested for both TB and HIV AIDS. So the state intervention must not exonerate mining from ultimate liability.

INCIDENCE OF TUBERCULOSIS (PER 100; 000 PEOPLE) IN SOUTH AFRICA⁴



Acid mine drainage and environmental impact

The mining industry produces acid mine drainage an acidity problem threatening contamination of streams and water ways. The water used by democracy's outcasts who scavenge the abundance in dump heaps for a livelihood face a new dilemma in their destitution. The birds and the aquatic creatures would bear the brunt to the same effect. All these are diabolical

⁴ WORLD BANK INDICATORS



consequences of irresponsible mining activity. In his budget speech this year Finance Minister Pravin Gordhan has allocated R225 million for a period of two years towards building acid mine water treatment facility in the Vaal water management area.

The state `s capacity to make these interventions is enhanced by tax collection to which majority of the South Africans oblige to pay despite the fact that mining benefits do not improve their livelihood .Mariette Liefferink and expert and activist in acid water drainage assert that 2.7 billion litres of acid mine drainage were already part of the water ways so the interventions may be too late.



A game reserve on the Tweelopiesspruit near Krugersdorp, West Rand, is the recipient of untreated acid mine drainage. Photo: Cara Viereckl⁵

The Department of Water and Environmental Affairs hopes to claim recovery expenses from culprit companies subsequent to its remedial interventions which effectively are bail out measures to mining companies .While it inherits the burden government must take the strategic opportunity to put conditions to effect discipline e.g. doing business with responsibility by imposing the polluter pray principle.

But In doing so it may find itself in a protracted long legal wrangle with business. Communities that could be affected must consider legal recourse. This is the only best way for ordinary people to enforce responsible business practice.

⁵ March 22 2012 ,Source SAPA



The Mankayi⁶ judgment and occupational diseases

Mr. Mankayi took **legal action**⁷ against AngloGold Ashanti for failing to provide safe and healthy working environment which resulted in him suffering from silicosis. An occupational disease he contracted under the employ of AngloGold Ashanti. Silicosis devours lungs and can result in death of the patient. It is a consequence of the inhalation of silica dust from underground mining and makes workers vulnerable to TB.

In objection Anglo Gold invoked section 35(1) of **Compensation for Occupational Injuries and Diseases Act (COIDA)** and argued that employees were prevented from taking such legal action against their employer(s). Section 35(1) holds: *"[n]o action shall lie by an employee or any dependent of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death."*

Mr. Mankayi claimed that section 35(1) of COIDA did not prevent him from claiming delictual damages from Anglo Gold because despite being an employee under COIDA (S35 (1)), **Occupational Diseases in Mines and Works Act (ODIMWA)** covered his disease(s) exempting him from COIDA. The court found in favour of Mr. Mankayi .This judgment has given ex-mineworkers a new leave of life to ensure corporate accountability and file civil damages.

The intervention by government will not ameliorate the degrading state of destitution defining families of mine workers. The judgment has profiled the importance of the company `s duty of care in protecting human dignity.

Organized workers call for legislative integration

In 2006 the NUM called for the integration of ODMWA and COIDA .This was intended to correct the disparities created by the parallel existence of the two Acts .For instance COIDA`s benefits are higher than those provided by ODMWA. In some instances both Acts exclude certain categories of employees from cover which is problematic .In addition ODMWA `s cover is limited to lung diseases whereas COIDA covers most of the illnesses and injuries .Furthermore, COIDA provides for pension payment while ODMWA has no provisions to this effect .

⁶ Thembekile Mankayi, who sustained a lung disease while he worked at AngloGold Ashanti between 1979 and 1995, lodged a civil claim of more than R2, 6-million, after he had been compensated through the Occupational Diseases in Mines and Works Act (ODIMWA). The court had to decide on whether miners, who had been compensated under the ODIMWA, could claim compensation from their employers, or whether a section of the Compensation for Occupational Injuries and Diseases Act precluded common law claims (Petronel Smit –Polity African News).

⁷ Petronel Smit: SA court ruling opens door for claims against mines published by Polity African News



On funeral benefits COIDA provides funeral benefits while ODMWA does not. In this regard as part of government strategic intervention in curbing the effects of the spectra of diseases in the mining industry it is imperative that both Acts are streamlined into one effective legislation that creates maximum benefit for both occupational diseases and injuries sustained by workers whilst employed.

Mining remuneration and inequality

The CEO Mike Cutifani of Anglo Gold the company which Mr. Mankayi worked for earned R22.4m. plus 11.4 million rand salary and an 8.5 million rand bonus which puts him above R30 million in payment all in the same year in which Mr. Mankayi died. Srinivasan Venkatakrishnan (CFO) of the same company received R16.6 million. While ten executive members were allocated R118 million to share amongst themselves. An average worker in the mines earns between R3, 800 and R4000, 00 monthly.

Neville Nicolau of Anglo Platinum earned 19.85 million and came fourth on the top twenty of highly paid Chief Executives in mining. Yet fatalities in the platinum sector increased about 140%. Neville Nicolau is the fourth in the list 20 best paid CEOs in South Africa. This is not only gross inequality we see through wage disparities but also a sequence of racial wage differentials presenting South Africa as one of the most unequal societies in the world. Almost 50% of the South African population is fixed to 08% of national income while 92% of national income is enjoyed by heavily privileged white minority.

The disregard for black lives was demonstrable in the 1987 Kinross mine disaster where 177 workers died by fire triggered by polyurethane which was a banned substance in countries like Australia. Neither the company nor management was held liable for the disaster. It is this escape from liability that has entrenched the neglect of duty of care by employers in mining.

Effects of migration on social relations and treatment regime

The acquisition of TB by mineworkers poses risks to their spouses, children, including their friends. The Oxford research indicates that Tuberculosis has been increasing in Southern Africa between 1990 and 2007. This has been doubling over a twenty year period with incidents ranging from 173 out of every 100,000 to 351 per every 100,00 population. The cross-border nature of mining in South Africa had impact on countries like Swaziland, Lesotho, Botswana, and etc. pertaining to the spread of disease in Southern Africa. The migratory nature of workers has subjected them to the predatory brutality of mining capital.

The migratory feature of the employees impacts on the treatment regime which accentuates probabilities of the spread. The health facilities in the labour sending areas of South Africa and neighboring countries are in a state of want. So when ill workers are sent home it is easy to conclude that are sent home to die. In most cases no supporting documentation is given to



these sickly mineworkers to link them with treatment in the areas where they retreat to for holidays to ensure continuity of treatment .This exacerbates resistance to TB treatment.

The Way forward

To remedy the situation government must dispense the culture of business with responsibility through punitive measures while it also generates conducive infrastructure for private entities and social partners to work together in resolving the health and safety challenges in the mining industry. The victims must use legal avenues to claim damages and social protest to change their destitution.

The state of misery in which Mankayi died and the resonance of his posthumous victory in the struggle for dignity as per the court judgment reminds us of the importance why the National Democratic Revolution must aggressively go a step further beyond race and gender lenses. So that the scourge of poverty wages, fatalities, injuries, disease and acid mine drainage and inequality all consequences of mining negligence do not remain the permanent discord in the ANC `s next centenary celebrations. This can happen if the workers develop deep sense of the genocidal effects of the dereliction of duty of care by employers.

Mike Fafuli

- Policy and Research Officer –Secretariat Pillar NUM
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