

# Farlam loses his temper with Mpofu at inquiry

**SAMUEL MUNGADZE**

Staff Writer

JUDGE Ian Farlam's annoyance and frustration with lawyers appearing before the Marikana Commission of Inquiry took a turn yesterday when he snapped at advocate Dali Mpofu over his cross-examination of police commissioner Riah Phiyega.

The judge, who has kept his composure throughout the commission's seating, lost his cool when Mr Mpofu said he would not move on until the general had answered his questions adequately.

Lawyers at the commission had been pressing Judge Farlam to expedite matters, citing spiralling expenses as well as prolonged suffering and distress among the families of victims.

Yesterday, the judge felt that by his cross-examination, Mr Mpofu was prolonging the inquiry's seating unnecessarily.

The lawyers last month complained that at the rate the hearings were being conducted, the inquiry was likely to be concluded next year. The frustration was heightened further when President Jacob Zuma extended the period for the commission of inquiry to the end of October, confirming fears of the prolonged inquiry.

Yesterday Mr Mpofu insisted he would not move forward with his questioning until Gen Phiyega had answered a question regarding the stage at which she knew there was an underlying wage dispute at Lonmin's platinum mine.

Gen Phiyega had remained steadfast in her response.

"I'm going to sound like a scratched record. I have clearly articulated myself that the unrest could have been because of whatever, but we, as the police, were there because there was an unprotected strike which was violent," she said.

It was her response which prompted Mr Mpofu to tell the commission that he would not move on until he was answered, even it meant he would wait for 30 days. "I'm sorry. I'm not moving away from my question. It forms a crucial part of my case," he said.

It was at this stage that Judge Farlam intervened angrily.

"Don't make threats to me, if I say move on to something else, you will. We'll not be here the whole month," Judge Farlam snapped.

Mr Mpofu's line of questioning had appeared to suggest that the presence of the police at the mine was political. He wanted the commissioner to confirm or deny this, but Gen Phiyega would not be drawn into a "Yes or No" answer.

"The reason why police went there was because there was an unprotected strike and violence. I've answered you over and over again," she said.

Meanwhile, African National Congress deputy president Cyril Ramaphosa yesterday rejected allegations that he was instrumental in the "recharacterisation" of the deadly Marikana dispute.

However, Mr Ramaphosa acknowledged that Lonmin management was anxious that the government urgently be informed of the seriousness of the situation.

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# Marikana: 'politics played no part'

Cops there only because of violence, says Phiyega

**SAPA**

**T**HERE was nothing political in the police presence at Lonmin's platinum mine at Marikana, last year, the Farlam Commission of Inquiry was told yesterday.

This was during the submission of national police commissioner General Riah Phiyega in response to questions by Dali Mpofu, appearing for miners wounded and arrested during the unrest at Marikana.

Mpofu asked Phiyega at what stage she knew there was an underlying wage dispute at Lonmin's platinum mine.

"I've clearly articulated myself that the unrest could have been because of whatever, but we, as the police, were there because there was an unprotected strike which was violent," she said.

Phiyega said the information she had at the time was the same information that was public knowledge.

She was aware that there were incidents of intimidation, public violence and murder before she went to Marikana.

"I'm going to sound like a scratched record," said Phiyega.

"The reason why police went there was because there was an unprotected strike and violence. I've answered you over and over again," she said.

Mpofu maintained that he would not move away from the point until Phiyega gave an answer.

He said he wanted to prove there was political interference that led to the situation's being "decharacterised".

"I'm sorry. I'm not moving away from my question. It forms a crucial part of my case," said Mpofu.

Phiyega responded by saying that she knew there was a matter regarding R12 500.

"Whether it was a wage dispute or anything, I don't know," said Phiyega.

Mpofu questioned her on whether she believed the situation was a hybrid - wage-related unrest wherein criminal activity then surfaced.

The advocate referred her to a statement by ANC deputy president

Cyril Ramaphosa.

Ramaphosa's company, Shanduka, owns shares in Lonmin.

In his statement, Ramaphosa acknowledged having sent an e-mail to Lonmin on August 15 - the day before police fired on striking mineworkers, killing 34 of them.

In the e-mail, Ramaphosa said: "The terrible events that have unfolded cannot be described as a labour dispute.

"They are plainly dastardly criminal and must be characterised as such.

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Mpofu pointed out that on that same day, Mineral Resources Minister Susan Shabangu had called the matter a labour dispute.

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Mpofu questioned Phiyega on what view the police had acted on when they went to Marikana.

Phiyega said the police viewed the matter as a law-and-order issue.

In response, Mpofu said: "I'm pursuing a leg that says because of a campaign to (make) the characterisation solely a criminal matter - it was to make up for what the (police) minister (Nathi Mthethwa) said.

(He said) if it's a criminal matter, use maximum force; if it's not a criminal matter, use minimum force."

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Earlier yesterday, Mpofu suggested that police might have "misdiagnosed" the situation at Lonmin. If police did not have the correct details of the conflict, they could not have had an accurate plan to resolve it, he said.

"If I can prove at the end that there was a series of misdiagnoses of the situation, then the police's plan was doomed to fail."

Mpofu said police did not appropriately address the situation, as they believed the unrest was largely associated with union rivalry. Workers, however, also wanted higher wages.

The commission, chaired by retired judge Ian Farlam, is investigating the deaths of 44 people killed during the unrest.

Police shot dead 34 striking mineworkers on August 16. Ten people, including two police officers and security guards, were killed in the preceding week.

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# Amcu warns Lonmin of wildcat strike

LONMIN mine has been urged to engage Amcu over its recognition agreement or face a strike.

This was the warning issued by labour law expert Michael Bagraim yesterday. It would be best for Lonmin to act swiftly and grant the Association of Mineworkers and Construction Union (Amcu) full organisational rights as the majority union and stop protecting its rival, the National Union of Mineworkers (NUM), he said.

Amcu said it had secured a meeting with Lonmin on Monday to ask the company to agree to its demands or face a strike. Amcu national treasurer Jimmy Gama said if no agreement was reached on Monday, the union would serve Lonmin with a Tuesday deadline to do so. "If nothing changes, we will serve Lonmin with a 48 hours strike notice on Wednesday."

The strike would then officially start on Saturday.

Amcu and Lonmin reached an impasse in their recognition agreement dispute. The matter was referred to the CCMA, but a certificate of non-resolution was issued.

Amcu wants to be conditionally recognised as the majority union at Lonmin. It also wants minority unions to have a union membership of at least 35 percent to enjoy basic recognition rights at Lonmin.

Lonmin wants the representation threshold for collective bargaining for skilled workers to be 20 percent. This, according to insiders, has been widely seen as Lonmin's way of assisting the NUM to stay on as a recognised union after its membership plunged from being the majority to just about 20 percent of membership at Lonmin. The company has confirmed that Amcu represents about 70 percent of workers in the category which includes miners and rock drill operators.

If the threatening strike was allowed to happen, Bagraim said, it could turn into another season of turmoil in the mining industry that was "already on its knees".

Bagraim said the government should enhance its intervention in the troubled mining industry and put pressure on Lonmin to give in to Amcu's demands "before the entire economy collapses".

"(The ANC) as an ally of Cosatu will not dare fight (the labour federation) because they need their support in the elections. For that reason they'll support it against Amcu. Lonmin is also seemingly under pressure from the government to keep the NUM." – Poloko Tau

# ‘No political motivation for police presence at Marikana’

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Mpofu questioned Phiyega on whether she believed the situation was a hybrid wage-related unrest wherein criminal activity then surfaced.

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# Lonmin urged to honour its deal with Amcu to avert strike

**POLOKO TAU**

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LONMIN has been urged to speak to the Association of Mineworkers and Construction Union over its recognition agreement or face strike action.

This was a warning by labour law expert Michael Bagrain, adding that it would be best for Lonmin to act swiftly and give Amcu the full organisational rights as the majority union and stop protecting its rival, the National Union of Mineworkers (NUM).

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48-hour strike notice on Wednesday,” he said.

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Lonmin wants the representation threshold for collective bargaining for skilled workers to be at 20 percent. This, according to insiders, has been widely seen as Lonmin’s way of assisting NUM to stay on as a recognised union after its membership plunged from being the majority to

just about 20 percent of membership at Lonmin. The company has confirmed that Amcu was representing about 70 percent of workers in the category which includes miners and rock drill operators.

If the threatened strike was allowed to happen, Bagrain said, it would be the beginning of what could turn into another season of turmoil in the mining industry, which he added was “already on its knees”.

Bagraim said: “Once the strikes spread, they may be protracted. And without any salaries, workers will get frustrated, go to loan sharks, and at the same time, violence will spread.

“For the sake of the whole of South Africa, which has already lost billions in mining taxes, our struggling economy and the stability in the struggling industry, Lonmin must do the right thing by giving Amcu what they want and avoid strikes,” he added.

# MPOFU BLAMES POLICE AND ARMY

**Siphelele Dlodla**

**A JOINT operation between the army and police, and a misdiagnosis of labour-related issues led to the Marikana massacre, Advocate Dali Mpofo argued yesterday.**

Mpofo was cross-examining national police commissioner General Riah Phiyega at the Marikana Commission of Inquiry in Centurion.

Tempers flared between the two. At some point Mpofo, exasperated by what he alleged was Phiyega's apparent evasiveness, came close to accusing the police commissioner of perjury.

Mpofo said the South African Police Service had

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joined forces with the South African Air Force because the wildcat strike was classified as criminal. During this time, the police operational strategy was upgraded to "Stage 6, which involved the cordoning off and searching of hostels", he said.

In the move to disarm striking mineworkers, Mpofo argued, the police had "engaged maximum force", culminating in the death of African National Congress councillor Paulina Masuhlo, who was caught in the cross-fire [of rubber bullets].

Masuhlo later died from leg

and abdominal wounds in hospital on September 15.

Mpofo further argued that the police had taken Lonmin's view that "this was not simply an industrial dispute but criminal", also citing Cyril Ramaphosa's affidavit to the commission.

But Phiyega stuck to her guns, saying that the police were meant to bring stability to a volatile situation that had been prompted by an unprotected strike.

"Our involvement was purely to restore public order," Phiyega said. "We only utilised equipment from

the [South African] Air Force, not personnel."

Asked if she knew what the underlying causes and grievances of strikers were, Phiyega resolutely said this was public knowledge that workers were demanding R12 500 from their employer.

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# Amcu threatens strike at Lonmin

THE Association of Mineworkers and Construction Union has threatened to down tools at platinum mine Lonmin next week if it is not recognised as the majority

union, a senior official said yesterday.

“At a mass meeting yesterday, our members opted to embark on a protected industrial action, but

we will first seek a meeting with Lonmin management to see if we can’t come into an agreement,” Amcu treasurer Jimmy Gama said. – *Reuters*

# Mpofu and Phiyega lock horns

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## **NQETO'S BODY IDENTIFIED**

■ THE family of slain Marikana union shop steward, Mbulelo Nqeto formally identified his body yesterday, North West police confirmed.

According to police spokesman, Sabata Mokgwabone, the deceased hails from Qunu in the Eastern Cape.

Nqeto was gunned down by unknown men inside the offices of the National Union of Mineworkers (NUM), situated next to the Wonderkop hostel near Lonmin Mine early this week.

Mokgwabone said no arrests have been made. – *Citizen Reporter.*

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**QUESTION TIME.** National Police Commissioner Riah Phiyega testified yesterday at the Farlam Commission of Inquiry into the deaths of 44 people in Marikana last year. *Picture: Christine Vermooten.*

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# Shooting politically motivated – Mpofo

## **ELAINE SWANEPOEL**

**ADVOCATE** Dali Mpofo, representing the miners that were arrested and wounded during last year's unrest in Marikana, will argue that the police's action on August 16 last year was politically motivated and characterised in such a way as to justify their violent actions.

"We will argue there was a campaign to change the characteristics of the Lonmin strikes from a simple wage strike to a criminal matter, so as to justify the use of maximum force," Mpofo said during a sitting of the Farlam Commission of Inquiry in Centurion yesterday. The commission is investigating the deaths of 44 people during the unrest on August 16, of which police shot dead 34 striking mineworkers.

Under cross examination Mpofo pressed National Police Commissioner General Riah Phiyega on whether she knew beforehand that the events at Lonmi's Platinum mine were underlined by a wage dispute. Phiyega initially stood by her answer that the police were there in their capacity to ensure peace and stability.

It was only much later that she admitted to knowing there was a dispute of some kind, but that she did not know the particulars of the dispute.

"In a statement (ANC deputy president Cyril) Ramaphosa mentioned the rising of violence which led to the killing of various people in the run up to August 16," Mpofo said.

# Day 100 of the Marikana buzz

August 16 forms a dark cloud over South Africa as answers for mining tragedy are still earnestly sought

QAANITAH HUNTER

MORE than 100 days have passed since the Marikana Commission of Inquiry started its work to give answers to the nation as to what really occurred in August last year at a Lonmin mine in Marikana, North West.

August, particularly the 16th, forms a dark cloud over South Africa as answers are still being sought as to who is responsible for the tragic incidents that cost the lives of 44 people.

In addition, the violence that plagued the mine resulted in more than 70 persons being injured and close to 250 arrested.

The commission headed by retired justice of the Supreme Court of Appeal judge Ian Gordon Farlam, is mandated to investigate matters of public, national and international concern arising out of the tragic incidents at Marikana in that week of August.

Among the legal representatives involved, making submissions and participating in the cross examinations of witnesses, are advocate Ishmael Semanya, acting on behalf of the South African Police Service and advocate Dali Mpofu acting on behalf of the injured miners.

Meanwhile Lonmin, the National Union of Mineworkers (NUM) and rival union Association of Mineworkers and Construction Union (Amcu) also have legal representation.

In addition, representations are made on behalf of the South African Human Rights Commission, non-governmental organisation the Bench Marks Foundation and Police and Prisons Civil Rights Union (Popcu).

Four advocates of the high court were further appointed as evidence leaders.

They are advocates Mbuyiseli Madlanga, Mathew Chaskalson, Geoff Budlender, and Charles Wesley.

"These evidence leaders are experienced advocates of the high court of South Africa and will make an indelible contribution to the work of the commission," it noted.

In more than 600 hours of the commission's hearings, various witnesses were called on to testify on different facets of the incidents of August.

Anglican bishop of Pretoria, Bishop Jo Seoka, was among the first to take the stand followed by SAPS member WO Wessels

continued to testify, president of Amcu Joseph Mathunjwa and Brig Zephania Mkhwanazi from the SAPS.

NUM's chief Lonmin negotiator Eric Gcilitshana was called to the stand by the NUM legal representative, Karel Tip, while NUM president Senzeni Zokwana gave testimony and was cross-examined on his involvement in the Lonmin wage dispute.

Mzoxolo Magidiwana, a protestor who was shot by the police on August 16, 2012, was called to testify, after which the national police commissioner, Riah Phiyega, took the stand.

Maj-Gen Charl Annandale, who serves as the component head of specialised operations in the SAPS, was also called to take the stand in April this year.

As the commission is trying to find get answers as to why and how those 44 people were killed, many witnesses and potential

witnesses have been gunned down in mysterious circumstances.

Lonmin mineworker Lungani Mabutya committed suicide in May.

Another witness, Steve Khululekile, who was the regional organiser of Amcu, died in the same

month after being attacked at a tavern near an Anglo American shaft in Rustenburg.

Earlier in March, Alton Joja, a sangoma (traditional healer) who reportedly supplied the striking workers with charms they believed would protect them against police bullets, was shot and killed by unknown assailants.

"Both cases appear to be assassination. It is important for this commission to get to the truth of what happened and it's able to carry on without interference and disruption. Deaths of these kind can only impact adversely on the work of the commission," Farlam said.

Lawyers say there are many others on the witness list but the list has been kept a secret.

The commission was scheduled to end in May but its work has not finished. President Jacob Zuma then extended the commission period without a rigid deadline.

Furthermore the commission has cost the government millions.

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news@thenewage.co.za



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# Cops' chaos raised

## Dali Mpofu questions police commissioner on level of SAPS lawlessness

MEDIA reports that 500 police officers were being investigated for murder, attempted murder and fraud were discussed at the Farlam Commission of Inquiry yesterday.

Dali Mpofu, for the miners arrested and wounded during last year's unrest at Lonmin's platinum mine in Marikana, said he heard the report on the radio in the morning.

He raised the issue as he cross-examined national police commissioner Riah Phiyega.

"Is that the level of lawlessness of police?" he asked her.

Ishmael Semanya, for the

police, objected and asked whether the question was relevant.

In response, Mpofu said: "If the outcome of this commission is that police behaviour should be improved, then this can be used as a basis. Before you can diagnose a problem, you need to know the extent of the problem," Mpofu said.

The commission chairperson, retired judge Ian Farlam, asked Phiyega whether the number of police officers being investigated by the Independent Police Investigative Directorate was about the same

number as last year.

Phiyega said she did not believe the numbers had drastically escalated from August last year.

The commission, sitting in Centurion, is investigating the death of 44 people killed during mining unrest. Police shot dead 34 striking mine workers on August 16. Ten people, including two police officers and security guards, were killed the preceding week.

Earlier yesterday Mpofu suggested that police might have "misdiagnosed" the situation at Lonmin.

If police did not have the correct details of the conflict, they could not have had an accurate plan to resolve it, he said.

"If I can prove at the end that there was a series of misdiagnoses of the situation, then the police's plan was doomed to fail," he said.

Mpofu said police did not appropriately address the situation, as they believed the unrest was largely associated with union rivalry. Workers, however, also wanted higher wages.

The hearing continues. - Sapa



# Day 100 of the Marikana buzz

August 16 forms a dark cloud over South Africa as answers for mining tragedy are still earnestly sought

QAANITAH HUNTER

MORE than 100 days have passed since the Marikana Commission of Inquiry started its work to give answers to the nation as to what really occurred in August last year at a Lonmin mine in Marikana, North West.

August, particularly the 16th, forms a dark cloud over South Africa as answers are still being sought as to who is responsible for the tragic incidents that cost the lives of 44 people.

In addition, the violence that plagued the mine resulted in more than 70 persons being injured and close to 250 arrested.

The commission headed by retired justice of the Supreme Court of Appeal judge Ian Gordon Farlam, is mandated to investigate matters of public, national and international concern arising out of the tragic incidents at Marikana in that week of August.

Among the legal representatives involved, making submissions and participating in the cross examinations of witnesses, are advocate Ishmael Semenya, acting on behalf of the South African Police Service and advocate Dali Mpofu acting on behalf of the injured miners.

Meanwhile Lonmin, the National Union of Mineworkers (NUM) and rival union Association of Mineworkers and Construction Union (Amcu) also have legal representation.

In addition, representations are made on behalf of the South African Human Rights Commission, non-governmental organisation the Bench Marks Foundation and Police and Prisons Civil Rights Union (Popcru).

Four advocates of the high court were further appointed as evidence leaders.

They are advocates Mbuyiseli Madlanga, Mathew Chaskalson, Geoff Budlender, and Charles Wesley.

"These evidence leaders are experienced advocates of the high court of South Africa and will make an indelible contribution to the work of the commission," it noted.

In more than 600 hours of the commission's hearings, various witnesses were called on to testify on different facets of the incidents of August.

Anglican bishop of Pretoria, Bishop Jo Seoka, was among the first to take the stand followed by SAPS member WO Wessels

continued to testify, president of Amcu Joseph Mathunjwa and Brig Zephania Mkhwanazi from the SAPS.

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# Marikana: lae-intensiteitburgeroorlog volg



## ARBEIDSIENING

JAN DE LANGE

is net logies dat die Marikana-slagting en die terugslae van die National Union of Mineworkers (NUM) politieke gevolge vir die ANC gaan hê.

Almal het geweet dat die slagting op 16 Augustus verlede jaar en die verlamme ongemaagtigde stakings daarna 'n uitwerking op die kollektiewe-bedingstelsel gaan hê.

Onafhanklike ontleders het dit gesê, werkgewer-organisasies het dit gesê en selfs topwoordvoerders van die regering en die ANC het dit gesê.

Vakbonde was tot dusver deur die bank doodstil daarvoor.

Die eerste uitsprake uit amp-telike oorde van wat moontlik kan volg, was dié van Gwede Mantashe, sekretaris-generaal

van die ANC, in 'n toespraak in Maart dat die ekonomiese skade en die geweld waarmee die stakings gepaardgaan, “die regering nooit om deel te word van kollektiewe bedinging”.

Hy het dit nog sterker gestel: “Die wetteloosheid in stakings en Cosatu se onvermoë om doeltreffend kollektief te beding, gaan binne 'n jaar tot die vernietiging van die vakverbond lei,” het hy gesê. Wetteloosheid en geweld “kom neer op die aftakeling van kollektiewe bedinging”.

Twee senior regeringslui, Susan Shabangu, minister van minerale bronne, en Zweli Mkhize, premier van KwaZulu-Natal en tesourier van die ANC, het dit uit 'n ander hoek benader. Albei het op die NUM se minikongres in Irene gesê die “aanslag” op die NUM, Cosatu se grootste vakbond, is 'n aanslag op die ANC self om die party te ontsetel.

En vandeeweek het Mildred Oliphant, minister van arbeid, gesê sy gaan by die sekuriteitsministers aanbeveel dat veiligheidsmagte by myne ontplooi word om die toestand onder beheer te bring. Dit sal by alle myne moet wees, want dit gaan nie help om dit net by sommige myne te doen nie.

'n Mens kan dit noem wat jy



**Die wetteloosheid in stakings en Cosatu se onvermoë om doeltreffend kollektief te beding, gaan binne 'n jaar tot die vernietiging van die vakverbond lei.**

— GWEDE MANTASHE,  
SEKRETARIS-GENERAAL  
VAN DIE ANC

wil, maar dit beteken net een ding: 'n noodtoestand. Oliphant het al Maandagaand haar voorstelle aan Motlanthe gedoen.

Tot dusver het die regering geen verdere woord daarvoor gesê nie; wat 'n mens laat aflei dat Motlanthe nie gedink het dis 'n saak van dringendheid nie. Maar agter die skerms word daarvoor gepraat, gedink en papierwerk gedoen en beplan.

En wanneer die volgende geweld plaasvind; nog beskuldigings daarvoor heen en weer geslinger word en nog emosionele massa-begravnisse gehou word, skuif almal 'n treetjie nader aan paramilitêre ingryping.

Die jongste ontwikkelings is die tekens van 'n “derde mag”. Die moord Maandagoggend op die NUM se skag-vakbondopsiener by Lonmin se Wonderkop-hostel en op die Association of Mineworkers and Construction Union (Amcu) se streekorganiseerder in 'n sjebeen drie weke gelede was duidelik beplande en professionele sluipmoorde – nie haatbendes wat vermeende ver-raaiers uitwis soos in vakbondgeweld gebeur nie.

Dit en 'n regering wat glo sy gesag word bedreig, is 'n toksiese resep waarin kollektiewe bedinging gaan plek maak vir 'n lae-intensiteitburgeroorlog – 'n uitgerekte weergawe van Zimbabwe se Matabeleland-slagting in die vroeë 1980's. Só jaag elke rolspeler sy eie belange na.

Niemand in die regering of die NUM praat egter oor die fundamentele rede vir die verskuiwing in vakbondlojaliteit nie: dat derduisende mense bloedig harde werk ondergronds en bogronds doen, maar nie genoeg daarmee verdien om 'n menswaardige bestaan te voer nie.

Dis 'n uiters emosionele kwessie. Daarom gaan dit met soveel bloedvergieting en geweld gepaard. Daar is talle redes daarvoor, onder meer die skuldvlakke van werkers wat ongesekureerde skuld aangeaan het

en wie se kontant opgeslurp word deur genadelose geldskietters.

Die NUM en die ANC voorspel dat Amcu nie die pas gaan volhou nie en dat die NUM oor 'n jaar of twee sy steun gaan terugwen, soos in die 1990's met die destydse Mouthpiece Workers' Union gebeur het.

Die probleem hiermee is dat die NUM steun verloor het omdat hy niks aan die nood van sy lede gedoen het nie. Sy destydse probleme met Mouthpiece was dat hy 'n opportunistiese enkelkwessiegroep was wat 'n grief-toegang tot voorsorgfondse – uitgebuit het.

Dié keer gaan dit oor die fundamentele reg op 'n menswaardige bestaan.

As Amcu ook nie beter resultate daarmee behaal as die NUM nie, gaan hy beslis ook uitgespoeg word, maar dit beteken nie dat hierdie werkende arm-lastiges na die NUM gaan terugkeer nie. Daardie vertroue is te diep geskend ná al die geweld.

Nog erger wetteloosheid en chaos is 'n waarskynliker gevolg.

Die gevaar is inderdaad so groot dat dit die platinumbedryf, wat veronderstel is om die heuning te wees waarmee Suid-Afrika voorspoed bou, heeltemal tot niet kan maak.