

Amcu jubilant over Marikana legal aid

SAMUEL MUNGADZE
and ERNEST MABUZA

SUPPORTERS of the Association of Mineworkers and Construction Union (Amcu) and of newly formed political party the Economic Freedom Fighters attended the Marikana commission of inquiry's hearings in Centurion yesterday.

A triumphant atmosphere prevailed at yesterday's proceedings, with Amcu president Joseph Mathunjwa saying that the stage was now set to expose the truth behind the deaths of 34 miners who were killed by police while on strike at Marikana on August 16 last year.

Mr Mathunjwa was reacting to Monday's court judgment that reviewed and set aside Legal Aid SA's decision to refuse to pay for legal representation at the commission for injured and arrested miners.

Judge Tati Makgoka of the North Gauteng High Court ordered Legal Aid SA to take immediate steps to provide legal funding to the mine workers for their participation before the commission. The court also ordered Legal Aid SA to pay the mine workers' costs.

Mr Mathunjwa said the court triumph was a "win for the workers".

"We hope the commission itself will now be able to hear both sides of the story.

"I think now the stage is set for the real game to start. It's now time to dig for the truth. Why there were these massacres, why such an embarrassment?" he said.

In a rare moment of reconciliation yesterday, Aisha Fundi, the wife of a murdered security guard at Lonmin's Marikana mine, also welcomed the ruling to represent 250 mine workers, some of whom are allegedly behind

the death of her husband. Mrs Fundi said the participation of the miners was crucial in her finding closure and putting the matter of the Marikana massacre to rest.

"I am happy for them. We started the race together; we need them to complete the work of the commission. Although there is still some tension, I am happy for them," she said.

But Legal Aid SA said yesterday it was taking legal advice on whether it would appeal against the judgment. It said providing legal aid to the injured and arrested miners affected the organisation's sustainability.

Legal Aid SA said it had reiterated its concern that funding for commissions of inquiry was beyond its mandate and budget, and that providing this funding would have to be done by reducing its budget for criminal and civil matters.

Legal Aid SA CEO Vidhu Vedalankar said that by increasing the scope of assistance to be provided by the body, the high court ruling amounted to the organisation having to reduce its assistance to the poor and vulnerable in criminal and civil matters, to assist those before commissions of inquiry.

"This decision will affect the sustainability of the organisation in providing access to justice in criminal and civil legal aid matters for the poor and vulnerable, unless special funding is forthcoming," Ms Vedalankar said.

She said the annual budget allocation was fully utilised, with no allowance for anything outside its mandate.

"The available funding, which was meant for criminal and civil legal aid for the poor, will be compromised, meaning fewer people will receive legal aid in criminal and civil matters," she said.

Marikana probe drags on

THE Marikana commission of inquiry was appointed on August 23 last year, a week after the tragedy. It was originally supposed to report back within five months.

More than a year and many hours of expensive legal time later, it seems to be nowhere near the end of its hearings. And whatever its findings and recommendations prove to be, they will surely be too late to be of much use to the miners, the mines, or SA itself.

This week's court ruling that Legal Aid SA must fund the miners' legal representation will at least remove one of the delaying factors, and provide comfort to those who doubted that the process would be inclusive and miners' voices heard — even though Legal Aid SA does raise a concern that providing this funding will have to be at the expense of funding for indigent and vulnerable people who might need help with civil or criminal cases.

But it is worth remembering that the reason so much money was needed for legal representation was precisely because the commission's hearings have been allowed to take so long, and the process has been so tortuous.

The commission, led by retired judge Ian Farlam, was meant to

answer four quite simple questions on the conduct of Lonmin, the police, the Association of Mineworkers and Construction Union and the National Union of Mineworkers.

It should have been a tightly disciplined, effective process with the judge clearly in charge. But it lost the plot somehow. And as the South African Communist Party put it earlier this year, it became a “lawyer-heavy, quasicriminal court process” in which some of the lawyers were more interested in “vying for the limelight and claiming billable hours” than in contributing to finding the truth.

The commission had made a new ruling a while ago, before the recent round of postponements, adjournments and delays, tightening up the presentation of evidence to make it more effective, more efficient and less of a free-for-all. This could also help to pick up the pace of the commission hearings and make them less costly for all concerned.

It is hoped that the steps the commission has put in place will make for more effective presentation of evidence, while ensuring that all interested parties have the opportunity to be heard — and that a conclusion is reached sooner rather than later.

Miners joyous over court ruling, says Mpofu

SAPA

MINERS wounded and arrested during the Marikana unrest were elated about being represented again at the Farlam commission of inquiry, Dali Mpofu, SC, said yesterday.

Mpofu, who represents the miners, said the ruling by the Johannesburg High Court on Monday compelling Legal Aid SA to pay the legal costs of survivors of the Marikana shooting was a great reprieve.

“The clients are excited. As their lawyers, we are relieved.

“We have subsequently learnt

now that Legal Aid has made an undertaking to provide the necessary legal funding.

“Indications are that we are back permanently,” he said.

“We need to sit down with them (Legal Aid) to work out the mechanics of the judgment. The judge said they had to take steps to provide funding forthwith and they should also pay the costs for our court application.”

The commission’s public hearings in Centurion were adjourned until Monday.

Mpofu said during a break his

team would iron out grey areas with the Legal Aid Board.

“We hope this is sufficient time to have that urgent meeting so that when we come back next Monday we will be able to inform the chairperson (retired Judge Ian Farlam) and the nation what the permanent position will be.”

Mpofu rejected allegations that the funding of his team would diminish the Legal Aid purse, depriving other needy South Africans of legal representation in unrelated matters.

“That is just nature. There is no

place where there are unlimited funds, where you pick funds as if they are from trees. Every time government builds a house for someone, someone else is not having the house.”

Mpofu said on Friday he was not in a position to disclose the amount he stood to receive from Legal Aid.

“... Not until we have that roundtable meeting. We need to obviously jointly agree on what the meaning of the judgment is,” he said.

“What is clear is the rate of the funding, which is what we went to court asking for – the Legal Aid rate.”

Lonmin promises empty – report

Mpho Sibanyoni

Business Reporter

A STUDY on Lonmin paints a picture of a mine that shifts goalposts in relation to its empowerment objectives.

The Bench Marks Foundation research report, released yesterday, accuses the platinum miner of failing to stick to its promise of providing housing for communities at Marikana, North West.

The report also notes that Lonmin did not honour its commitment of eliminating single-sex hostels. The findings could give an insight into some of the concerns that resulted in the wildcat strike that led to the police shootings on August 16 last year.

The report says Lonmin's failures came when the company was patting itself on the back for winning awards for its environmental and socioeconomic performance.

“The sustainability development reports contain

many commitments on the provision of houses.

Between 2003 and 2012, Lonmin gave support to two RDP projects. In addition, Lonmin repeatedly gives five-year plans for its own housing projects.

“(Lonmin made) a commitment in 2006 to build 6 000 houses by 2011, (but) by the following year, (the promise) has become 5 500 by 2011, but no houses were built,” the report reads.

It acknowledges that in 1999 Lonmin built 1 149 houses, and had not completed building houses since then. “Lonmin wants to sell houses to the employees, but the employees can't or don't want to buy them.

“Commitments under the Mining Charter have not been met,” the report says.

In a 2012 sustainability development report, Lonmin repeated its commitments to build “5 500 low-density houses by 2014”.

“The 1 149 houses from 1999 are now suddenly taken into account. This means Lonmin has silently cut the commitment made in 2007 and 2008 to build 5 500 new houses,” says the report.

The report adds that Lonmin committed to eliminate single-sex hostels in 1999 and 2004. “In 2006, the company commits to convert all hostels to family or bachelor units by 2011. This commitment, and obligation, is not met. It is repeated again in 2012, to be met by 2014.”

Lonmin spokeswoman Natascha Viljoen said: “While Bench Marks has given Lonmin a copy of the report, unfortunately they did not engage us during its compilation, although we have begun discussions aimed at finding common ground. We have started going through the detailed analysis to understand the context and veracity of the assumptions properly ...”

Marikana funds hurt Legal Aid

BUDGET: JUST R1 BILLION FOR THE YEAR, SAYS SPOKESMAN

» **Funding of miners' legal team will affect other South Africans 'harshly'.**

Yadhana Jadoo

Despite the intentions of the Constitution to render everyone equal before the law, the country's resources sometimes limit these entrenched freedoms.

"The Constitution isn't really for everybody until we are really well resourced," said Mpho Phasha, Legal Aid SA's national spokesman, yesterday.

The organisation has been put in a substantial predicament following a South Gauteng High Court judgment instructing it to foot the bill for lawyers representing Marikana miners at the Farlam Commission of Inquiry.

According to Phasha, Legal Aid's current budget for this fi-

nancial year is just R1 billion.

"It has never been enough," Phasha said.

"Look at the budget for prosecution and police alone. We are talking billions of rand."

Funding Advocate Dali Mpfu and his team from the current budget would harshly affect other South Africans requiring access to justice, he said.

Mpfu is representing over 270 miners arrested and wounded during police dispersal operations following a Lonmin Platinum strike last year. Altogether, 34 workers were killed by police in the incident.

"This funding will not sustain our organisation for a lengthy time.

"We operate on a grant received from the justice department. It's really going to strain operations going forward," Phasha said.

If Legal Aid doesn't get further resources its operations will affect the services rendered by its agencies and partners in the private sector. There will simply be no money.

Funding the legal team meant

that the organisation would have to reduce its judicare budget. It was not pre-empted that Legal Aid would have to fund a commission of inquiry and this directly affected civil and criminal cases, he said.

The organisation was taking legal advice on whether it should appeal the judgment while trying to fund the miners.

A "process of engagement" on the matter would also be conducted in Parliament today, he said.

The yearly grant comes directly from the justice department, said Phasha.

He could not give figures on just how much it would cost to fund the Marikana legal team.

The organisation will engage with the justice department and treasury on the way forward.

However, the budget received has never been adequate enough to afford the organisation enough reach for those requiring access to justice, added Phasha.

Muzi Msimang, who is part of Mpfu's team, said there has been no communication as yet from Legal Aid on funding.

That's a bit rich of Dali

Martin Williams

Dali Mpfu, who first made headlines while having an affair with Winnie Mandela when she was still married to Madiba, is not short of money. In that sordid business in 1992 there were allegations of fraud in the ANC's social welfare department where the Mother of the Nation had appointed him as her deputy. The cuckolding pair travelled together to the United States, flying Concorde from London and staying at the Beverly Hills Hotel.

In 2009, after his term as the SABC's group chief executive had been cut short, Mpfu received a settlement totalling R13.4 million. Most South Africans would not be able to save such an amount in a dozen working lifetimes, but Mpfu was not yet 50.

After the Marikana massacre he was quick to jump into the fray, where he seemed to be in the headlines more for demanding money to represent the victims' families than for any cogent legal arguments on their behalf.

In August this year Nathan Geffen noted on *Politicsweb* that "Mpfu has not worked free of charge for the miners. From October 2012, he and his 'team' have received more than R2.5 million from the Raith Foundation to represent the miners".

"They have also been offered R2 million more since. This was to pay Mpfu, his junior counsel and three attorney firms working on the case. The lawyers are not working solely on the Marikana commission. It is reasonable to assume that a large chunk of the money has gone to Mpfu personally."

Geffen was speaking from the perspective of one whose long experience with the Treatment

Action Campaign (TAC) had exposed him to lawyers who often represented TAC pro bono or at reduced fees. "They put money aside to fight for justice, especially for poor people. They were also modest. In our high-profile cases, the TAC's lawyers were not the centre of attention. Nevertheless, TAC won most of its."

Despite these and other trenchant comments reflecting negatively on his intentions, Mpfu has created a significant amount of spin suggesting he is the sole, legitimate representative of the aggrieved families.

Even the hypocritically pro-poor Julius Malema sang Mpfu's praises when launching the Economic Freedom Fighters at the notorious koppie of death at Marikana on Sunday.

The next day Mpfu scored precedent-setting victory in the South Gauteng High Court, which ruled that Legal Aid SA must fund lawyers representing victims' families at the Farlam Commission of Inquiry.

Ultimately, Legal Aid SA is funded with taxpayers' money. This means you will be paying for senior advocates – mainly Mpfu in this matter – to earn between R20 000 and R30 000 a day. This is a tricky issue because when the police, who could be the culprits, are represented by up to seven advocates, at taxpayers' expense, there does seem to be an argument that victims' interests should also be well represented.

Perhaps the format of such commissions is incorrect. It does not seem right that rich lawyers should get richer off the suffering of the poor, who remain firmly at the end of the food chain. At the very least the latest ruling must be challenged. Taxpayers have enough burdens without encouraging a new breed of vultures.

From October 2012, Dali and his 'team' have received more than R2.5 million from the Raith Foundation to represent the miners.

Mining giant 'breaches codes'

MICHELE CURLING-HOPE

A DAMNING report on the mining industry says companies do not report accurately on what they pay miners, under report on how many contract workers they employ and don't live up to their social investment promises.

What's more, there are no repercussions for big companies.

However, Lonmin spokesperson Natascha Viljoen said they had begun discussions to find common ground.

Many damning criticisms are levelled at mining companies in a report by the Bench Marks Foundation released in Kempton Park yesterday. Executive director John Capel said the aim of the report was to shed light on what he

believed led directly to the Marikana massacre last year.

Bench Marks chairperson Bishop Jo Seoka said that Lonmin had stated that it was "best in class" in sustainability and has won awards for its environmental and socio-economic performance but is in actual fact running an unsustainable project and has breached the codes of good practice to which

it subscribes.

Capel said that although obliged by law to report accurately about employee numbers and wages, most companies do not.

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Marikana lawyers funded

DUDU DUBE

MINERS who were injured and arrested during the Marikana Massacre will now participate in the Commission investigating the shooting permanently, their lawyer said yesterday.

Adv Dali Mpofo withdrew from the Commission three months ago after about 300 miners who he represents went to court to seek state funding for their legal costs.

They all returned yesterday with the widows of the 34 miners who were killed, workers union Amcu, and other human rights organisations who had withdrawn in support of the miners.



We are happy to be back here, we had lost hope. Now we are confident that the truth will come out

When Mpofo addressed the commission yesterday morning, there was still uncertainty over whether Legal Aid SA would pay the legal fees as ordered by the court on Monday or if they would appeal the judgment.

But in the afternoon, he made an announcement that was well received by his clients.

“We have now learned that Legal Aid SA has made an undertaking to provide the necessary funding. The indication is that we are back permanently.

“Obviously we need to sit down with them, our team and their team, to work out the mechanics of the judgment, as you know that the judge said they must pay the costs for our court application.”

The commission had gone on with only the SAPS and evidence leaders participating. However, Mpofo and the other parties were promised an opportunity to recall witnesses and cross-examine them.

“For us, the most important thing is that the court has found that the state is liable for the funding of the victims, whether that funding comes from any organ of state, whether it is Legal Aid SA or the municipality of Rustenburg we don't care, as long as it is state funding,” he said.

Equally excited about being back was Zameka Nungu, the widow of Jackson Lehupe who died with the 34 miners shot dead by the police in August last year.

“We are happy to be back here, we had lost hope.

“Now we are confident that the truth will come out. But we are also worried about our children back home, we are here and we get food every day while our children are hungry.

“We wish we could get some financial assistance to support our families while we

are here,” she said.

Nungu's husband was among the 3000 Lonmin mineworkers who gathered on a hill in Marikana, North West, in protest for higher wages last year.

The strike ended two weeks later with 45 people, including two policemen and two security guards, dead.

The commission will resume on Monday with the cross-examination of Lt-Col Duncan Scott, the man who put together the police plan that went wrong.

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A welcome ruling

AFTER much to-ing and fro-ing – including protests and withdrawals from lawyers – the Marikana legal aid issue was finally resolved on Monday.

Lawyers representing injured and arrested miners are now back at the Farlam commission with Legal Aid SA ordered by the high court to pay for their legal fees.

We welcome the Johannesburg High Court ruling and kudos must go primarily to Advocate Dali Mpofu who spearheaded the application for funding and the subsequent withdrawal from the commission because the government wouldn't budge. But it must be said it is not yet a done deal – at least according to Legal Aid SA, who said just after the ruling that it will “independently decide” whether to comply or appeal a decision.

We hope they don't appeal but comply. The appeal would be a great pity and yet another set back for the long-running judicial inquiry into the massacre where 34 people, mostly striking workers, were shot dead by the police, with 10 others killed days before. The hundreds of families directly affected need closure and – and soon.

We also need to see retired Judge Ian Farlam finish his mammoth task and we and the world get to know exactly why the strike at the mines had to be “resolved” in such a brutal manner, 18 years into the new dispensation.