Many questions remain

The Marikana Commission of Inquiry has reported yet much remains unclear.

On 16 August 2012 police deployed units armed with assault rifles and live ammunition with the stated intention of forcing an end that day to a mine workers’ strike at the Lonmin Marikana platinum mine in North West Province. Sixteen miners died at the scene. Fourteen others died at another location. Four other miners died later that day from their injuries. An unknown number – but certainly more than one hundred people – were wounded. Following the shootings police arrested 259 miners, an apparent mass case of arbitrary arrest and detention. The detainees were then charged with the murder of the 34 miners shot and killed by police, but the decision was widely criticised, the charges were dropped, and the miners were later released.

The dispute had erupted a week earlier when workers had demanded a pay increase after workers at a neighbouring mine (Implats) took unofficial strike action and were awarded very significant increases, substantially above the terms of their existing collective agreement. Marikana workers, many of whom were migrant workers, housed in awful conditions, and very unhappy with their pay rates, saw the Implats rise as a key opportunity to mobilise and to secure improvements to their own situation. In both cases the miners organised themselves into committees to petition management independently, having, for various reasons, lost confidence in either the capacity or willingness of the recognised NUM union to represent them.

Neither dispute was without incidents of violence, which often mar South African industrial relations, though the murders marked the Marikana case as particularly severe. While Implats did ultimately concede to the workers’ demands Lonmin steadfastly maintained a position under which it refused to negotiate with the workers. Lonmin was not without powerful allies during the dispute. From the second day one of its then non-Executive Directors, Cyril Ramaphosa (now South Africa’s Deputy President, previously a leader of the NUM trade union, and at the time a senior and influential figure in the ANC leadership) was in regular contact with the company, with political leaders, and with the police. A Commission of Inquiry was mandated to investigate matters of public, national and international concern ‘arising out of the incidents leading to the deaths of approximately 44 people’. The Commission was asked to look into conduct of various parties: Lonmin, the police, the unions, etc. Hearings concluded in November 2014 and the Commission’s report was submitted to the presidency on March 31 2015, being finally published to the public on 25 June, to a mixed response.

Timeline

The unfolding of events prior to 16 August has been less clear than it should have been. The Inquiry has shed some light on these events yet it failed to draw these together to provide a concise report of how key events that unfolded. In order to assist those wishing to understand how these events unfolded ICTUR lists below our understanding of the attempted bargaining process and of the unfolding of violence that preceded the events of 16 August.

During 2012 a strike wave throughout the mining sector saw thousands and thousands of workers taking industrial action – outside of formal industrial relations structures – to demand higher pay. The strike called at Lonmin’s Marikana mine fell within this context.

April: management at the neighbouring Implats mine granted workers substantial pay increases – over and above existing collective agreement terms – to end a strike organised by an ad-hoc committee of workers.

June: an ad-hoc committee of workers at Lonmin demanded a pay rise.

July: Lonmin offered a small rise – over and above the collective agreement – but workers rejected this and held out for a larger rise.

9 August: workers held a meeting at the Wonderkop stadium at which they agreed to begin strike action in support of their pay claim. Lonmin issued a communiqué stating that it would not negotiate and arguing that the existing collective agreement rate must be respected.

10 August: Lonmin again refused to negotiate when the workers gathered at the mine and sent a delegation to speak with management. The crowd at the mine was then violently dispersed and fired on with dozens of rubber bullets in three separate shooting incidents. Lonmin guards claimed in each case these were fired in response to ‘intimidation’. Two strikers were also shot and injured in two further incidents at separate locations. The victims claim that Lonmin guards were responsible for these further shootings.

11 August: two strikers were shot by armed officials of the NUM trade union after a crowd marched to the NUM offices.

12 August: Two Lonmin security guards were killed by strikers after their colleagues initiated an armed confrontation with a group of strikers. Two other guards were assaulted. That evening strikers also killed a miner who had remained at work and assaulted three others.

13 August: another miner was killed by strikers.
while on his way to work. That afternoon a striker was killed in a large-scale confrontation with police. Two police officers were also killed. A striker was also found murdered at his home.

14 August: a Lonmin supervisor was killed by strikers.
16 August: police commenced a disastrous operation to disperse the miners, shooting at least one hundred or more people with military-class automatic weapons in two separate mass shooting incidents. 34 of those who were shot died from the severity of their injuries.

**Response to the Commission’s findings**

ICTUR has studied the report of the Commission, and our appraisal of the Commission’s work is outlined in summary form below. We note where the Commission has made findings which are, in our view, useful, but we also criticise a number of aspects of the Commission’s work and the style in which its report was prepared. We also outline our own recommendations for the most urgent next steps in this horrifying case.

The findings that Lonmin bears some culpability and that it failed to act appropriately in the circumstance are welcome. Domestic and international legal processes must now be taken forward to allow victims and families to seek redress.

The findings against the police – that they failed to plan appropriately, that the operation was best by numerous flaws, and that they subsequently were uncooperative with the investigation – are welcome and must be followed up. The lack of any Government accountability coming out of the Inquiry is a glaring failure and is one that will rightly be criticised by international observers and human rights organisations. Engagement with international supervisory processes of the ILO and UN must now be part of a process of establishing accountability.

We agree that the role of the NUM trade union in physically assisting workers to cross a picket line in such a tense situation was rightly criticised. We agree also that NUM officials who fired on striking workers on 11 August should be referred to investigation.

The report makes only very general recommendations about prosecutions, in most cases offering no guidance to prosecutors. We question the value of merely advising that cases of murder and serious violence should be investigated, offering no guidance to prosecutors. We question the Commission’s brief narrowly and did not avail itself of an opportunity to set out what would have been influential recommendations for a compensation scheme, which is clearly urgently needed by the families and victims.

ICTUR is disappointed by the Commission’s failure to make findings concerning the shooting of ‘bird shot’ during the massacre on 16 August, which ammunition the Commission has noted was available to Lonmin’s guards but should not have been carried by police officers. At least seven people – four of whom died – suffered injuries from this type of ammunition.

Evidence in relation to the ‘intimidation’ said to have occurred on 10 August is vague and ICTUR is disappointed that the Commission preferred evidence given only by those who relied on it to excuse their own conduct (Lonmin guards and NUM officials) over and above compelling evidence to the contrary from several sources which indicated that the strikers on the 10 August were peaceful.

We also regret that the Commission did not make sufficiently clear findings as to exactly what the intimidation consisted of, nor did it identify specific victims of intimidation, yet it still managed to find that the use of rubber bullets in several cases was justified.

ICTUR is disappointed that the Commission did not instead take this opportunity to address the underlying principle that appears to normalise the use of rubber bullets by private security guards in crowd control situations.

We further believe that the decision to admit a great deal of evidence given by a person with a disguised identity - Mr X - was unhelpful. This was especially so given the context of the enormous extent of collusion and obfuscation that the Commission accepts that the police engaged in. This decision undermines the appearance of impartiality.

ICTUR regrets that the Commission interpreted its brief narrowly and did not avail itself of an opportunity to set out what would have been influential recommendations for a compensation scheme, which is clearly urgently needed by the families and victims.

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4 Marikana Commission of Inquiry, pp2-4.
5 Marikana Commission of Inquiry, p42.
6 Marikana Commission of Inquiry, pp45-7.
7 Marikana Commission of Inquiry, pp4-5.
8 Marikana Commission of Inquiry, pp67-8, 70, 73.
9 Marikana Commission of Inquiry, p77.
10 Marikana Commission of Inquiry, p544.
11 Marikana Commission of Inquiry, pp118, 121.
12 Marikana Commission of Inquiry, pp112-3.
13 Marikana Commission of Inquiry, pp122, 127.
16 Marikana Commission of Inquiry, p544.
17 Marikana Commission of Inquiry, p147.
18 Marikana Commission of Inquiry, pp395, 401.
22 Marikana Commission of Inquiry, p259.