



A Narrative of Marikana Tragedy Against Right to Life and Right to Human Dignity Under the South African Constitution

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ABSTRACT

The purpose of the study was to assess the events in Marikana against the elements of life and dignity as fundamental rights listed in the Bill of Rights in the South African Constitution of 1996 hereafter referred to as the Constitution. This paper argued that stakeholders ignored workers' rights especially the right to life and dignity at the expense of corporate profit. This paper therefore assessed the Farlam Commission's findings on the human rights violations by the state and the mine authorities. The Farlam Commission findings and recommendations indicated, further, that one of the consequences of the establishment of a constitutional state that respects every person's right to life is that tighter restrictions may have to be introduced on the use of lethal force in making arrests. It is argued that human dignity, as one of the founding values of democratic South Africa, plays a pivotal role in addressing human rights issues. The authors contend that the foundations of the new age where all people's rights must be preserved and respected are a total transformation and a restoration of a human life. This is founded on South Africa's history of human rights violations, total disdain and terrible inhumanity by the apartheid administration. The authors hope that the arguments set out in this paper will help add to the debate on the realisation of rights and strengthen the practical application of the fundamental rights of life and human dignity as enshrined in the South African Bill of Rights.

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INTRODUCTION

The Marikana massacre occurred on 16 August 2012, during a six-week wildcat strike at the Lonmin platinum mine at Marikana near Rustenburg in South Africa's Northwest region. The killings constituted the deadliest use of force by personnel of the South African Police Service and Lonmin Security. The killings echoed the 1976 Soweto uprising and have been linked to the 1960 Sharpeville Massacre.¹ Thirty-four miners were killed by the South African Police Service (SAPS). The violence and confrontation that occurred in the days leading up to the fatalities on August 16th, 2012, were connected to a conflict that had been raging at the Marikana mine. This conflict was related to a group of miners' unprotected strike that had begun on August 10, 2012, on a Thursday. The then-president of the Republic, President Zuma, declared he would create a Commission of Inquiry relating to the events at Marikana on August 17, the day following the horrific killings. On August 23,

¹ Jaco Boëtger and Mark Rathbone, "The Marikana Massacre, Labour and Capitalism: Towards a Ricoeurian Alternative," *Koers - Bulletin for Christian Scholarship* 81, no. 3 (December 15, 2016): 10–16, <https://doi.org/10.19108/KOERS.81.3.2263>.

2012, a week after the massacre, a presidential proclamation announced the commission's appointment and its terms of reference (ToRs).²

This paper assesses the tragedy of Marikana against fundamental rights of the victims such as the right to life and human dignity. Inclusive of these fundamental rights is the upliftment of the standard of living of the community, the lack of employment opportunities for local youth, the squalid living conditions of the miners, high unemployment, and growing inequalities.

The authors argue that other issues, such as miners' distrust of unions evolved because of the government's inability to take necessary action to relieve surrounding bad circumstances. Equally, it is the conviction of the authors that if there had not been a collapse in trust between unions and miners, the wage strike would not have turned violent, and the massacre would not have taken place. In light of the sown mistrust, there were dire consequences, the South African Police had to use live ammunition on the protestors. Lonmin security officials resorted to the use of rubber bullets. There was too much emphasis on profit by the mine owners and dire ignorance of *Ubuntu* in the workplace. The loss of control of the situation by those in police leadership exacerbated the tensions and regrettably resulted in the massive killings in Marikana. This incident gave contrary views to the South African claim that it possesses the best constitution on the continent as it embraces human rights. As a result of that view, the Marikana killings and the measures taken by the state or business against the protestors, the narrative that the South African constitution is supreme seemed to have fallen short of its founding values. This paper tests the events in Marikana against the claims of a purportedly great Constitution and a government committed to making good the promises in the Bill of Rights. The paper is divided into four parts, the first part introduces the issues to be addressed in this paper. The second part focuses on miner's rights to life. Part three will deal with the issue of human dignity while part four will attempt to weigh these rights against corporations' drive for profits or their rights to make profit as business. Part five is the conclusion.

METHODOLOGY

The study's methodology is based on a qualitative approach. To begin, an explanatory literature review was conducted, encompassing scholarly papers, points of view, principles, and *Farlam* Commission findings. The key sources used were commission conclusions, study findings, and newspaper stories from prominent publications that documented eyewitness descriptions of the massacres and protests. Furthermore, secondary research was carried out using both primary and secondary sources. Secondary sources in this study contained books, internet sites, and documents containing descriptive articles and commentaries.

DISCUSSION

Miner's rights to life.

"In certain respects, the right to life transcends all other rights protected by the Constitution. It would be difficult to execute or be the bearer of rights without life in the sense of existence. But the right to life was enshrined in the Constitution for more than just expressing it. The Constitution cherishes not life as mere organic objects, but the right to human life: the right to live as a human being, to be a part of a larger community, to take part in the experience of humanity."³

This concept of human life speaks to the core of South Africa's constitutional values. The Constitution explicitly gives the right to life to everyone despite their status or origin. Equally, the Constitution encapsulates equal protection to the right to life and the enjoyment of all rights and freedoms.⁴

In general, any employee in South Africa has the liberty to strike and to join a trade union of their choice⁵ and every employee has a right to join a trade union of their choice.⁶ The main objective of trade unions is to protect the rights and interests of their members. Their mandate includes negotiating salary, benefits, and working conditions.⁷ Many strikes in South Africa are launched by trade unions during the collective bargaining process when trade unions and employers struggle to come to an agreement on matters of mutual interest. It was not the case in Marikana. Miners felt that the unions compromised their members' interests because of the inter-

² Jacob Zuma, "Ian Farlam to Head Marikana Inquiry," *PoliticsWeb*, August 23, 2012, <https://www.politicsweb.co.za/documents/ian-farlam-to-head-marikana-inquiry--jacob-zuma>.

³ *S V Makwanyane* 1995 6 BCLR (CC) para 326 (hereinafter "*Makwanyane*")

⁴ Section 9(2) of the Constitution.

⁵ Section 17 of the Constitution.

⁶ Section 23(2)(a)(b) of the Constitution.

⁷ Section 23(5) of the Constitution.

union rivalry, unions compromised the importance of their members' basic demands.⁸ That propelled miners to attempt to negotiate with the employer directly, without the involvement of the unions.⁹ What happened in Marikana outside the miners' unions was an unprotected strike. The Marikana Massacre took place on August 16, 2012, at the Marikana plant of Lonmin PLC mines, which primarily produces platinum metals. The strike was a direct consequence of societal unrest centered on labour and better housing conditions. This was an unlawful and unprotected strike, and it was not represented by the National Union of Mine Workers (NUM), which is part of the Congress of South African Trade Unions' major trade union (COSATU).¹⁰ Between the unions in the Marikana mine, there was a huge trust deficit resulting in the conflicts prior to the blood bath.

The miners felt the scourge of poverty as they observed the lack of success of unions and believed that their rights were severely violated. Durojaye believes that poverty remains one of the greatest challenges facing humanity.¹¹ He defines poverty as the denial of the choices and opportunities necessary for the enjoyment of an adequate standard of living and as a violation of human dignity.¹² To deny someone's human dignity is to "treat her story as if it did not exist, her point of view as if it were literally beneath the worth of any respect."¹³ That was the miner's cry that their story be heard and recognised by those in power. What followed is the tragedy that is now known as the Marikana tragedy. The Marikana incident contradicted with adequately protected section in the Bill of Rights to protect people from violent acts, which provides that "everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources."¹⁴ In essence, after the tragedy, it suffices to say that section 12(1)(c) of the Bill of Rights was infringed since the violence had already been inflicted on the miners and many were declared dead in the hands of the State. The State itself infringed the rights of the citizens it was meant to protect.

Section 11 of the Constitution provides this right (right to life) to all people living in South Africa. The Constitution implies a social contract between the state and its citizens.¹⁵ The Constitution aims to shape South Africa's social and political system in order to foster a society free of tyranny, inequality, poverty, and violence, in which people are permitted to fulfil their full potential.¹⁶

The Constitution's founding provision has noted that South Africa is a sovereign, democratic state founded on the values of human dignity, equality, human rights, non-racialism and non-sexism, the supremacy of the constitution, and the rule of law. It continues that any law or action that is inconsistent with it shall be deemed to be null and void.¹⁷ Because of the unequal character of the relationship, the Constitution regulates the vertical relationship between the individual and the state.¹⁸ The State is empowered to protect life from all criminality and fear. Magistrate Schoeman illustrated the lack of protection of human rights (particularly the right to life) which occurred during the apartheid period.

To this day, there are more questions than answers about what unfolded in Marikana. Will justice be administered to the victims of such violence and infringements on the right to life? Courts must create fundamental rights in terms of a unified set of ideals that are ideal for an open and democratic society.¹⁹ To this end, common values of human rights protection the world over and foreign precedent may be instructive.

Right to Human Dignity²⁰

"The central concept is that of the human person as a dignified entity who shapes his or her own life in collaboration and reciprocity with others, rather than being passively formed or pushed around by the world in the

⁸ Fasken, "Marikana – the Causes and Wider Implications and Lessons for the Mining Industry in Africa," Lexology, 2012, <https://www.lexology.com/library/detail.aspx?g=cb5d7b8e-e10c-45e8-b92f-89bc031ee5cc>.

⁹ Ruth Ben-Israel, "International Labour Standards: The Case of Freedom to Strike," 1988.

¹⁰ Njabulo S. Ndebele, "Liberation Betrayed by Bloodshed," *Social Dynamics* 39, no. 1 (March 2013): 111–14, <https://doi.org/10.1080/02533952.2013.777558>.

¹¹ Ebenezer Durojaye, "When Poverty Is Not a Sin: An Assessment of the Human Rights Council's Guiding Principles on Poverty and Human Rights," *African Journal of International and Comparative Law* 22, no. 3 (2014): 468–91.

¹² Durojaye, "When Poverty Is Not a Sin: An Assessment of the Human Rights Council's Guiding Principles on Poverty and Human Rights."

¹³ Katherine R Kruse, "The Human Dignity of Clients," *Cornell L. Rev.* 93 (2007): 1343.

¹⁴ Section 12(1)(c) of the Constitution.

¹⁵ Smit and Naude Law, Government, and People (1992) 2.

¹⁶ Currie and De Waal 1 *The New Constitutional and Administrative Law Constitutional Law* (2002).

¹⁷ S1 of the Constitution.

¹⁸ Currie I and De Waal J (n 19) 43.

¹⁹ Founding values of the Constitution, chapter 2.

²⁰ Section 10 of the Constitution, everyone has inherent dignity and the right to have their dignity respected and protected. Also, Article 1 of the Universal Declaration of Human Rights-the United Nations. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

manner of a 'flock' or 'herd' animal. A human life is one that is shaped by these human powers of practical reasoning and sociability throughout."²¹

The concept of human dignity has been omnipresent in everyday speech and deeply embedded in political and legal discourse.²² Human dignity is a universal phenomenon. South Africa is not isolated from the rest of the world. Peter G. Kirchsclaeger opines that the universality of human rights underpins the need for an ethical justification of human rights because human beings demand reasons why human rights are also applicable to them.²³ The Constitution gives the right to Human dignity to all humans. All other rights emanate from the observance of the right to life and dignity. Chaskalson points that, "The right to life and dignity is the most important of all human rights, and it serves as the foundation for all other personal rights in the Bill of Rights. By committing to a society based on the respect of human rights, we have an obligation to elevate these two rights above all others."²⁴

What South Africa witnessed in the Marikana killings was the total opposite of the democracy all citizens envisaged when they welcomed the new constitutional order that embraced all humans and their rights.²⁵ It was a total catastrophe to the life and dignity of a worker. Dignity is not only a founding value of the Constitution but an enforceable right.²⁶ Twala views the Marikana killings as a traumatic and tragic event that raised several questions among commentators and activists in the labour movement.²⁷ Chaskalson warns in *Makwanyane* that the killing of an escaping suspect by a police officer who intends to convict that person, should not be equated with execution. However, he indicated, that one of the consequences of the establishment of a constitutional state which respects every person's right to life is that tighter restrictions on the use of lethal force in making an arrest may have to be introduced.²⁸ In *Makwanyane*, Chaskalson posited that the law may legitimately permit killing in self-defence.²⁹ Additionally, the lethal force may legitimately be applied by the state to kill a hostage taker to save the life of an innocent hostage whose life is in real danger.³⁰

Right to fair labour practices³¹

The employer is empowered by the legislation to enforce laws while employing people. Equally, the Constitution protects employees' rights. It gives a right to a fair labour practice³² The Constitution plays an integral part in dismantling the apartheid damage to employment relationship which was introduced by colonial architecture. Conradie M enlightens:

To comprehend the true nature and meaning of the constitutional right to fair labour practices, it is imperative to consider the historical development of unfair labour practices.³³

²¹ Drucilla Cornell and Karin Van Marle, "A Call for a Nuanced Constitutional Jurisprudence: South Africa, Ubuntu, Dignity, and Reconciliation 1," in *Violence and Gender in the Globalized World* (Routledge, 2008), <https://www.taylorfrancis.com/chapters/edit/10.4324/9781351143363-11/call-nuanced-constitutional-jurisprudence-south-africa-ubuntu-dignity-reconciliation-1-drucilla-cornell-karin-van-marle>.

²² David Turner, "Understanding Human Dignity," *Ecclesiastical Law Journal* 17, no. 3 (September 1, 2015): 364–67, <https://doi.org/10.1017/S0956618X15000538>.

²³ Peter G Kirchsclaeger, "Human Dignity and Human Rights: Fostering and Protecting Pluralism and Particularity," *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 6, no. 1 (2020): 90–106.

²⁴ Kirchsclaeger, "Human Dignity and Human Rights: Fostering and Protecting Pluralism and Particularity," 144. Also mentioned in the *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) where the right to dignity was emphasised as a cornerstone of our Constitution. This was after the Constitutional Court ruled that the common-law criminalisation of sodomy was a violation of the right to dignity. The court held that constitutional protection of dignity requires us to acknowledge that the value and worth of all individuals, as members of society.

²⁵ Greg Marinovich and Greg Nicolson, "Marikana Massacre: SAPS, Lonmin, Ramaphosa & Time for Blood. Miners' Blood," *Daily Maverick*, October 24, 2013, <https://www.dailymaverick.co.za/article/2013-10-24-marikana-massacre-saps-lonmin-ramaphosa-time-for-blood-miners-blood/>.

²⁶ Section 7 of the Constitution.

²⁷ Chitja Twala, "The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa," *Southern African Peace and Security Studies* 1, no. 2 (2018).

²⁸ P.Chaskalson, *Makwanyane* case para, 140.

²⁹ *Makwanyane* case para, 138. In *Ntamo v. Minister of Safety and Security* 2001 (1) SA 830 (Tk), Madlanga AJP (then) proclaimed that [35] the community's legal convictions concerning the common law of self-defence are motivated by, amongst other things, the constitutionally guaranteed rights of life. Then, to assess whether the police might use private defence to defend the killing of a gun-wielding person who posed a threat to other people's lives, he adopted a relatively severe two-pronged test. The court determined that a private defence was ineffective in situations where a danger of harm could not be avoided without resorting to force. When using force, it had to be in proportion to the damage. Given the situation, the police's negligence and lack of professionalism while approaching the deceased.

³⁰ *Makwanyane* case para, 138.

³¹ Section 23(5) of the Constitution.

³² Section 23(5) of the Constitution.

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Section 186(2) of the Labour Relations Act³⁴ defines an unfair labour practice as an unfair act or omission by an employer towards an employee. An example is the case between the *National Entitled Workers Union (NEWU) v Commission for Conciliation, Arbitration, and Mediation (CCMA)*³⁵ where a NEWU union official resigned without giving the required three months' notice. The issue was whether a trade union, as an employer, can claim that the resignation of an employee, a union official, is an unfair practice. The court held that, no, the resignation of an employee was not embraced as an unfair labour practice committed by an employee vis-à-vis the employer in the definition of unfair labour practices. While in *Apollo Tyres SA (Pty) Ltd V CCMA & Others*³⁶ the employee was refused early retirement in terms of a scheme initiated by the employer. In this case, the court held that there was no acceptable, fair, or rational reason why the employee was not allowed to participate in the scheme. The employer had committed an unfair labour practice by not allowing the employee to go on early retirement.

Many people, both locally and internationally, are still haunted by the Marikana massacre. Mineworkers in South Africa, in the authors' opinion, are excluded from the benefits of social justice by design. While they were exploited as low-wage workers, their safety was a real issue, and as a result, the deaths unfairly silenced and terminated voices for fairness, a plight that the government was failing to aid and abet prior to the bloodbath.

Right to freedom of expression and right to join a trade union of choice³⁷

Sachs has underscored the significance of these rights. He underlined that the right to freedom and the right to join a trade union, bargain collectively, and strike are the most important elements of the right to freedom of association. He stated:

The key fundamental rights of workers are those enabling them to fight for and safeguard their rights. The first group of rights encompasses these rights. This particular group of rights incorporates three rights: the right to establish and join trade unions, the right to collective bargaining, and the right to strike.

When there was an impasse in Marikana, the state ought to have intervened and resolved the conflicts between the employer and employee before it escalated to so many human rights violations and deaths. The Constitution mandates the state to uphold and safeguard the people's constitutional rights in the employment industry. Workers' rights are human rights. The Constitution upholds the democratic values of humanism, equality, and liberty for all. Comparably the Labour Relations Act 66 of 1995 (LRA)'s purpose of advancing the development of the economy, social justice, labour peace, and workplace democratic transition by fulfilling its primary objectives, which include the promotion of employee participation in workplace decision making, is strictly forbidden by the nature of several of its provisions. Under the disguise of encouraging orderly collective bargaining.³⁸ Kruger and Tshoose argue that several sections of the LRA benefit majority unions inordinately, while minority trade unions often find themselves faced with insurmountable obstacles that prevent them from being able to engage in collective bargaining.³⁹ This view sends a rather appalling stance and violation of the constitutionally entrenched human rights in section 23 of the Constitution. The Constitution does not give majority or minority numbers for employees to qualify for these rights in the Bill of Rights.

Thus, the right to life incorporates the right to dignity. The rights to life and to human dignity are so entwined. The right to life is a lot more than the right to exist; it includes the right to be treated with dignity as a human being. Human life suffers greatly when it lacks dignity. There can be no dignity if there is no life.⁴⁰ As soon as considering the constitutionality of the death penalty, the Hungarian constitutional court stated:

'It is the untouchability and equality contained in the right to human dignity that results in a man's right to life being specific right to human life (over and above animals' and artificial subjects' right to being on the other hand, dignity as a fundamental right does not have meaning for the individual if he or she is dead...Human dignity is an essential quality of human life' (Decision No 23/1990, (X.31.) AB, George Feher translation).

³⁴ Labour Relations Act 66 of 1995.

³⁵ *National Entitled Workers Union v Commission for Conciliation, Arbitration, and Mediation* (2003) 24 ILJ 2335 (LC).

³⁶ *Apollo Tyres SA (Pty) Ltd V CCMA & Others* 2013 34 ILJ 1120 (LAC).

³⁷ As per section 23(2)(a) of the Constitution.

³⁸ Section 1(d)(i) of the LRA.

³⁹ J. Kruger and C. I Tshoose, "The Impact of the Labour Relations Act on Minority Trade Unions: A South African Perspective," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 16, no. 4 (January 16, 2014): 284, <https://doi.org/10.4314/pej.v16i4.7>.

⁴⁰ *Makwanyane* case para 327.

Labour Relations Act⁴¹

Picketing is allowable according to Section 69 of the Labour Relations Act. Similarly, Section 17 of the Republic's Constitution safeguards that right. A violent strike, it is suggested, is not undoubtedly an effective collective bargaining strategy. That, as stated by Budeli, is not conducive to good faith bargaining.⁴² These kinds of occurrences, however, must be peaceful, and participants must be unarmed.⁴³ In essence, being able to strike does not allow striking employees authorisation to engage in obnoxious or criminal behaviour.⁴⁴ Strike violence is an abuse of the right to strike.⁴⁵ Aside from the right to strike, the LRA permits protesters to picket peacefully in support of a protected strike. In *Picardi Hotels Ltd v Food & General Workers Union & Others*, the court ruled that employees on strike are entitled to carry around, display, and wave placards, but what they write on the placards may not constitute a criminal offense. Such employees are now similarly restricted in their ability to wave *sjamboks*.⁴⁶

In early 2000, the Constitutional Court emphasised the centrality of the question of human dignity in our constitutional democracy in a landmark ruling of Grootboom.⁴⁷ The Court took the view when Yacoob stated that “..... in short, I emphasise that human beings are required to be treated as human beings.”

Social Justice Imperatives

The State has a duty to foresee the social justice issues pioneered and implemented in the workplace. Social justice is not just a set of principles the authorities must entertain when they feel like doing so, but rather human rights imperatives that the State ought to implement to uplift the standard of living of all humans, especially taking into cognisance of the past inequalities. The miners too deserved the upliftment of standard of living from a variety of issues such as historically neglected infrastructure, hospitals, proper roads, proper sanitation, and accessible running water. When these pressing social issues are addressed, the lives of Marikana miners and the surrounding communities will be transformed. These would restore the dignity of Marikana residents and their families, making life more pleasant and conducive to living in a dignified manner in an enabling environment. The state ought to address the critical issues of homelessness and embrace humanity. When one is housed in a dignified manner, he not only has a place to call home, but it also recognizes a variety of health-damaging features. In a nutshell, having a place to live is also a requirement for the right to health,⁴⁸ though that may not be enough, it may give one dignity and the State may also extend its services of social security having achieved the housing disparities.⁴⁹

A similar view is shared in the case of *Dawood v Minister of Home Affairs*.⁵⁰ While it remains the government's duty to uplift the lives of people and to protect their human rights, the state had agreed and signed a Social Labour Plan (SLP)⁵¹ with Lonmin as part of the condition for a mining license. SLP is a requirement in terms of Regulation 46 of the Mineral and Petroleum Resources Development Act, No. 28 of 2002 to give the effect of s 100 (2) (a) of the Act and Section 9 of the Constitution to harmonise the Government's transformation policies. Representatives testified in the Marikana Commission, that Lonmin was aware of the prevailing living conditions and housing shortages but turned a blind eye.⁵² Failure by the state to hold Lonmin accountable undermines the objectives of South Africa's Mining Charter.⁵³

The miner's living conditions remained the same, and to a large extent deteriorated, while mine owners made excessive profits for their bosses. Research done by Benchmarks Foundation on the miners' living

⁴¹ Labour Relations Act No. 66 of 1995.

⁴² M Budeli, “Understanding the Right to Freedom of Association at the Workplace: Its Components and Scope,” *Obiter* 31, no. 1 (September 17, 2021), <https://doi.org/10.17159/obiter.v31i1.12375>.

⁴³ S 17 of the Constitution of the Republic. *SATAWU V Garvis & Others* 2011 (6) SA 382 (SCA) para 394. www.saflii.org/za/cases/ZASCA/2011/152.

⁴⁴ *Transport & General Worker Union of South Africa v National Co-operative Dairies Ltd* (1989) SA (2) 10 ILO 490 (IC).

⁴⁵ Section 69 of the LRA. *National Union of Metal Workers of SA v G M Vincent Metal Sections (Pty) Ltd* 1993 14 ILJ 1318 (IC).

⁴⁶ *Prestige Hotel t/a Blue Waters v SACCAWU & Others* [1997]8 BLLR 1078 (LC).

⁴⁷ Grootboom case para 83.

⁴⁸ Section 25(1)(2) of the Constitution.

⁴⁹ Section 27(1) (c) of the Constitution.

⁵⁰ *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC) paras 35.

⁵¹ Social Labour Plan (SLP).

⁵² Michael Power and Manson Gwanyanya, “Massacre at Marikana,” *The Sur File on Natural and Human Resources* 14, no. 25 (2017): 61–69, <https://sur.conectas.org/wp-content/uploads/2017/06/sur-25-ingles-michael-power-manson-gwanyanya.pdf>.

⁵³ South African Government, “Mining Charter,” *Government Gazette*, 2018, https://www.gov.za/sites/default/files/gcis_document/201809/41934gon1002.pdf.

conditions estimated that around 30,000 people lived in those gruesome conditions at Marikana.⁵⁴ While the miners made profits for the mine bosses, the Foundation described the situation in Marikana as despicable. The rhetorical question one might want to ask in this case is, are they less human? Or their lives simply do not matter.

Amongst the findings by the *Farlam* Commission⁵⁵ was that Lonmin created a condition conducive to labour discontent by failing to meet the housing necessities undertaken by its two subsidiaries in the Social and Labour Plan (SLP), on the strength of which it obtained new order mining rights.⁵⁶ The State's duty to see the fruition of all the SLP objectives and delivery should not be compromised. When the SLP is not fulfilled, it interprets the government's inability to deliver its promises to its own people. The State's aims ought to grant equal opportunities and equal protection of the law to everyone and maintain the trust of people.⁵⁷ The State is obligated to provide health care, food, water, and social security.⁵⁸ The State failed to provide these essentials to the Marikana community. Nonetheless, the miner's dignity and human rights were violated by the brutal killings. SAPS officers exceeded the bounds of self-defence and similarly violated the Constitution.⁵⁹ *'I just told guys that we need to act such that we kill this thing'*.⁶⁰ This was part of the evidence on audio records presented to the *Farlam* Commission where SAPS was heard as they planned to disperse striking miners. According to O'Regan:

Recognising a right to dignity is an acknowledgment of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many of the rights that are specifically entrenched in the Bill of Rights.⁶¹

However, the state continues to drag its feet to fulfil its role and right to human dignity which is the central value of the 'objective, normative value system'⁶² established by the Constitution, perhaps the pre-eminent value to escalate the socio-economic fundamental issues in the society such as a strike.

Rights versus Profits

The Marikana miners, like all South Africans, hoped to attain social justice and the improvement of the quality of life. The preamble to the Constitution records such a commitment. The *Grootboom*⁶³ case grapples with the realisation of the state's constitutional obligations to housing and the right to dignity. The key to the improvement of the quality of life is vested in the state. Marinovich describes the conditions Marikana miners live under as utterly inhumane.⁶⁴ The employer has the obligation to provide good working conditions and in this instance, miners get a dwelling place. Starving people of clean water violates the Constitution, which declares that the primary foundations of society are "human dignity, equality, and the advancement of human rights and freedoms."⁶⁵ Such violations are an extension of inequalities in society.

Yacoob states:

"Our Constitution defends both civil and political rights together with social and economic rights. All the rights enshrined in our Bill of Rights are interconnected and mutually beneficial. There is no disputing that those who have food, clothing, or shelter are denied human dignity, freedom, and equality, all of which are the foundational principles of our society. Ensuring everyone has the same socioeconomic rights permits them to enjoy the other rights established in Chapter 2. The realization of these rights is also crucial to the expansion of race and gender equality, and it also impacts the evolution of a society in which men and women can achieve their full potential."⁶⁶

Prior to the current constitutional dispensation, South Africa's history was defined as the ugliest, brutal, and dominated by unequal standards. People especially the black population had no rights to be free from any discrimination. The Bill of Rights must therefore be able to reverse such a legacy of deep inequality so that

⁵⁴ Aisha Bahadur, Lisa Kadel, and Sarah Lincoln, *Platinum for the World Market, Iron Shacks for the Workers* (Berlin: Bread for the World – Protestant Development Service Protestant Agency for Diakonie and Development, 2017), https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analyse75-Nd1-en-v01-Web.pdf.

⁵⁵ *Farlam* Commission, pages 556-561.

⁵⁶ *Farlam* Commission pages 556-561.

⁵⁷ S 9 of the Constitution.

⁵⁸ S 27 of the Constitution.

⁵⁹ Section 205(3) of the Constitution.

⁶⁰ Lieutenant General Marriam Mbombo, Northwest provincial police commissioner, Tuesday 14 August 2012.

⁶¹ *Makwanyane* para 328.

⁶² *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) [56].

⁶³ *The government of the Republic of South Africa v Grootboom* 2001 (1) (CC).

⁶⁴ G. Marinovich, *Murder at Small Koppie Penguin Books, Book Review*, (2016).

⁶⁵ See s 1(a) of the Constitution.

⁶⁶ *Grootboom* case para 23.

democratic South Africa must be realised by all human beings. However, the State seems to be wrestling with the most powerful document, the Constitution, without adequate means to implement it.

Chaskalson describes this in *Soobramoney*:⁶⁷

We live in a society with significant income disparities. Millions of people live in horrible conditions and extreme poverty. There is a high rate of unemployment and inadequate social security, and many people lack access to clean water and proper health care. These conditions existed before the adoption of the Constitution, and an eagerness to address them and transform our society into one of human dignity, freedom, and equality is at the heart of our new constitutional system. That aspiration will have a hollow ring as long as these conditions continue.⁶⁸

South Africa is part of the international community and abides by the treaties it has ratified.⁶⁹ The Constitution regulates the application of international law in detail. This Covenant is crucial in comprehending the positive duties generated by the Constitution's socio-economic rights. According to Article 11(1) of the Covenant,

"The States Parties to the present Covenant recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, as well as the right to continuous improvement of living conditions. The State Parties will take appropriate actions to guarantee the realisation of this right, recognising the critical relevance of international cooperation based on free consent in this regard."

According to Ngcukaitobi, social or economic challenges are the reason why structural violence occurs.⁷⁰ He further explains that structural violence refers to a form of violence wherein some social structure or social institution may harm people by preventing them from meeting their basic needs.⁷¹ Equally, he likened the Marikana killings to that of structural violence. That was due to the mine's reluctance to listen to the miners and to implement the SLP effectively. The inequalities in socio-economic factors must therefore be considered when dealing with the limitations of the right to strike. He, however, opined that there should be conformity to legislation as this could curb violent strikes. Jaichand suggests the series of "service delivery" protests are not matters of "service delivery" but violations of the socio-economic rights by "organs of the state. He states that the state is complicit in the violation of human rights when it fails to implement the socio-economic rights promised in the Constitution.⁷²

Part of the profits such as lucrative bonuses and increases made in the mine could have impacted the lives of those who live in Marikana if the prevailing conditions the miners and the Marikana community were faced with daily were confronted.⁷³ They only cared about how much their profits were. The selfish and self-centred decisions let the industry down. He comments below that:

"If these guys expected workers to accept a 0% raise, the first thing they'd do is take a salary decrease. That is what it means to lead by example - from the front. Instead, many of these 'leaders' received raises and bonuses. And, given the magnitude of the massive and frequent weight-downs we've been witnessing, resignations, firings, and jail time should be carefully considered. It's terrible."⁷⁴

RECOMMENDATIONS

The authors contend that because the authorities were expecting the opposite, the miners deserved better than the brutality they experienced. The state must update the procedures it uses to safeguard its citizens' rights under the constitution's promised Bill of Rights. The rights to human dignity and the right to life are guaranteed under Sections 10 and 11 of the Constitution of 1996, and these rights, as non-derogable rights must be protected at all costs by the state and its enforcement institutions to avoid any tragedy of such proportion. The state's ambition to advance economic growth must not be realised at the expense of the indignity and loss of lives of its citizens. While the Marikana victims must be adequately compensated, the state must as a matter of justice, strengthen enforcement mechanisms to practically realise the human rights of its citizens especially the rights to life and dignity as contained in the Bill of Rights.

⁶⁷ *Soobramoney v Minister of Health, Kwa Zulu-Natal 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC)* at para 8.

⁶⁸ *Soobramoney* case at para 30.

⁶⁹ S 231-235 of the Constitution of the Republic, 1996.

⁷⁰ Tembeka Ngcukaitobi, "Strike Law, Structural Violence and Inequality in the Platinum Hills of Marikana," *Industrial Journal* 34, no. 4 (2012): 836-58.

⁷¹ Ngcukaitobi, "Strike Law, Structural Violence and Inequality in the Platinum Hills of Marikana."

⁷² Vinodh Jaichand, "In Transition? The Struggle for Socio-Economic Justice in South Africa," *Notre Dame J. Int'l Comp. L.* 7 (2017): 12.

⁷³ The Mail & Guardian, "Mine Bosses Rake in the Big Bucks," July 26, 2013, <https://mg.co.za/article/2013-07-26-00-mine-bosses-rake-in-the-big-bucks/>.

⁷⁴ The Mail & Guardian, "Mine Bosses Rake in the Big Bucks."

CONCLUSION

The context of the specific concerns offers background for what happened in Marikana. Marikana's violations of human dignity and the right to life undermine the Constitution and the rule of law in the post-democratic epoch. The Marikana strike began with good intentions and was never intended to be so uncontrollable. What worsened the situation was the lack of good leadership between the mine bosses, unions, and the state. Similarly, the Marikana tragedy highlights the problem of intersectionality in that it challenges the institutionalisation of the industry that undermines collective solidarity. The state failed to protect workers' fundamental rights as guaranteed in the Constitution and the Bill of Rights. While the state delegated its duty to provide adequate housing and other social services to the mine owners through the Social Labor Plan (SLP), the state was prompt in sending SAPS to the mine when miners demonstrated their unhappiness with either nor delivery of the promised services. Instead, the State must have taken the mine to account and equally take the mine to task for the breach of contract to provide SLP to the miners and surrounding community. The duty is now with the Courts to act justly on these human rights violations.

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