

Murder on the Mines: Who is guilty?

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Graeme Simpson is a founder and former Executive Director of the Centre for the Study of Violence and Reconciliation.

"It is very sad that today I am being sentenced for something which I did not do with my own hands. I have no-one's blood on my hands. That is all."

These were the words of Lucky Nomnganga before he was sentenced to death by the judge in Welkom in November 1988. Lucky Nomnganga was the secretary of the shaft stewards's committee at the Number 6 shaft at Western Holdings Gold Mine near Welkom in the Free State. The court case concerned the events of 5 June 1987, when two white mine officials were murdered at the mine. One of them was a mine engineer and the other a mine security officer. Six mineworkers were shot dead by mine security guards the same day.

The mineworkers and the mine security guards gave different stories to the court about what happened that day. In its findings, the court displays the double standards which are typical of justice in this country. Lucky Nomnganga has been sentenced to the gallows without any evidence led that he inflicted any wounds on the dead men. But the very mine security officials who gave evidence against him will not even be brought to trial for the six mineworkers they shot dead on that same winter's day.

What the Workers Say

For several months before the murders there had been dismissals which the workers regarded as unfair. At a mass meeting on 3 June the issue of dismissals was discussed. At a previous meeting, shaft stewards had decided to seek the help of a witchdoctor to protect them against such dismissals. At the meeting on June 3, workers were encouraged to go to see the witchdoctor.

Two days later, five workers who had been dismissed went to the shaft offices to demand that they be reinstated. When the mine manager refused, they went outside and sat on the lawn where they were joined by 150-200 workers. Workers claim that the mine manager became nervous and called in extra mine security guards. Workers say that without provocation, mine security officials then opened fire on them using live ammunition. This led to a pitched battle between workers armed with stones and mine security who had guns. The fight lasted about twenty minutes, at the end of which two white mine security guards were found dead. They had been killed with "sharp instruments". In the same battle, six workers were killed and 20 injured by the gunfire of the mine security personnel.

What the Security Guards Say

The story of the mine security personnel and the state witnesses was very different to the story of the workers. The judge, van Coller, accepted the version of mine security and the state.

They claimed that the reason that workers called the witchdoctor was to "turn the guns of the Whites to water" so that shaft managers could be attacked, rather than to protect workers against dismissal. They convinced the court that the meeting of June 3 was to plan the attack on the shaft offices two days later, and not to discuss dismissals as workers had claimed. Furthermore, the state claimed that on June 5, workers had come armed with kieres and pangas and had simply attacked white mine officials and security guards, rather than the other way around.

The shaft manager, David Heugh, claimed that the five men who came to him earlier on the day of 5 June 1987, gave him an ultimatum to reinstate them within five minutes. Heugh said that, once the crowd gathered, he gave the order that all mine officials should go into his office, including four mine security guards. The witnesses for the prosecution claimed that workers then attacked the shaft offices, and in response mine security reinforcements were called.

Mine security personnel stated that their division received a report of developments at the shaft office and sent three vehicles to the scene, including a Casspir, and several heavily armed security guards. Lukas de Wet, one of the murdered security guards, was the driver of a land cruiser which was sent to the scene. He was armed with a 9 millimetre pistol with two magazines and a Streicher gun which shot rubber bullets.

The Trial

The state began to act immediately after the battle. All the workers that had been shot in the battle were arrested. The following day another 243 workers were also arrested, most of them bearing "muti marks" from the treatment of the witchdoctor. Sixteen of those arrested were charged eventually with two counts of murder and an additional charge of public violence.

Even before the case came to trial, the system began to take its revenge for the death of the two white mine officials. The witchdoctor, who was detained along with all the

mineworkers, coincidentally fell ill while in detention and died in hospital. Ernest Gogela, the acting shaft steward committee chairperson at the mine, and one of the accused in the case, was found hanged in his cell before the trial came to court.

The evidence against Lucky Nomnganga was that, during the battle, he had stolen a gun from one of the deceased mine security officials and had pointed it at another security guard. Accepting the evidence of the security officials, the judge found that a whistle by Nonmganga had been the signal to start the attack. Nomnganga denied that he had whistled at any time or that he was armed. He also denied that he had aimed a gun at one of the security officials.

There was no evidence led that Nomnganga had inflicted any of the wounds on the deceased. But on the basis of "common purpose" he was found guilty for the wounds. (The Sharpeville Six were also found guilty of murder because of the principle of "common purpose"). The judge stated that because Nomnganga was a leader (as secretary of the shaft stewards' committee at the Number 6 shaft), he should have foreseen that someone could be killed in such a situation and therefore he was guilty of murder on the basis of "common purpose".

The evidence against the other accused was that they had thrown stones into the offices of the manager, that they had broken the glass of the windows to the offices, and that they had tried to get through the burglar bars.

Death Sentence for "Common Purpose"

Of the 16 accused, seven were found not guilty (acquitted) and nine were convicted on all three charges. Of these nine, eight were given sentences of between three and ten years. The ninth was Lucky Nomnganga. He was sentenced to death.

The judge ignored the plea by Nomnganga's lawyers that he had not participated physically in the killings. He did not see this as an extenuating factor. In distinguishing between Nomnganga and the others, van Coler found that there was extenuation for the others because, unlike Nomnganga, none of them had played a leadership role in the events. He said that they were not sophisticated people and didn't play a central role like Nomnganga. Finally, the judge accepted that they had been swept along by the crowd and that this was an extenuating circumstance – but Nomnganga could not argue the same.

The judge also rejected Nomnganga's lawyers' arguments that unfair dismissals should be considered an extenuating circumstance. He stated that there was no evidence that workers had been unfairly dismissed and said that there were no grounds to the workers' grievances.

In passing sentence, van Coler simply stated that there had been a brutal and violent attack on the mine officials without any reason or provocation. He made little mention of the fact that six workers were killed and another 20 were injured as a result of gunfire from the security personnel. No mention is made of this fact by the judge when passing judgement on Lucky Nomnganga.

Van Coller found that there was no doubt that Nomnganga had foreseen that one or more persons may have been killed and that he had the intention or disposition to kill himself. The judge even denied him the right to appeal against his sentence and conviction on one of the counts of murder.

In Search of Justice

In his judgement, van Coller admitted that there were certain inconsistencies in the evidence given by the white mine security guards. He excused this, however, on the basis that these men were in a "dangerous situation at the time" and that they had observed the events from different positions, thus resulting in slightly different perceptions of what happened. Yet the judge's reliance on the evidence of the mine security guards under the circumstances is rather disturbing. Many of the miners brought to trial were identified by mine security guards who had themselves been involved in shooting and killing six miners in the battle.

The very mine security guards who, by their evidence, will have hanged Nomnganga for a murder in which he inflicted no wounds, will not even be brought to trial for pulling the triggers that killed six mineworkers on the same day. While he prays for his appeal to be heard, and awaits his execution, they are free to go home to their families.

The courts and the legal system present themselves as the instruments of justice. But it is clear that they interpret some actions as violent and therefore punishable crimes while other actions, equally if not more violent, are justified because they are in the interests of maintaining "law and order". This does not come as a surprise in the context of the State of Emergency, which protects agents of the state and effectively grants them immunity. But now a court is even offering protection and a licence to kill to the private armies of the mining bosses and is allowing violence against workers in the industrial relations sphere.

The double standards of the courts is further demonstrated by the abuse of the "common purpose doctrine". If Lucky Nomnganga is guilty of murder simply because he was a leader in the shaft steward committee, then are Zac de Beer or Peter Grush to take the blame for the actions of the mine security guards who shot the mineworkers? Surely they too should have foreseen that if they arm mine security guards to the teeth, violence and possible murder will be the consequence? Perhaps regular dismissals of workers at Western Holdings also makes them guilty of the murders? By the same token, is the Minister of Police not criminally liable for the death in detention of Ernest Gogela (or any other detainee) on the grounds of "common purpose"?

Courts Take Violent Revenge

By lending protection to some while punishing others for their violence, the court has discriminated against the mineworkers. What is more, in reality the court is as much an agent of violence as the security guards or the workers. The imposition of the

death penalty is an act of violent revenge. The court becomes just another violent actor on the South African political stage.

This shows that "the law" is not an objective set of rules governing "normal" behaviour in society. Rather the law is created and shaped by various social institutions – parliament, the universities, state bureaucracies, the courts. These institutions themselves reflect and maintain the injustices of South Africa. As a result, the courtroom becomes a microcosm of society in South Africa – reflecting its injustices rather than remedying them.

Indeed, at a time when political debate and demands are suppressed by law, the courts have become the sterile forum in which political and economic debates are contested. Workers, trade unionists and treason trialists alike, find themselves arguing for their very lives in the courtrooms of South Africa. Their "defences" and often their arguments "in mitigation" are based on their experience of South African society and its injustices.

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