

## OPEN LETTER

# Justice requires lawyers for the miners

**W**e, the undersigned, call on the government to urgently make financial resources available for the legal team representing the 270 miners injured and arrested following the Marikana massacre on August 16 2012.

The failure to ensure that all interested legal parties before the Marikana Commission of Inquiry have funding calls into question the government's commitment to uncovering the causes of the massacre, and it also poses a serious risk to the integrity of the commission, which is currently continuing its hearings without the miners' legal team.

The government has a duty to uphold the Constitution, and two critical constitutional principles — access to justice and equality before the law — are at stake. The government has not directly provided any funding for any of the victims of the violence, although it has indirectly provided some funding through Legal Aid South Africa to the team of advocates (as briefed by the Socioeconomic Rights Institute of South Africa) representing the families of 36 deceased miners.

The commission is set to continue until the end of October. By then it will have sat for a year — far longer than the four months originally planned.

This has stretched the resources of the donor-supported institute that represents the families of the miners who were killed, as well as the Association of Mineworkers and Construction Union.

It has placed considerable strain, too, on the Legal Resources Centre representing the Bench Marks Foundation.

The legal team for the injured min-

ers, headed by advocate Dali Mpofu, has only received donor support for three of the 10 months the commission has already sat.

All the while, the government supports large legal teams for the South African Police Services (SAPS), as well as the police minister and the department of minerals and resources.

This is not acceptable.

Now that all the legal teams representing the victims have withdrawn in solidarity following the withdrawal of the Mpofu team, the only interested parties that are left at the commission are the heavily resourced Lonmin, the National Union of Mineworkers (NUM), SAPS, the South African Human Rights Commission — which is operating on a strained budget and in accordance with its constitutional mandate to monitor the process and ensure the protection of human rights — and various other government departments.

Without legal representation for the injured miners, there can be no level playing field. Should the hearings continue without the participation of the legal teams representing the victims it would be a travesty of justice.

That this matter will now have to come before the Constitutional Court is a serious indictment of the government and, in particular, the ministry of justice and constitutional development and the presidency.

Signatories:

- Peter Alexander, professor in sociology, University of Johannesburg and National Research Foundation chair in social change;
- Brian Ashley, director of the Alternative Information Development Centre;
- John Capel, executive director of the Bench Marks Foundation;
- Hugh Corder, professor of public

law at the University of Cape Town (UCT);

- John Dugard, emeritus professor of law, universities of Leiden and Pretoria; former member of the International Law Commission and United Nations special rapporteur;
- Jackie Dugard, former director of the Social and Economic Rights Institute;
- Mary-Ann Davies, public health medicine specialist at UCT;
- Rehad Desai, documentary filmmaker and chairperson of the Human Rights Media Trust;
- Judith February, director of governance and human rights at the Human Sciences Research Council;
- Ebrahim Fakir, manager of governance institutions and processes at the Electoral Institute for the Sustainability of Democracy in Africa;
- Frene Ginwala, former speaker of Parliament;
- Marion Heap, School of Public Health and Family Medicine at UCT;
- Allan Kolski Horwitz, poet and playwright;
- Martin Jansen, director at Workers World Media Productions;
- Mazibuko Jara, the Democracy from Below campaign;
- Shamil Jeppie, Institute of Humanities in Africa at UCT;
- Ronnie Kasrils, former Cabinet minister;
- Mark Heywood, executive director of Section27;
- Jacob van Garderen, national director of Lawyers for Human Rights;
- Bobby Godsell, council of the Elders;
- Derek Hellenberg, professor and head of family medicine at UCT;
- Ros Irlam, administrative director of Crossing Bridges Africa;
- Nozizwe Madlala-Routledge, the Democracy from Below campaign;

- Mosibudi Mangena, president of the Azanian People's Organisation;
- Joseph Mathunjwa, president of the Association of Mineworkers and Construction Union;
- Eddie Mbalo, film producer and former chief executive of the National Film and Video Foundation;
- Narius Moloto, general secretary of the National Council of Trade Unions;
- Andrew Nash, associate professor of political studies at UCT;
- Lawson Naidoo, director of the Council for the Advancement of the South African Constitution;
- Njabulo Ndebele, professor, writer and academic;
- Noor Nieftagodien, National Research Foundation chair of present realities and head of the history workshop at the University of the Witwatersrand (Wits);
- Lorna Olckers, public health and family medicine at UCT;
- Suren Pillay, associate professor, Centre for Humanities Research, University of the Western Cape;
- Sipho M Pityana, chairperson of the Council for the Advancement of the South African Constitution;
- Laurel Baldwin-Ragaven, professor of family medicine, University of the Witwatersrand;
- Thiven Reddy, professor of political studies at UCT;
- Jo Seoka, Anglican Bishop of Pretoria, president of the South African Council of Churches;
- Karam Singh, head of research at the South African Human Rights Commission;
- Mathatha Tsedu, newspaper editor; and
- Paul Verryn, bishop of the Central District Methodist Church.

Issued by the Marikana Support Campaign