

# Health and safety sacrificed for profits

## Mining industry doesn't care

The mining industry continues to neglect workers health and safety, hence high death tolls from accidents and diseases such as tuberculosis, silicosis and HIV and AIDS writes **Mike Tankiso Fafuli.**

**S**outh Africa gloats about its mineral reserves with the desire to lure global investors to pounce upon this beautiful wealth. By so doing, the country hopes that this will create jobs so that government can be able to fight poverty, unemployment and inequality. However, the beauty of furnished products from gold, platinum and diamond, often disguise the evils of the mining industry in South Africa.

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 result of neglect of duty by the employers. It is important to unpack this and call for tough interventions by trade unions and decisive laws by government to change the ugly face and prevent it from showing up.

### ECONOMIC CONTRIBUTION 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 one million jobs.

Out of the one million, half were directly employed by mining, while the remainder was indirectly employed through suppliers of goods and services. The mining industry contributed 5.2% to the GDP and is generally counted amongst the leading employers in South Africa.

### MINING'S UGLY FACE

Alongside the glitz and glamour of precious metals and the exciting nationalisation debates promoted by the newly formed economic freedom fighters, a brutal killer left loose by decades of corporate neglect, exists in the form of tuberculosis (TB). Linked to it are silicosis, respiratory diseases and HIV and AIDS. This neglect of the duty to take care of workers while making profits from the sweat of their labour is common in the mining industry.

The death toll, injuries, disease, and the potential effects of acid mine drainage present the frightening face of a killing industry. For example, 69 000 mineworkers died in mine accidents during the period 1900 to 1993 and one million were injured.

On 4 December 2007, the National Union of Mineworkers (NUM) organised a strike. Over

60 mines were hit by the strike with 240 000 workers responding to the call. On 4 October 2011 NUM organised another strike to highlight the rate of fatalities. The high number of deaths in mining, occupational diseases and environmental degradation show an industry taking part in occupational genocide.

### HEALTH AND SAFETY

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 the death toll 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 value to the risks. The increasing number of deaths and growing occupational diseases affects mainly black workers and has a class character. This should not be surprising given the historical ties between mining and the apartheid state.

## MINING FATALITIES

'According to the Mining and Occupational Health and Safety Report, gold number of fatal accidents has increased by 300%, platinum by 400%, and coal by 150% and other mines has a reduction of 25%'.

An Oxford University-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 and AIDS. When combined, these conditions have badly affected workers' health. The latter conditions present a disastrous scenario that largely affects black workers. So the genocidal thread has been mainly racist in character.

Most mineworkers directly employed underground will not live to see retirement age without bodily harm. They will either be killed, injured, or fall sick. This happens because the industry has invested little in workers' health to be able to improve the conditions.

## SPREAD OF OCCUPATIONAL DISEASES

An Oxford University-led study indicates that spouses, children, and friends of those who contracted diseases 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 the World Health Organization (WHO) about 30% were from Africa.

The general view is that 7 000 per 100 000 mineworkers develop the disease, but the South African Chamber of Mines admits to a lower figure of 2 984 per 100 000 per annum. The South African National Health Department gives figures of between 3 000 and 70 000 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 responsible for defending its members.

In 2009 the world had about 10 million orphans whose parents died due to TB mainly in developing countries. The WHO considered Swaziland as having a high TB infection rate of 1 200 per 100 000 of the population infected. In Lesotho, particularly Maseru hospitals, about 35% to 45% TB sufferers had worked in South African mines, reflecting the cross-border effect of mining.

According to Lancet Laboratories microbiologist, Dr Pillay, about 400 000 South Africans are annually diagnosed with TB. This is clearly an occupational catastrophe with serious regional and social consequences. As far back 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 Kgalema Motlanthe and Health Minister 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 and AIDS. So the state intervention must not move liability away from the mining industry.

## ACID MINE DRAINAGE

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

The state's capacity to make these interventions is enhanced by tax collection from the majority of South Africans who are obliged to pay despite the fact that mining is not improving their livelihoods. Mariette Lieferrink, an expert and activist in acid water drainage, asserts that 2.7 billion litres of acid mine drainage were already part of the water ways so the interventions may be too late.

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 that effect discipline, for example doing business with responsibility by imposing the polluter pays principle. But in doing so, it may find itself in long legal battles with business. Communities that could be affected must consider taking legal action. This is the best way for ordinary people to enforce responsible business practices.

## MANKAYI JUDGMENT

Thembekile Mankayi took action against Anglo Gold Ashanti for failing to provide a safe and healthy working environment, which resulted in him suffering from silicosis, an occupational disease he contracted under the employ of the company. Silicosis destroys lungs and can cause death of the patient. A worker gets the disease by inhaling silica dust when underground. Silicosis makes workers vulnerable to TB.



*Mineworkers demonstrate for health and safety.*

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.'

Mankayi claimed that section 35(1) of COIDA did not prevent him from claiming 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 ruled in favour of Mankayi. This judgment has given ex-mineworkers a new lease on life to ensure corporate accountability and to file for civil damages.

The intervention by government will not change the degrading state of destitution among families of mineworkers. The judgment has profiled the importance of the company's duty of care in protecting human dignity.

#### **ONE LAW**

In 2006 the NUM called for the integration of ODIMWA and COIDA. This was intended to correct the gaps created by the parallel existence of the two Acts. For instance COIDA's benefits are higher than those provided by ODIMWA. In some instances both Acts excluded certain categories of employees from cover, which is problematic.

In addition, ODIMWA's cover is limited to lung diseases whereas

COIDA covers most of the illnesses and injuries. Furthermore, COIDA provides for pension payment while ODIMWA has no such provisions.

On funeral benefits COIDA provides while ODIMWA does not. As part of government strategic intervention in curbing the effects of diseases in the mining industry, it is important for both Acts to become one law that creates maximum benefit for occupational diseases and injuries sustained by workers whilst employed.

#### **FAT PAY FOR BOSSES**

In the year Mankayi died, Anglo Gold CEO, Mike Cutifani, earned R33.8 million plus an R8.5 million bonus. Chief finance officer, Srinivasan Venkatakrishnan of the same company received R16.6 million while 10 executive members shared R118 million amongst themselves. An average worker in the mines earns between R3 800 and R4 000 monthly.

Neville Nicolau of Anglo Platinum earned R19.85 million and came fourth in the top 20 of highly paid chief executives in mining. Yet fatalities in the platinum sector increased by 140%. Neville Nicolau is the fourth in the list of 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 lives on 8%, while 92% of national income is enjoyed by a 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.

#### SENT HOME TO DIE

TB infection poses risks to mineworkers' spouses, children

and friends. The Oxford University research indicates that TB has been increasing in Southern Africa between 1990 and 2007. This has been doubling over a 20-year period with incidents ranging from 173 out of every 100 000 to 351 per every 10 000 population. The cross-border nature of mining in South Africa impacted on countries like Swaziland, Lesotho and Botswana. 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 and causes the spread of diseases. 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 they 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 worsens resistance to TB treatment.

#### WAY FORWARD

To remedy the situation government must enforce a culture of business

with responsibility through tough measures. Government must also create an environment 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 his posthumous victory in the struggle for dignity as per the court judgment reminds us of the importance of why the National Democratic Revolution must aggressively go a step further in race and gender lenses. The scourge of poverty wages, deaths, injuries, disease and acid mine drainage and must not remain a permanent discord in the African National Congress'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. **LB**

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Delegates sing at the 2012 NUM Congress in Johannesburg where it was resolved that the Mine Health and Safety Act be merged with the Occupational Health and Safety Act for the benefit of mineworkers.