

## **Salute lawyers suing corporates for aiding 'the single worst human rights violation in history'.**

The South Africa few tourists see is the Northern Cape. It is the equivalent of Chernobyl. Scattered across a windswept landscape are dumps of discarded asbestos tailings that poison the air, water and food of countless people, not least those who mined the wealth of others.

The prevailing wind can deliver disease straight into a village; just one microscopic fibre causes mesothelioma, a cancer that kills very painfully. Children are especially vulnerable. The disease can take up to 30 years to reveal itself, so the effects of these dumps can be indefinite.

No company responsible for this epic devastation has offered reparations, neither has any company that profited from apartheid. The mining industry greeted democracy by sacking half its labour force. Some miners got a pittance; many got nothing and thousands died in their 40s, their families often too poor to pay for a burial. According to Finance Minister Trevor Manuel, the liberation struggle was not for money, and compensation was not necessary because government policies were “uplifting” the poor.

This contemptuous view was echoed during the “business hearings” of the Truth and Reconciliation Commission by the companies themselves. In its written submission the Chamber of Mines, representing the most voracious, ruthless, profitable and lethal industry in the world, summed up a century of mining in South Africa in just six-and-a-half pages. Mining had been “largely instrumental” in developing South Africa, said the document, providing employment for people from “deep rural areas” and “contributing to economic activity in those areas”. The heads of black people in the public gallery shook in disbelief; someone cried, “Shame!” The places where South Africa’s miners and wealth creators come from, such as the Eastern Cape and neighbouring Lesotho, remain the most forsaken and impoverished on earth.

Most of those who poured out their grief before the Truth and Reconciliation Commission asked for nothing but justice. A few sought no more than a gravestone or a wheelchair. The commission directed that some 20 000 victims should receive a single payment of R30 000. Peanuts. In 2002, after it was taken to court in London, the British multinational mining company Cape plc agreed to pay out £7-million over 10 years to 7 000 victims of its asbestos carnage. Peanuts. The company has since cited financial difficulties and most of the claimants are still waiting. Like the judges who enforced apartheid, not one multi-millionaire businessman applied to the commission for amnesty, no doubt confident none would be required. They were right.

But they did not get away with their crimes. In 2002, with little fanfare, South African lawyers John Ngcebetsa and Dumisa Ntsebeza, a former investigator for the commission, launched a \$400-million lawsuit in New York under the United States’s 200-year-old alien tort statute, which allows foreigners to bring human rights claims in American courts. Representing victims of more than 50 companies accused of aiding and abetting “the single worst human rights violation in history”, they are suing the likes of BP, Barclays, Coca-Cola and Ford for their activities in support of apartheid South Africa.

What is also extraordinary about this case is that the ANC government is backing the companies against the victims. In 2003, then president Thabo Mbeki and Justice Minister

Penuell Maduna asked the American courts to drop the case on the grounds that it would deter “much needed foreign investment and delay the achievement of the government’s goals”. They claimed “the litigation could have a destabilising effect on the South African economy as investment is not only a driver of growth, but also of employment.” The former chief economist of the World Bank and Nobel Prize winner, Joseph Stiglitz, replied on behalf of the plaintiffs that such an argument had “no basis”, because “those who helped to support [apartheid], and who contributed to human rights abuses, should be held accountable — if anything it would contribute to South Africa’s growth and development”.

But abuse from South African government officials has continued. The plaintiffs are said to be “perpetual victims” who are needed by “special interest groups to advance their cause”. If that was not enough, Nelson Mandela himself ticked them off. At an event to establish a “Mandela Rhodes” foundation and attended by leading businessmen and hosted by South Africa’s richest man, Nicky Oppenheimer of Anglo American, Mandela derided the court case in New York as “outside interference”. He praised Cecil Rhodes, the embodiment of imperialism, as one who would “have given his approval” to the ANC government’s so-called free market policies.

In October 2007 the administration of George W Bush moved against the plaintiffs by asking the US Supreme Court to stop the lawsuit on the grounds that it “would interfere with [the US government’s] ability to employ the full range of foreign policy options when interacting with regimes the US would like to influence”. The British, German and Swiss governments joined in, seeking to protect their own companies. Up against such power, it seemed the case was doomed and the Supreme Court would support the administration. But as Jo Lateu reported in *New Internationalist*, “the close links between government, judiciary and the private sector have scuppered their attempts to sabotage the lawsuit. Federal law requires at least six of the nine Supreme Court justices to hear review cases. But four of them have been forced to withdraw because of ‘conflicts of interest’; they all have financial or personal connections with some of the companies on trial.” Bush’s favourite judge, Samuel Alito, was found to have \$250 000 worth of stock in the oil giant Exxon.

Lacking a majority to overturn it, the Supreme Court last May allowed the lawsuit to continue. The significance of this cannot be exaggerated. A win for the plaintiffs will radically change international human rights law and serve notice on Rhodes’s rapacious corporate successors, wherever they are, that they are no longer above the law. In a world bereft of good news a group of tenacious, principled, courageous South Africans may well provide at least one cheering headline in the new year. We should salute them.

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