

Commissioners and commanders

Police leadership and the Marikana massacre

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Acknowledgements

Anyone who has tried to engage with the Marikana Commission process in order to understand what happened at Marikana will know there is a formidable amount of material available. Evidentiary material, for instance, includes transcripts of proceedings, many statements from police and others, visual material, and other exhibits. In preparing this monograph, I have placed particular reliance on some sources. The monograph attempts to accurately reflect events based on the sources indicated.

In addition to these sources, I have benefited from email exchanges and conversations with Gary White and Matthew Chaskalson. Gareth Newham of the ISS has also been an ongoing source of support and encouragement. I am indebted to Johan Burger and two anonymous reviewers for their comments on an earlier draft. Discussions in meetings of the Marikana panel of experts have also added to the analysis presented in this monograph.

Other than where views are attributed to others, all opinions, and all errors, are my own.

David Bruce

Acronyms and abbreviations

AMCU	Association of Mineworkers and Construction Union
ANC	African National Congress
FHA	forward holding area
JOC	Joint Operational Centre
JOCCOM	Joint Operational Coordinating Committee
NIU	National Intervention Unit (South African Police Service)
NMF	National Management Forum (SAPS)
NUM	National Union of Mineworkers
ORS	Operational Response Services (SAPS)
POP	Public Order Police (SAPS)
RDOs	rock drill operators
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SO	standing order
STF	Special Task Force (SAPS)
TRT	Tactical Response Team (SAPS)
Abbreviations of titles of rank (in order of rank):	
Gen.	General
Lt Gen.	Lieutenant General
Maj. Gen.	Major General
Brig.	Brigadier
Capt.	Captain
WO	Warrant Officer

Terminology

The word **massacre** is used to refer to the killing of 34 strikers by members of the South African Police Service (the SAPS) at Marikana on the afternoon of Thursday, 16 August 2012.

The term **operation** refers to the SAPS activities in Marikana in response to the miners' strike and associated violence from 9 August to 16 August 2012. This paper focuses on the operation during the period from Monday 13 August until the launch of the 'tactical phase' intervention.

The Marikana **intervention** (also called the 'tactical intervention') refers to what the SAPS call the 'tactical phase' of the operation, launched on the afternoon of 16 August. The intervention was one aspect of the overall SAPS Marikana operation. During the intervention, the police intended to 'disperse, disarm and arrest' strikers gathered on a koppie (small hill) at Marikana. Police killed 34 strikers during the intervention.

The term **tactical**, as used by the SAPS (e.g. 'tactical phase', 'tactical intervention'), means to address a situation through (planned) police action as opposed to, for instance, negotiating.

The **tactical units** referred to in this monograph are the Special Task Force, National Intervention Unit and Tactical Response Team of the SAPS. These are specialised paramilitary units responsible for medium-risk and high-risk interventions. The term does not include Public Order Police (POP) or the SAPS K9 (police dog) unit, although these units also played a major role in the Marikana intervention.

Dates

This monograph focuses on the operation from Monday, 13 August 2012 until the launch of the 'tactical phase' intervention on the afternoon of Thursday, 16 August 2012.

Unless stated otherwise, days of the week mentioned in this monograph refer to the period from Friday, 10 August 2012 to Thursday, 16 August 2012.

Note on the division Operational Response Services

At national level the SAPS is structured into a number of divisions. These divisions are reproduced at provincial level. At the time of Marikana these included Visible Policing, Detective Service, Operational Response Services (ORS) and a number of others.

ORS was the division within which both POP units and the tactical units were located. Maj. Gen. Mpembe was North West Deputy Provincial Commissioner for *Operational Services*. The latter term should not be confused with the term ORS. In practise he had overall responsibility for both the Visible Policing and ORS divisions in North West province.

Main people referred to in this monograph

SAPS National

General Riah Phiyega

SAPS National Commissioner at the time of Marikana. She was not at Marikana other than on the night of Monday, 13 August. She officiated at the special session of the National Management Forum on 15 August and maintained communication, notably with Lt Gen. Mbombo, as events unfolded.

Major General Charl Annandale

Head of the Specialised Interventions component of the Division Operational Response Services. Formally, he acted as deputy to Major General Mpembe at Marikana.

Lieutenant Colonel Duncan Scott

A senior member of the Special Task Force (STF). Chief SAPS planner at Marikana, reporting to Annandale. (Scott was promoted to Colonel in July 2013.)¹

SAPS North West province

Lieutenant General Zukiswa Mbombo

SAPS Provincial Commissioner for the North West province. The most senior SAPS member at Marikana during most of the SAPS operation.

Major General Mzondase William Mpembe

Deputy Provincial Commissioner for Operational Services. Appointed as the overall commander of the SAPS at Marikana on Monday, 13 August.

Brigadier Adriaan Calitz

North West provincial head of Operational Response Services (ORS). Appointed as the operational commander on Monday, 13 August. He does not feature prominently in this monograph. (His role is most significant after the launch of the intervention on the afternoon of 16 August.)

Lieutenant Colonel Joseph Merafe

The head of Public Order Police in Rustenburg. Replaced as operational commander at Marikana by Calitz.

SAPS Gauteng

Lieutenant Colonel Stephen McIntosh

The head of the Carletonville Family Violence, Child Protection and Sexual Offences (FCS) unit. The chief SAPS negotiator at Marikana after his arrival on Tuesday, 14 August.

Others involved in the events at Marikana

Joseph Mathunjwa

President of the Association of Mineworkers and Construction Union (AMCU). Involved in events at Marikana on Wednesday, 15 and Thursday, 16 August 2012.

Barnard Mokwena

Lonmin's Executive Vice President for Human Capital and External Affairs. The public representative of Lonmin at the time of Marikana.

Nathi Mthethwa

Minister of Police. Only came to Marikana the day after the massacre but was in telephonic contact with Phiyega and Mbombo.

Mgcineni Noki

Leader of the strikers. One of those killed by police on 16 August 2012.

Bishop Seoka

Anglican Bishop of Pretoria. Tried to negotiate with Lonmin on behalf of the strikers during the afternoon of 16 August.

Participants in the Marikana Commission of Inquiry

Judge Ian Farlam

Chairperson of the Marikana Commission.

Executive summary

This monograph examines the functioning of the police system, with a focus on the leadership and command levels, in the build-up to the Marikana massacre on 16 August 2012, when police killed 34 miners who were striking at the Lonmin platinum mine at Marikana. It considers events up to about 15:30 on Thursday, 16 August, which is when police launched their tactical intervention during which the massacre took place.

The monograph examines decision making and the exercise of authority and influence by senior leadership of the South African Police Service (the SAPS), particularly the senior national and provincial leaders (National Commissioner Phiyega and North West Provincial Commissioner Zukiswa Mbombo), and senior SAPS commanders (Major Generals Mpembe and Annandale).

The key findings of the Marikana Commission are summarised, followed by an overview of the conflict at the mine in August 2012. This conflict involved the strikers, mine management and two unions, the National Union of Mineworkers (NUM) and the Association of Mineworkers and Construction Union (AMCU). The monograph outlines some of the aspects of this conflict, including questions about the political alignment of the parties involved and how the strike, launched on Thursday 9 August, rapidly escalated into violence.

The monograph then focuses on two critical shifts in the SAPS approach to the Marikana situation. Both these shifts were linked to the involvement of SAPS senior leaders, Phiyega and Mbombo, and are likely to have been influenced by their interactions with Minister of Police Nathi Mthethwa. The first shift was on Monday, 13 August, after two SAPS members were killed by strikers. The strike then became the focus of intense national political and media attention; national police commanders, planners and units were brought in and Public Order Police (POP) commanders were marginalised from the command system. The second shift was a decision made on Wednesday, 15 August, that police would take action against the strikers on the following day if the strikers refused to disarm.

The section on operational matters focuses on some of the nuts and bolts of the operation. A discussion of the planning of the intervention is relevant to examining how the police understood the situation they were confronting. This is followed by an analysis of the negotiation process that focused on persuading the strikers to disarm. It examines

the fact that the strikers refused to disarm unless Lonmin negotiated with them. The SAPS conveyed the strikers' message to Lonmin but refrained from exerting any pressure on Lonmin to comply with the strikers' request. This section of the monograph examines how the decision taken by SAPS senior leadership on Wednesday, 15 August affected both the planning and negotiations processes. It also informs the analysis of the actions of the SAPS commanders that follows.

The penultimate section of the monograph focuses on the role the two senior commanders, Mpembe and Annandale, played in the operation before the tactical intervention. It explores the role they played in implementing the decision that had been made by the SAPS senior leadership that Wednesday, and whether they exercised their authority appropriately in this respect.

The conclusion draws together this discussion with a focus on questions raised in the monograph about the SAPS commanders at Marikana. It recognises that their actions were affected not only by the senior leadership decision made on Wednesday but also by shifts in the nature of the operation that took place on the Monday prior to this. These not only created ambiguity about what type of operation was being conducted but also resulted in a blurring of lines of authority.

The monograph ends by highlighting key issues raised, including:

- Police positioning in relation to social conflict and the potential impact of political pressure.
- Ensuring that senior leaders of the SAPS, as well as other people in leadership roles, are appropriately qualified.
- The nature of decision making in the SAPS.
- How leadership and command are exercised in large-scale public order and crowd management operations as well as minimum standards for ensuring that such operations are carried out professionally and conform with crowd management principles.
- The need for the SAPS to recognise the principle that, in actions by the police where the use of lethal force is anticipated police should seek to resolve situations effectively while minimising the potential for having to use lethal force. The principle applies to all police actions of this kind and not only to crowd management.

Introduction

The Marikana massacre and preceding killings

On the afternoon of Thursday, 16 August 2012, members of the South African Police Service (the SAPS) killed 34 striking miners² at the Karee section of Lonmin's Marikana platinum mine.³

The killings took place at two separate localities, now known as Scene 1 and Scene 2, with 17 strikers killed at each. The first 17 killings took place just before 16:00, next to a small cattle kraal (enclosure), shortly after the launch of a police action to 'disperse, disarm and arrest' the strikers. The killings were partly the result of a 12-second-long barrage of more than 291 rounds of live ammunition fired by 47 members of the SAPS Tactical Response Team (TRT) and one member of the SAPS Public Order Police (POP). In addition, one or more other unidentified SAPS members fired at the strikers with live SSG shotgun ammunition. SSG ammunition was responsible for the deaths of four of the 17 strikers at Scene 1.⁴

After about 15 minutes, another killing episode started in an area of large boulders – now known as 'the small koppie' or 'koppie 3' – less than 500 m away. The time between the first and last killing at the small koppie was 11 minutes, much longer than the barrage of gunfire at the small kraal. (For an aerial photograph of the area see pages 15).

The Marikana Commission of Inquiry was appointed by President Jacob Zuma shortly after the massacre to 'inquire into, make findings, report on and make recommendations' in relation to the conduct of all of the parties involved.⁵ Yet what happened at Marikana remains, in some ways, unclear. This was partly due to efforts by some of the police and others involved to conceal the truth about what happened. Efforts by police officers to conceal the truth started almost immediately after the massacre, with weapons being planted on the bodies of at least six of the dead miners at Scene 2.⁶ At the Marikana Commission of Inquiry, there were many instances of deception and concealment of evidence by key members of the SAPS and other witnesses.

In the week before the massacre, the Lonmin mine at Marikana had already been the location of several cases of gruesome bloodletting in which 10 people had been killed. Three of the deceased were strikers, killed during or shortly after a confrontation with SAPS members on the afternoon of Monday, 13 August. Two SAPS members were also killed, by strikers, in this confrontation. Others who were killed during that week were, two

Lonmin security guards and three other Lonmin employees. The latter five are also known or believed to have been killed by strikers.

These 10 deaths and the events that surrounded them are an important part of the story of Marikana. However, although they are relevant to understanding the context of the massacre, they do not explain why the massacre took place.

Focus of this monograph

The conflict at Lonmin's Karee mine at Marikana in August 2012 involved strikers, mine management, and two unions, the National Union of Mineworkers (NUM) and the Association of Mineworkers and Construction Union (AMCU).

The intention of this monograph is to contribute towards understanding why the Marikana massacre – the 34 killings by police on 16 August 2012 – took place. It assumes that we need to examine the functioning of the police system at Marikana in order to understand this, and focuses on the police operation in the build-up to the intervention that led to the massacre. It considers events up to about 15:30 on Thursday, 16 August, which is when police launched the tactical intervention during which the strikers were killed.⁷

The key concern of this monograph is the decision making and exercise of authority and influence by SAPS leaders and commanders during this part of the Marikana operation. It therefore focuses on the senior SAPS national and provincial leaders (the national commissioner and the provincial commissioner), and the senior SAPS commanders at Marikana. These two levels were not entirely distinct, as the North West provincial commissioner, Lt Gen. Mbombo, was part of the SAPS command system at Marikana.

The monograph starts by focusing on the Marikana context, with a discussion of aspects of the situation at Marikana that shaped the police response. It provides a brief outline of the conflict and how the strike, launched on Thursday, 9 August, rapidly escalated into violence.

It then focuses on two critical shifts in the SAPS approach to the Marikana situation. Both shifts were linked to the involvement of the SAPS senior leadership (National Commissioner Phiyega and Provincial Commissioner Mbombo) and are likely to have been influenced by their interactions with the Minister of Police, Nathi Mthethwa. The first shift was on Monday, 13 August, after the two SAPS members were killed by strikers. The strike now became the focus of intensified national political and media attention; national police commanders, planners and units were brought in, and Public Order Police (POP) commanders were marginalised from the command system. The second shift was a decision made sometime on Wednesday, 15 August, that police would take action against the strikers on the following day (16 August) if the strikers refused to disarm.

The section on operational matters focuses on some of the nuts and bolts of the operation. A discussion of the planning of the intervention is relevant to examining how police understood the situation they were confronting. This is followed by an analysis of

the negotiation process and framework applied by the SAPS. This section includes a discussion of how the leadership decision, taken on the Wednesday, affected the planning and negotiations processes. It also informs the analysis of the actions of the commanders that follows.

The penultimate section of monograph is essentially concerned with the role that the two senior commanders, Maj. Gen. Mpeembe and Maj. Gen Annandale, played in the operation before the tactical intervention. In particular, it is concerned with their role in implementing the decision that had been made by the SAPS senior leadership on the Wednesday, and whether they exercised their authority appropriately during this part of the operation.

The conclusion draws together this discussion with a focus on questions raised in the monograph about the SAPS commanders at Marikana. It also identifies the key issues raised by the monograph and discusses these in relation to the recommendations raised by the Marikana Commission.

This monograph is intended to assist people – police and others – to analyse and learn from what went wrong with the police operation at Marikana. A concern that is sometimes raised about the retrospective analysis of police actions (whether by the courts,⁸ academics or others) is that it is ‘armchair criticism’, and thus removed from the reality of the situation police were faced with. This monograph attempts to understand Marikana as the police experienced it. It is sensitive to the fact that Marikana was undoubtedly a complex and challenging situation for members of the SAPS.

The Marikana Commission of Inquiry: key findings

In June 2015, nearly three years after the events at Marikana, the report of the Marikana Commission of Inquiry was released. This followed a process that lasted more than two years and involved 300 days of hearings, reflected in close to 40 000 pages of transcripts of testimony. Although it attracted criticism from some quarters,⁹ the report is a substantial attempt to come to grips with the events at Marikana. In particular, it is important to note the key findings of the Commission with regard to the actions of the police.

A number of television cameras captured footage of the moments leading up to the shooting at Scene 1 on 16 August 2012. This was a major factor contributing to the public impact of the massacre. Most notably, the footage recorded by a Reuters camera operator, positioned somewhere behind the SAPS Tactical Response Team (TRT) line, showed a group of strikers, some of them armed with assegais*, sticks or other weapons, running towards the line. As a result of this footage there was a widespread perception that the strikers had attacked the police at Scene 1.

In the end, the Marikana Commission decided not to make a definite finding on whether the strikers had, in fact, attacked the police at Scene 1. When addressing the shooting by police at Scene 1, the report points to the complexity of the evidence and states, ‘It is in

* Assegai: A wooden spear usually with a metal tip.

the circumstances not necessary to decide whether they were actually facing an attack, an issue in respect of which there are arguments of great cogency on both sides.¹⁰ Arguably, the evidence provided to the Commission on this issue was more persuasive than the Commission acknowledged. Although there are ambiguities in the evidence,¹¹ the most detailed assessment of the video and photographic evidence available supports the conclusion that the strikers did not attack the police. For instance, it shows that the police took more than nine minutes to roll out a barbed-wire barrier between themselves and the strikers. The strikers were little more than 50 m from where the police were rolling out the barrier. If they had wanted to, they would have had ample time to cross the line where the barrier was supposed to be and attack the police. The roll out of barbed wire finished only two minutes before the first 17 of them were killed by police gunfire. During this nine minute period they could have attacked the police and did not do so.¹²

The critical point, according to the Commission, was ‘that the TRT members (and Warrant Officer Kuhn)¹³ had reasonable grounds for believing they were under attack in circumstances which justified them in defending themselves and their colleagues.’¹⁴ In effect, the Commission found that although it was unclear whether strikers were attacking the police, some of the police believed they were being attacked. Even if one takes the view that there probably was not an attack, it is reasonable to accept that *some* of the police who opened fire believed they were being attacked.¹⁵

It is reasonable to accept that *some* of the police who opened fire believed they were being attacked

However, the Commission came to the prima facie conclusion* that some of the SAPS members at Scene 1 had ‘exceeded the bounds of self and private defence’ by failing to comply with the ‘principle that only the minimum amount of force reasonable in the circumstances should be used.’¹⁶ Similarly, the Commission’s findings indicate it is probable that many of the police at Scene 2 are likely to have used force unjustifiably. The report states that the SAPS ‘provided no details of what happened with regard to the deaths of most of the deceased at Scene 2’ and that ‘where it does provide evidence pertaining to the deaths of some of the deceased, their versions do not bear scrutiny when weighed up against the objective evidence.’¹⁷

The Marikana Commission was not a court of law but a commission of inquiry appointed by the president in terms of Section 84(2)(f) of the Constitution and governed by the Commissions Act No. 8 of 1947.¹⁸ No one was charged or had the chance to present a full defence at the Commission. The Commission was therefore careful to emphasise that its conclusions were prima facie conclusions. However, the conclusions of the Commission are, in most respects, well considered and closely aligned with the available evidence.¹⁹ In effect, the report states that the SAPS was not able to persuade the Commission that SAPS members consistently acted in a lawful manner at Marikana, and points to the possibility that some SAPS members might have violated the law. The

* Prima facie conclusion: The conclusion appears to be true based on available evidence but must still be proved.

Commission recommended that 'the circumstances surrounding the injuries and deaths of all persons at Scene 1 and 2' be referred to the Director of Public Prosecutions of the North West province for investigation 'with a view to ascertaining criminal liability' on the part of the SAPS members who were involved. The matters referred for further investigation include not only the shootings at Scenes 1 and 2 but also the delay in sending medical assistance to Scene 1, and 'issues of command and control ... and the possible liability of senior officers in the South African Police Services.'²⁰

The police shootings at Marikana are currently subject to an investigation. A presentation by the Independent Police Investigative Directorate (IPID) to the Portfolio Committee on Police in February 2016 states that the investigation involves a task team of 21 members, including staff from the IPID, SAPS, Directorate for Priority Crime Investigation (known as 'the Hawks'), and National Prosecuting Authority; a state and a private pathologist; and an advocate in private practice.²¹ The presentation refers to case files being registered against a few individuals, including Gen. Phiyega and Lt Gen. Mbombo,²² but it is not clear if any of these case files relate to the actual killings by members of the SAPS at Marikana. At this point, it is not clear what this investigation will lead to. At the very least, it is possible to say that the Marikana Commission raises serious questions about the actions of SAPS members who were involved in the events at Marikana including both those who discharged their firearms as well as senior SAPS officers. (Media reports indicate that 19 of the strikers have been charged for some of the other killings, including those of the two security guards and two SAPS members.²³)

Mapping the massacre – photograph

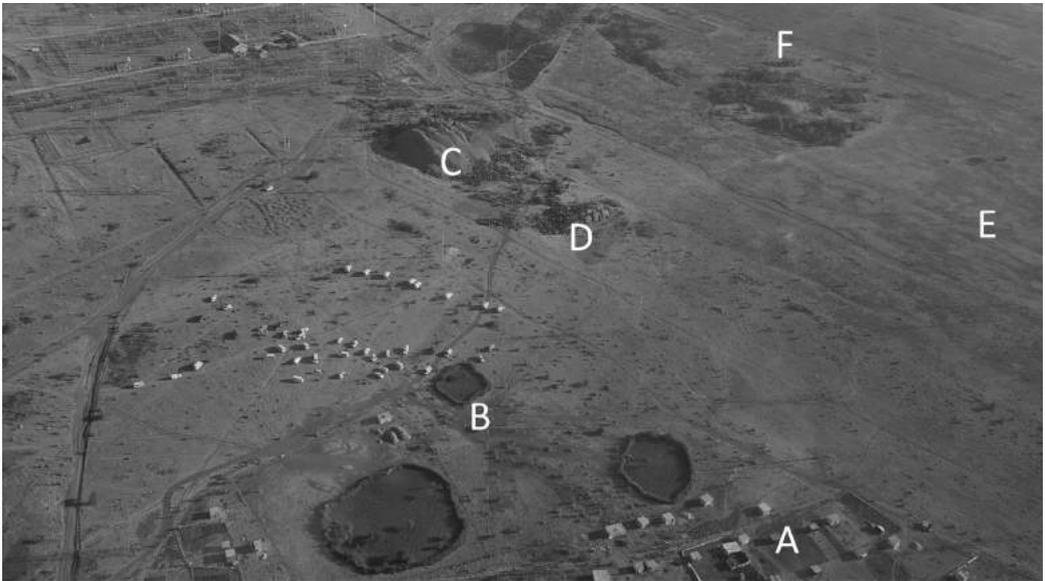


Image: South African Police Service.

This aerial photograph of the area where the Marikana intervention and massacre took place was taken on Wednesday, 15 August 2012, from a SAPS helicopter. The picture is taken from the northeast. The three cattle kraals at the bottom of the picture are on the south west side of the Nkaneng Informal settlement (A). The small kraal (B), where the first part of the massacre took place, is the topmost of the three in this picture. Koppie 1 (C) and the much smaller koppie 2 (D), where the strikers are gathered are in the middle of the picture. The area where the vehicles are scattered, around the south side of the small kraal, is where many of the police units were located when the intervention was launched on the 16th. When the intervention was launched a barbed wire barrier was rolled out between the police and the strikers on the koppie. The police plan was for the police units to move out from behind the barrier and drive the strikers off koppies 1 and 2, towards the western part of the area (E) that lies on the right hand side of this picture, and to disarm any who resisted. Koppie 3 (F), where the second part of the massacre took place, lies just to the right of koppie 1 and 2 in this picture.

The conflict at Marikana in August 2012

Impact of the end of the commodities boom at Lonmin

During the first decade of the new millennium, a global commodities boom resulted in increased demand for platinum. South Africa is the world's main producer of platinum, and the centre of the industry is in the country's North West province. To sustain high levels of production, platinum mining companies boosted employment. While wages in the platinum sector were increasing,²⁴ other sectors of the mining industry were in decline. There was a major expansion of employment on the platinum mines, and the population of informal settlements in platinum mining areas expanded dramatically.²⁵

In 2012 the boom had ended, platinum prices were falling and platinum miners were no longer receiving the wage increases they had become accustomed to.²⁶ In spite of this, in April 2012 rock drill operators (RDOs) at the Impala Platinum (Implats) mine succeeded in winning substantial wage increases through strike action.²⁷ The strike at Implats, roughly 40 km from the Lonmin Karee mine at Marikana, would have been closely watched, especially by the RDOs, at Lonmin. However, although Implats might have believed it could afford these increases, Lonmin was in trouble financially at the time and unenthusiastic about the prospect of pay increases.²⁸

The strike: the unions, mine management and the strikers

South Africa is a country characterised by high levels of inequality. By the standards of what some people in South Africa earn, miners may be regarded as being poorly paid. But at the time of the Marikana strike in August 2012, median wages in the mining sector were dramatically higher than those in other key sectors, such as construction and manufacturing.²⁹ In addition, the RDOs, who led the strike, were often on higher wages than other mine employees.³⁰ However, as many of them had extensive financial obligations, this did not mean that the RDOs and other miners regarded themselves as well paid or financially secure.³¹ Furthermore, many of them lived in unsatisfactory conditions in informal settlements that had poor sanitation and water supplies that were unreliable and often of poor quality.³²

The demand by Marikana strikers for a monthly wage of R12 500 received widespread publicity, but this was their opening bargaining position.³³ The main thing the strikers

demanded was for Lonmin management to negotiate with them directly.³⁴ They called for this throughout the strike, right up to the massacre, despite considerable opposition from Lonmin management and the National Union of Mineworkers (NUM) (the main union in the mining sector and at Lonmin) which united in opposing them.

Founded in 1982, the NUM rapidly established itself as the key union in the mining sector and a major actor in mobilising black workers in South Africa to resist apartheid. After the country's transition to democracy in 1994, the NUM was the major union in the Congress of South African Trade Unions (COSATU). COSATU and the South African Communist Party (SACP) were allies of the ruling African National Congress (ANC) in the tripartite alliance, and the NUM enjoyed a position of prestige within the ruling party. Several former NUM leaders were prominent members of the ANC. At the same time the NUM had become detached from, and no longer retained the loyalty of, many mineworkers. In particular, the RDOs became increasingly disillusioned with the union.³⁵

Another role player in labour disputes at platinum mines in 2011 and 2012 was a new union, the Association of Mineworkers and Construction Union (AMCU). Before 2011, AMCU's impact on the mining industry and platinum mines was fairly limited.³⁶ AMCU first gained formal access to the Lonmin Karee mine late in 2011.³⁷ At the time of the strike, almost 48% of trade union members at the mine were members of AMCU, although the union did not have official recognition.³⁸

AMCU's presence was clearly a factor in increasing worker militancy at Implats and at Marikana. However, available evidence shows that, as with the Implats strike,³⁹ the Marikana RDOs were acting as an autonomous group, independent of any union.⁴⁰ Yet, the NUM at Lonmin put its full weight behind obstructing the strike. Four people were killed and 60 injured during the Implats strike, with NUM members frequently being the targets of intimidation and violence.⁴¹ The NUM believed that AMCU had been behind both the Implats strike and the one at Marikana. As a result, the NUM was antagonistic towards the Marikana strikers. Even before the strike started, NUM officials at Marikana tried to discourage workers from participating in it.⁴²

Evidence shows that the Marikana RDOs were acting as an autonomous group

Lonmin management favoured the NUM over AMCU.⁴³ However, the NUM and some of its political allies in government suspected that mine management wanted to undermine the NUM and was using AMCU to do so.⁴⁴ On Tuesday, 14 August 2012, the SAPS Provincial Commissioner, Zukiswa Mbombo, held a meeting with Barnard Mokwena, Lonmin's Executive Vice President for Human Capital and External Affairs,⁴⁵ at which she voiced suspicions that Implats mine management had colluded with the Implats strikers. She suggested that this type of collusion was the reason for the strike at Marikana as well.⁴⁶

Mbombo, the highest-level SAPS official Lonmin management interacted with during the strike, therefore encouraged Lonmin not to make any concessions to the strikers. Evidence suggests that management was already firmly opposed to negotiating with the

strikers, as Lonmin was experiencing financial difficulties.⁴⁷ On the first day of the strike, Friday, 10 August, management insisted that any 'wage-related demands should go through NUM.'⁴⁸

The strike did not have AMCU's endorsement, either. When the strike started, AMCU leader Joseph Mathunjwa also encouraged Lonmin management not to negotiate with the strikers.⁴⁹ Mathunjwa wanted to use the strike to secure formal recognition for AMCU as a representative of the miners. He did not want the strikers to succeed in their demands without his union achieving recognition.

Nevertheless, Mathunjwa clearly had much better rapport with the strikers than the NUM. Lonmin and the SAPS therefore sought to use him to bring an end to the strike. But in his negotiations with Lonmin his key emphasis was on ensuring that AMCU was included in efforts to resolve the situation. Throughout most of the week there was therefore no-one who put pressure on Lonmin to negotiate directly with the strikers. Until the very last moment on the afternoon of Thursday, 16 August, when Bishop Seoka, the Anglican Bishop of Pretoria, approached Lonmin with this request, Lonmin refused to negotiate.⁵⁰ Lonmin later used the strike violence as a justification for not negotiating.⁵¹ But it is not clear that this was their main reason. They had been opposed to negotiating from the beginning.

The violence: Friday, 10 August to Tuesday, 14 August

As at Implats, the Marikana strikers were operating from a position in which they had little formal power. Although Lonmin management had engaged with and made concessions to them in the months before the strike,⁵² it now refused to recognise them. Lonmin said the strikers should take up their demands through the NUM and the formal collective bargaining process. But the strikers believed this would not help them.⁵³

From the first day of the strike, Friday 10 August, there was intimidation and some violence. The Marikana strike was not unique in this respect, as many strikes in South Africa are characterised by intimidation.⁵⁴ On Friday afternoon and evening, groups of strikers were involved in intimidation.⁵⁵ Some strikers were armed with knobkerries (clubs with a knobbed end), and stones were thrown in at least one incident.

There is evidence that Lonmin security responded to the strikers in a heavy-handed way.⁵⁶ At least two Lonmin employees suffered significant injuries at the hands of strikers.⁵⁷ It is not clear if these employees were involved in the intimidation.⁵⁸ In its report, the Marikana Commission suggests that the actions of Lonmin security could have been primarily to protect other workers against intimidation.⁵⁹ Nevertheless, heavy-handed actions by Lonmin security might have contributed to the escalation of tension.

The antagonism between the NUM and the strikers quickly came to a head. The strikers were angry with the union for encouraging Lonmin employees to keep going to work. Wanting to confront the NUM about this, they marched to the union's offices on the second day of the strike, Saturday, 11 August. The Marikana Commission reached the

conclusion that the strikers had violent intentions towards the NUM members at this point.⁶⁰ However, it is not clear that this was the case, as there are inconsistencies in the evidence provided by the key witness that the Commission relied on in making this finding.⁶¹ The evidence is that NUM members, possibly believing they were in danger, attacked the strikers.⁶² Two strikers were injured after NUM members opened fire on them. This incident was to become especially significant over the following days as the strikers believed that these two colleagues had been killed. This motivated the strikers to retaliate against the NUM.

The strikers started using a nearby koppie as a gathering point. The koppie, referred to as 'Thaba' by the strikers,⁶³ is close to the Nkaneng informal settlement at the Marikana mine, where many strikers lived. Thaba would become the location of the stand-off between strikers and police over the next five days. The Commission of Inquiry later referred to Thaba as 'koppie 1'. The small kraal at which the first part of the massacre took place lay not far from the foot of koppie 1, on the north-east side. The small koppie (koppie 3) at which the second part of the massacre took place lay a few hundred metres to the west of koppie 1.

Though much of the strikers' antagonism was towards the NUM, there might also have been antagonism towards Lonmin security, aggravated by the actions of security officers on the first day of the strike. On Sunday, 12 August, a group of Lonmin security guards tried to stop a warlike group of about 300 strikers from proceeding towards the NUM offices. The strikers wanted to avenge the shooting of the previous day.⁶⁴ Strikers attacked the security guards, killing two of them, after security guards fired at the strikers with rubber bullets.

Later that night, two workers were killed by small groups of strikers. One of the workers was going to work, the other was at one of the shafts. Yet another Lonmin employee, an alleged spy, was killed by strikers two days later, on Tuesday, 14 August. But the incident that came to overshadow all others in shaping the approach of the police was a clash between strikers and the SAPS, discussed further below, on the afternoon of Monday, 13 August.

A note on the significance of the use of muti by the strikers

The use of muti (traditional medicine) by the strikers has been a disputed subject. The SAPS tried to persuade the Marikana Commission that the muti made the strikers believe they were 'invincible'⁶⁵ because they believed it could make them 'invisible and invulnerable to police bullets.'⁶⁶ The SAPS wanted the Commission to accept that the strikers had attacked the SAPS on Thursday, 16 August even though the SAPS had far superior weapons.

The focus of this monograph is on the SAPS operation in the period leading up to the launch of the intervention on the afternoon of 16 August. After their confrontation with the NUM on Saturday, 11 August, during which they believed that two of their colleagues

had been killed, the strikers were clearly distressed. They began to arm themselves more heavily⁶⁷ and decided to hire a sangoma (traditional healer) to assist them. Later on Saturday, some of the strikers participated in rituals and had muti applied to their bodies.⁶⁸ This also happened on Sunday,⁶⁹ Tuesday and Wednesday.⁷⁰ One possibility is that beliefs about the powers of the muti might have played a role in encouraging the strikers to retaliate violently against the police on Monday, 13 August.

As indicated it is not clear whether the strikers did attack the SAPS members that Thursday, and there is reasonable evidence suggesting they did not. Nevertheless, one way in which the muti might have played a role in what happened after Monday is that many police, including some in senior roles in the operation, might have believed the strikers would not act rationally because of the muti. Police might have seen the use of muti as adding to the danger that strikers would attack them, despite the police having superior weaponry. This would have enhanced police fear of the strikers. There might also have been police who believed in the effectiveness of the muti.⁷¹ There is no evidence, though, that any of the SAPS senior leaders and commanders mentioned in this monograph held such beliefs.

The commissioners: critical shifts in the police response to the Marikana situation

Members of the SAPS were deployed to Marikana on the morning of Friday, 10 August.⁷² SAPS involvement escalated as the level of violence increased. Following the killing of the two security guards, Mr Mabelane and Mr Fundi, by strikers on the morning of Sunday, 12 August, the SAPS North West provincial head office became directly involved. Their initial orders were for police numbers to be increased and police helicopters to be sent to monitor the situation.

Up to that point the Rustenburg SAPS cluster commander, Brig. Seboloki, had been overall commander and Lt Col. Merafe, the head of Rustenburg Public Order Police (POP), had been operational commander.⁷³ But on the Monday morning the provincial commissioner, Lt Gen. Mbombo, and deputy provincial commissioner for operational services, Maj. Gen. Mpembe,⁷⁴ travelled to Marikana. Mpembe was then appointed as overall commander in Seboloki's place. Brig. Calitz, the North West provincial head of Operational Response Services (ORS), was appointed as operational commander.⁷⁵

After this point, prior to the launch of the intervention itself, there were two critical shifts in the nature of the SAPS response to the strike. The first shift was an increase in the involvement of the SAPS at a national level in policing the strike following a clash between strikers and police late on Monday, 13 August. The second was a decision, apparently made on Wednesday, 15 August, that the stand-off between strikers and police at the koppie must be brought to an end on the following day.

The Marikana operation goes national (Monday, 13 August)

The clash between strikers and police

On the afternoon of Monday, 13 August there was a clash between strikers and members of the SAPS. It was the most deadly incident of the conflict thus far. Two members of the SAPS and three strikers were killed in, or shortly after, the clash. A group of SAPS members under Mpembe⁷⁶ had been sent by Mbombo to intercept a group of 100 to 200 strikers. The strikers, who were on foot, were returning to the koppie from one of the mine

shafts, 6 km away. They had gone to the shaft to see if anyone was working⁷⁷ and were armed with pangas*, assegais and spears.⁷⁸ On meeting up with the strikers, Mpembe asked them to hand over their weapons.⁷⁹ The strikers refused, though one of them said they would hand them over at the koppie. The strikers then continued walking towards the koppie.

Not long after the strikers had set off, police fired tear gas and threw stun grenades at them. Stun grenades sound like gunfire,⁸⁰ and some strikers may have believed the police were shooting at them. A group of strikers rushed at and attacked the police, killing two SAPS members, Warrant Officer (WO) Monene and WO Lepaaku. Another SAPS member, Lt Baloyi, was seriously wounded. One striker was killed at the scene of the attack. The body of another striker, who was injured in the confrontation, was found some distance away. A third striker, Mr Sokanyile, was shot dead by the SAPS, possibly unlawfully, in the aftermath of the clash.⁸¹

The Marikana Commission concluded that the firing of tear gas and use of stun grenades ‘were unreasonable and unjustifiable in the circumstances’ and that this ‘was the “spark” which caused the confrontation between the SAPS and the strikers.’⁸² It has never been clarified who, if anyone, gave the instruction for tear gas and stun grenades to be used.⁸³

The clash was clearly precipitated by action taken by the police. Nevertheless, the finding that the police ‘sparked’ the confrontation does not exonerate the strikers who attacked the police. There was clearly a group of strikers who were willing to use violence to defend and enforce the strike. These strikers may have seen themselves as victims of violence and injustice, but their approach to addressing this was extremely confrontational. The hostile way in which they retaliated against the police would strongly influence the police approach to the situation in the days that followed.

National units and commanders deployed to Marikana

After the clash between the strikers and police on the afternoon of Monday, 13 August, the national level of the SAPS became heavily involved in the operation. Personnel from national SAPS units were deployed to Marikana. This deployment included more than 250 members of the National Intervention Unit (NIU), Special Task Force (STF) and Tactical Response Team (TRT). These are all specialised paramilitary units responsible for dealing with medium-risk and high-risk interventions. After the clash on Monday afternoon, SAPS numbers at Marikana increased. The ‘tactical phase’ on Thursday involved over 500 SAPS personnel including 176 POP, 154 TRT, 99 NIU, 38 K9 and 20 STF members.⁸⁴ Members of the TRT, NIU and K9 units, and a few POP members, would be responsible for the 34 killings on that day.

The involvement of the national level of the SAPS was also reflected in the police command structure at Marikana. The SAPS National Commissioner, General Phiyega,

* Panga: A bladed tool similar to a machete

arrived at Marikana on Monday evening. She left later that night and did not return until after the massacre on Thursday. She was a central role player in the leadership decision taken on the Wednesday, but this decision was not taken at Marikana.

Maj. Gen. Annandale, Head of Specialised Interventions in the national SAPS Operational Response Services (ORS) division, was also sent to Marikana. His presence meant that the national level of the SAPS continued to have a strong representation at Marikana.

Maj. Gen. Mpembe continued as overall commander and Brig. Calitz as operational commander for the duration of the Marikana operation. Formally, the operation remained under provincial command. But in practice, Annandale’s presence meant that the command system at Marikana was a hybrid national–provincial one. As will be discussed, this created ambiguity about the exact lines of authority.

Table 1: SAPS hierarchy at Marikana in the build-up to the Marikana intervention⁸⁵

National SAPS	Provincial SAPS (North West)
Not at Marikana except on evening of Monday, 13 August: National Commissioner, Gen. Phiyega. National Commissioner has authority over divisional and provincial commissioners	
Not at Marikana: Operational Response Services Divisional Commissioner, Lt Gen. Mawela	Provincial Commissioner, Lt Gen. Mbombo
Head of Specialised Interventions, Maj. Gen. Annandale	Deputy Provincial Commissioner Operational Services, Maj. Gen. Mpembe (overall commander from 13 to 16 August)
	Provincial Head, Operational Response Services, Brig. Calitz (operational commander from 13 to 16 August) ⁸⁶
STF Acting Commander of Operations, Lt Colonel Scott (chief SAPS planner at Marikana, 13 to 16 August)	

A further aspect of national involvement was the appointment of Lt Col. Scott, who was called in to assist with planning.⁸⁷ Scott had served as the STF’s acting commander of operations since 2007. Scott was not formally one of the senior commanders but his appointment as the chief planner would be critical in defining how the SAPS approached the situation at Marikana in the days that followed. As seen in Table 1, he reported to Annandale. This meant that Annandale was effectively in charge of planning even though Mpembe was supposed to be in charge of the operation overall.

The role of political and elite influence

The deadly clash on Monday afternoon was one factor that contributed to increased national involvement at Marikana. But it is also significant that the SAPS had been coming

under increasing pressure, from Lonmin⁸⁸ and the NUM,⁸⁹ to deal with the violence at the mine. The person who raised Lonmin's concerns was Cyril Ramaphosa who at the time was a non-executive board member of Lonmin and highly influential member of the ANC. Ramaphosa and the NUM president, Senzeni Zokwana, contacted the Minister of Police, Nathi Mthethwa, on the afternoon of Sunday, 12 August, and their concerns about the situation had been communicated to the senior SAPS leaders, Phiyega and Mbombo. On the morning of Monday, 13 August, the NUM also issued a public statement calling on government to 'deal decisively with the criminal elements in Rustenburg and its surrounding mines.'⁹⁰

It would appear that Phiyega and Mbombo were receptive to this pressure. The deployment of the national SAPS units, as well as Scott and Annandale, to Marikana may be seen not simply as a response to the killings of WOs Monene and Lepaaku, but also a desire on the part of the SAPS to show it was taking seriously the concerns of the politicians and the powerful groupings associated with them.

Marginalisation of the Public Order Police in the command of the operation

At the time of Marikana, SAPS POP units had gone through a prolonged period of neglect. The overall strength of POP units had declined and standards of training had fallen.⁹¹ It had also become established practice within the SAPS for public order and other large-scale operations to be conducted jointly by public order and tactical units, most notably the TRT.⁹²

The removal of Lt Col. Merafe as operational commander on Monday morning meant there were no POP commanders in the leadership of the operation. None of the people who were to play critical roles in the command of the operation over the coming days – Mbombo, Mpembe and Annandale – had public order policing command experience or had recently attended public order training.⁹³ The same applied to Scott, who, despite being chief planner, was not familiar with Standing Order (SO) 262, the SAPS standing order governing public order policing at that time.⁹⁴ (Calitz had public order experience but his role as operational commander became significant only after the launch of the intervention on Thursday, 16 August.)

There were no Public Order Police commanders in the leadership of the operation

In effect, the operation became a general operation of the ORS division, in which POP units were subordinate, rather than one that was managed and led by the POP. The Commission viewed the marginal role played by POP commanders and the fact that the planning of the intervention was not based on SO 262 as having contributed to the fact that 34 people were ultimately killed by the police. The Commission recommended that 'in Public Order Policing situations operational decisions must be made by an officer in overall command with recent and relevant training, skills and experience in public order policing.'⁹⁵

In its opening presentations before the Commission, the SAPS initially identified Marikana as a public order situation in which the SAPS had been governed by crowd management principles.⁹⁶ However, as the Commission progressed, the SAPS began to argue that SO 262, and crowd management principles more generally, were not applicable at Marikana because of the violent nature of the situation. This was despite the fact that police at Marikana were dealing with a very large crowd.⁹⁷ The issue was addressed by Gary White, a former police officer from Northern Ireland who served as an expert witness at the Commission. White argued that 'An increase in the violence or unpredictability of a situation does not lessen the relevance or applicability of established crowd management principles. However, what it does require is an intensified focus on intelligence gathering, planning, briefing, communication, and command and control.'⁹⁸

The decision to end the stand-off (Wednesday, 15 August)

The 'inexplicable' leadership decision

At the Marikana Commission, the SAPS stated for some time that the decision to launch the intervention had been made on the afternoon of Thursday, 16 August and that the reason for the decision was an escalation of violence on that day. The final instruction to launch the 'tactical phase' intervention was indeed given by Lt Gen. Mbombo, at a special meeting of the Joint Operational Coordinating Committee (JOCCOM) held at 13h30 that Thursday. The SAPS version of events was that the meeting was called because of an escalation of tension on the koppie,⁹⁹ and Mbombo's instruction for the SAPS to launch the intervention was given after 'evaluating the situation and from the reports on the ground.'¹⁰⁰ Many senior members of the SAPS misled the Commission on this issue.¹⁰¹

What is now known is that the decision that led to the launch of the intervention on Thursday was taken the day before, on Wednesday, 15 August. The report of the Commission states that it is 'common cause' that the decision was taken 'by Lieutenant General Mbombo', the North West SAPS provincial commissioner.¹⁰² But the situation is not as straightforward as this, and at other points the report presents the issue in a different way.¹⁰³

It is clear that there was a meeting of the SAPS National Management Forum (NMF) in Midrand on the night of Wednesday, 15 August. After this Phiyega convened some of those who had been at the NMF to attend a further meeting. Mbombo told this meeting that 'an operation' would be carried out the following day and that the motive was to 'prevent further loss of life.'¹⁰⁴ The reason why Mbombo is said to have taken the decision is because of the role she played at this meeting. But given the gravity of the decision, Mbombo would not have made it on her own. The intervention may have been taking place in the North West province but it was a decision to unleash the combined might of the SAPS's 'tactical' special forces against the strikers. It would be the biggest 'tactical' intervention to be launched in response to industrial action since the SAPS was established in 1995.¹⁰⁵

Mbombo would not have tabled the decision at the NMF 'special session' unless she had already canvassed it with Phiyega. In other words, Phiyega convened the extraordinary session so that Mbombo could table the decision. Given Phiyega's seniority, Mbombo would have deferred to and taken guidance from Phiyega on this matter. But Phiyega had been in her position for only two months.¹⁰⁶ She had no prior policing experience and would not have approved the decision without guidance from her political superiors. It is therefore likely that Phiyega's approach to the matter was informed by Minister of Police Nathi Mthethwa. What seems most likely is that the decision was essentially a directive that came from Phiyega under the guidance of Mthethwa.¹⁰⁷ The Marikana Commission report itself states that the decision may have been influenced by 'pressure or guidance from the executive.'¹⁰⁸ If this was the case, states the report, this guidance is most likely to have come from Mthethwa.¹⁰⁹

Once the decision had been taken, it was Mbombo who was responsible for putting it into action. The JOCCOM meeting called at 13h30 on Thursday was called for this purpose and not to evaluate the situation.

What was the reason for the urgency?

The Marikana Commission described the decision as 'the decisive cause of the 34 deaths on 16 August.'¹¹⁰ But one of the consequences of efforts to conceal the truth about when the decision was made is that we do not have clarity on what motivated it. The Commission's report states that the decision itself 'remains inexplicable. No explanation was given as to why it was necessary that it be implemented in the course of the day on 16 August, sometime after 09h00 when it became clear that the strikers were not prepared to lay down their arms, at a time therefore when the number of strikers on the koppie was likely to be at its highest.'¹¹¹

The best we can do is speculate about the most likely reasons for the decision. Many agree political considerations are likely to have played an important role.¹¹² Given the available evidence, it is also reasonable to believe that political considerations had such a large influence because of *political influence* and *politicisation*. In other words, it is reasonable to believe that senior politicians (notably the minister of police) were involved in shaping the decision (political influence). At the same time, both Phiyega and Mbombo saw it as their job to protect the interests of the ruling party (politicisation),¹¹³ which included taking direction from political officials as to how those interests should be protected. This despite the fact that the Constitution forbids the police, and members of other 'security services', from acting to either prejudice or promote the interests of a political party in the performance of their functions.¹¹⁴

The failure of the decision makers to consult experienced commanders

Lt Gen. Mbombo joined the police in 1980 and performed crime-prevention duties in Umtata until 1981. She then held administrative and financial positions until her appointment as a provincial commissioner in the Northern Cape in 2005.¹¹⁵ As the

Marikana Commission states, she 'did not have the training, the skills or the experience to enable her to make decisions as to what should be done in the complex and difficult situation at Marikana.'¹¹⁶

The same applies to Gen. Phiyega. At the time when the decision was taken, she had been national commissioner for two months and had no prior policing experience. Phiyega and Mbombo had taken on the function of operational decision making, a function that is supposed to be performed by operational commanders. They most likely did so without fully considering and understanding what they were doing.

A principle reason for Marikana, then, was the way in which senior SAPS leaders exercised their authority. It was not inappropriate for Phiyega and Mbombo to have been involved in the decision-making process. However, they should have recognised the need to take into account the views of commanders who had appropriate operational experience. If they had consulted with their commanders, they might have realised that they at least needed to tell their political bosses that police action should wait until the following morning, as the risks of taking action on the Thursday afternoon were too great.¹¹⁷ Instead of considering the views of the commanders at Marikana, they unilaterally issued an instruction.

Operational matters: police planning and negotiations at Marikana

Planning for the ‘tactical phase’ intervention

Lt Col. Scott’s initial framework for addressing the situation

Lt Col. Scott arrived at Marikana on the evening of Monday, 13 August, and acted as chief planner for the SAPS operation. There had been several incidents of violence prior to Scott’s arrival. But it is clear that he, like many other police, gave prominence to the SAPS clash with the strikers. According to Scott, his understanding was that the strikers ‘had taken their level of willingness to achieve their goals to levels beyond what the police had previously experienced in labour and service delivery unrest.’¹¹⁸

In his statement, Scott says that the principles he applied to planning the intervention involved prioritising ‘methods to avert physical confrontation’, including ‘the use of dialogue’¹¹⁹ as well as what he termed ‘the show of force dissuasion tactic.’¹²⁰ If these strategies failed, ‘compliance with the law’ would be enforced by using force in a manner ‘proportionate to the threat posed by the transgressor towards the police.’¹²¹

Scott’s approach, and the initial approach applied by the SAPS, prioritised negotiation as the preferred means of resolving the situation. However, Scott was not involved in the negotiations. Scott’s planning was concerned with the possibility that the police might need to deal with the situation by ‘tactical’ intervention.

The encirclement plan

Scott envisaged two broad scenarios. One of these was a stalemate in which the police were unable to persuade the strikers to disarm through negotiation. As many of the strikers were armed, the gathering on the koppie was an unlawful gathering. Scott’s view was that the SAPS could not simply allow armed strikers to remain on the koppie. If the strikers did not agree to disarm, Scott believed the police would be obliged to take action to disarm them. Scott seems to have thought this action would be justified, notwithstanding the fact that the offence in question carried a maximum sentence of two years’ imprisonment and police action might result in people being killed or injured.¹²²

An additional motivation that Scott provided for potential police action was ‘the probability that amongst the strikers there were murder suspects who the police needed to apprehend and illegal firearms which needed to be retrieved.’¹²³

The SAPS plan Scott developed for disarming the strikers was to encircle the strikers on the koppie early in the morning. This would enable the SAPS to rely on the element of surprise. There would be few strikers present at that time, as most of them returned to their homes in the informal settlements at night. Strikers who had remained on the koppie overnight, and any arriving at that time, would be disarmed.¹²⁴ The Marikana Commission described the plan as ‘substantially less risky’ than the intervention that was eventually implemented on the Thursday afternoon.¹²⁵ It was less risky because the police would be dealing with a small group of about 100 strikers, or even fewer.¹²⁶ The intervention would also be geographically concentrated on the area immediately around the koppie. The Commission also viewed the plan in a favourable light because, unlike the Thursday plan, it had been drawn up by Scott ‘with inputs from experienced POP commanders’ on the Monday night and ‘approved by a full-strength JOCCOM including more POP commanders’ on the Tuesday.¹²⁷

Scott initially thought of implementing the encirclement plan on the Tuesday morning, but this did not take place. That Tuesday, Scott envisaged that the plan could still be carried out early on Wednesday morning.¹²⁸ Late on Tuesday afternoon, the SAPS negotiators reported ‘positively with regard to the dialogue with the strikers’ and that they had made arrangements to continue their dialogue the next day.¹²⁹ It was therefore decided that the encirclement would not take place on Wednesday morning. Developments at nightfall on Wednesday also created the hope that the strikers would disarm the following morning. As a result, an encirclement action was not planned for Thursday morning either.

Late on Tuesday afternoon the SAPS negotiators reported ‘positively with regard to the dialogue with the strikers’

The other scenario that Scott envisaged was one in which the strikers, of their own initiative, attacked the police or other people or facilities at Marikana.¹³⁰ There was no detailed plan for how the police would address this other than through the ‘show of force dissuasion tactic.’¹³¹ In effect, therefore, the main plan that had been considered during the days leading up to the massacre was the encirclement plan.

The leadership decision’s impact on the tactical phase planning

The implication of the leadership decision made on Wednesday, 15 August was that the ‘tactical phase’ must take place the next day (Thursday) if the situation had not been resolved. AMCU’s Joseph Mathunjwa had spoken to the strikers at the koppie late on Wednesday afternoon. He told the SAPS that it was possible the strikers would agree to disarm and agreed to speak to them on Thursday morning.

At midday on Thursday it became apparent that Mathunjwa had been unsuccessful. The strikers still said they would not leave or disarm until Lonmin management came to

speak to them. This meant that the SAPS now had to launch the tactical intervention that afternoon. It was no longer possible to use the encirclement plan, as there were then too many strikers on the koppie. In broad daylight, the SAPS would also not be able to rely on the element of surprise.¹³²

There was therefore a need for another plan. One of the issues on which Scott was unclear was when he recognised the need for this. On Thursday, there was a JOCCOM at 06h00 at which it was discussed that the intervention would have to be carried out that day if Mathunjwa did not succeed.¹³³ The JOCCOM minutes indicate that those present assumed this would be an encirclement action.¹³⁴ Scott possibly started working on the new plan only at some point after 09h00 that day.

Risks involved in implementing the new plan

The new plan, which Scott eventually presented at the 13h30 JOCCOM, was extremely rudimentary and has been criticised on various grounds.¹³⁵ The plan provided for the police to disperse the strikers into smaller groups and to disarm any of those who resisted. What is most significant to this monograph is Scott's understanding of the potential risks involved in the intervention. Based on what had happened on the Monday, Scott was clearly concerned there would be a confrontation with the strikers if the police launched a tactical intervention against them.¹³⁶ Scott anticipated that this confrontation would potentially be much bigger than the one on the Monday.

Scott says he anticipated that some of the strikers would be cooperative but some would respond aggressively.¹³⁷ The SAPS intelligence reports also stated that the strikers would not relinquish their weapons peacefully and would resist attempts to disperse and disarm them.¹³⁸ Scott had very little confidence that the POP units would be able to respond effectively to violence by the strikers.¹³⁹ The POP members, he says, 'were not sufficiently armed to protect themselves against a potential attack with sharp-edged weapons in close-quarter surprise attacks.'¹⁴⁰

It is evident that, in Scott's view, major reliance would be placed on the tactical units.¹⁴¹ Neither he nor the SAPS commanders were concerned that the POP would not be able to cope. They were confident that, if there was significant resistance, the tactical units would compensate for the POP's shortcomings. Scott indicates that the tactical units had worked together with POP units 'in numerous security operations at major events over the years.'¹⁴² But the SAPS had never conducted an intervention like the one planned at Marikana, where police were given the task of confronting and disarming a very large group of people many of armed with traditional weapons.

Captain Loest, one of the TRT commanders, gave evidence that the purpose of the line of TRT members, armed mainly with R5 assault rifles, were to deter strikers from resisting the POP members. They were supposed to 'stand their ground and by doing so discourage the [strikers] from resisting.'¹⁴³ However, this avoids the obvious point: the tactical units

were also there to ensure that, if the police were attacked, the SAPS would get the upper hand by using lethal force.

Scott envisaged that strikers might attack the police at a number of different localities, including the area where the police were gathered. Strikers could attack the police from 'between the rock crevices, bushes and trees found at koppies 1 and 2' while police groups were advancing to disperse them, or 'dispers[e] into combative armed groups in the open ground to the west' of koppies 1 and 2.¹⁴⁴ Scott was aware that he could not predict exactly how events would unfold. However, by implication, the launch of the SAPS intervention had the potential to lead to a clash at koppies 1 and 2 and in the area to the west, which was mostly open ground but also included the koppie 3 area. (For an aerial photograph of the area see pages 15).

Scott says the instructions were that those who cooperated with the verbal warning would be allowed to leave the area with their weapons and would not be arrested. After the intervention, there would be search-and-seizure operations in the hostels and settlements to retrieve as many weapons as possible. But Scott says he did not expect 'that the smaller militant group ... would submit to the request to disperse.'¹⁴⁵ This group, estimated to number 300, included the strike leaders. Implicitly, the intervention would involve the forcible disarmament of this group. The engagement would potentially be dispersed over the broad area of the koppies, and the areas to the east and west of them, and involve a wide range of confrontation points between armed strikers and members of the tactical units.

The Marikana intervention on Thursday, 16 August involved about 500 SAPS members including over 270 tactical unit members, over 170 POP, and others.¹⁴⁶ A large majority of tactical unit members were armed with R5 assault rifles. The final plan was therefore potentially a plan for a pitched battle to be waged by the tactical unit members, most of them armed with automatic rifles, against the militant strikers. Scott says he recognised that that there would not be a simple and clear separation between 'cooperative' strikers and militant ones.¹⁴⁷ If some strikers attacked the police, there would be no reason to assume that many 'cooperative' strikers would not be caught in the crossfire. If the confrontation dispersed across the area, police gunfire would have endangered SAPS members as well. The SAPS intervention at Marikana was therefore launched in circumstances in which, in terms of the SAPS's understanding, many of the 3 000 strikers at the koppie and the 500 SAPS members could have been caught in a chaotic free-fire zone.

He recognised there would not be a clear separation between 'cooperative' strikers and militant ones

Planning for police interventions must always address questions about which outcomes are possible, likely or predictable. Scott saw it as highly likely that the SAPS intervention would result in a major confrontation between the SAPS and the strikers. As it transpired, the SAPS killed 34 strikers during the tactical intervention at Marikana. Evidence indicates that Mr Mpumza, the last of the 34 strikers to be shot by the SAPS, was attacking the

police, although the circumstances in which he was doing so are disputed.¹⁴⁸ There is no conclusive evidence that the other 33 strikers who were killed at Marikana were attacking the police when they were killed. The toll of death and injury may have been much higher if the scenario that Scott envisaged had unfolded.

In this monograph, the reason for discussing the planning process is its relevance to command decision making. As indicated, Scott reported directly to Annandale. However, this does not excuse the other commanders from the responsibility of asking questions about how an intervention might unfold and what the risks were. All of the commanders had a duty to engage with Scott about how the situation was likely to unfold. They then would have known that the intervention they were considering on the Thursday was enormously dangerous.

Putting the new plan into action

Scott's 'concept' for the intervention was presented to the JOCCOM at the 13h30 meeting on Thursday. Scott used a single printout of an image of the area, obtained from Google Maps, which included wording, lines, arrows and icons indicating how he saw the police deployment working.¹⁴⁹ The minutes of the meeting do not show there was a discussion of the risks of the intervention or how to mitigate them. After Scott's presentation, Annandale started going through a checklist of items that needed to be in place for the intervention.

The Commission scrutinised the plan itself as well as the way in which the SAPS commanders responded to and dealt with the plan. One criticism was that the commanders should have recognised that the absence of a detailed, written plan was in itself a danger. After Scott presented the plan there was no debate about the risks involved, critical gaps or other problems relating to the plan. The absence of a 'critical examination'¹⁵⁰ of the plan was, in effect, a decision to allow the fate of 3 000 strikers and nearly 500 police to be decided by Scott alone. If the plan had been evaluated properly, members of the JOCCOM might have recognised the risks of the intervention.

In their closing written argument, the SAPS lawyers downplayed this issue, arguing that all the SAPS units had to do was 'use standard operating procedures' to disperse the strikers and disarm those who were armed and arrested.¹⁵¹ But this was far from accurate. The SAPS units did not have experience in disarming large, heavily armed crowds. Scott himself referred to the situation at Marikana as 'unprecedented.'¹⁵² There can be little question that a more detailed plan was called for and that proceeding with an intervention of this kind without a more detailed plan was extremely reckless.¹⁵³

The 13h30 JOCCOM ended at 14h00.¹⁵⁴ At 14h30, Scott went to the forward holding area (FHA), where the SAPS commanders were assembled, to brief them on the plan:

'Colonel Scott's briefing to the commanders at FHA1 was the first time that they were introduced to the new tactical plan. He briefed the 20 commanders off a single Google Earth diagram on the screen of his laptop, while he sat inside a ... vehicle so that

there was shade over the screen of the laptop. He pointed the screen out towards the commanders who had gathered around the vehicle and explained the plan with reference to the icons on his screen.¹⁵⁵

The way in which the briefing took place, and the absence of written plans from section commanders, was also criticised.¹⁵⁶ A SAPS document on briefing and debriefing notes that 'A good briefing is as important as a good plan, because if there is no clarity and common understanding during the briefing, the operation is doomed to failure.'¹⁵⁷ The absence of a proper briefing process was reflected in the fact that several people with key roles in the Marikana intervention, including the operational commander Brig. Calitz, did not understand important details of the plan.¹⁵⁸

In effect, therefore, the SAPS commanders at Marikana gave their consent to an intervention by police units armed with assault rifles to 'disperse, disarm and arrest' a very large crowd of strikers, many of them armed with traditional weapons. They did so knowing that there was only a rudimentary plan in place, that they themselves had not discussed the merits and possibly risks of the plan, and that the unit commanders would receive only a very basic briefing. As will be discussed, they were also aware that the intervention was likely to involve bloodshed. If there had been urgent grounds for taking action at that point, this might have been justifiable, but this was not the case and there were other options available at the time. This included the simple option of delaying the intervention by roughly 15 hours until the following morning. And, as will be discussed, there was still the possibility that the situation could be resolved by negotiating.

SAPS efforts at negotiating a solution

Attempts at resolving the situation through negotiation started on Tuesday, 14 August. Lt Col. McIntosh was brought in as the primary negotiator in the SAPS negotiating team.¹⁵⁹ McIntosh was commander of the Carletonville Family Violence, Child Protection and Sexual Offences (FCS) unit and a trained hostage negotiator.¹⁶⁰ He arrived at Marikana shortly after midday on Tuesday. After a briefing at around 15h20, he was taken by Calitz to the koppie. McIntosh said in his statement that he saw a large number of strikers and that many were armed with knobkerries, assegais, pangas and other sharp instruments.¹⁶¹ He also noted that there was a group of about 300 'well-armed' men who were gathered at the front and who seemed to be the leaders.

One aspect of the SAPS approach to the negotiations that attracted criticism was the use of a person trained as a hostage negotiator rather than a POP operational commander or experienced POP member.¹⁶² Whether or not McIntosh was the most suitable person, it is evident that negotiations were carried out under difficult circumstances. The negotiation team was in a Nyala armoured vehicle that was part of the 'monitoring and negotiation line'¹⁶³ of police vehicles positioned facing the koppie. The negotiators asked the Joint Operational Centre (JOC) for permission to leave the vehicle in order to carry out the negotiations. The JOC refused because of concerns for the team's safety.¹⁶⁴ Negotiations

were therefore carried out through a 10 cm-wide gun port built into the front-left window of the Nyala, and relied on the assistance of an interpreter speaking in Fanagolo.¹⁶⁵ According to McIntosh, he and the strikers couldn't hear one another, as the Nyala had to be left idling for mechanical reasons.¹⁶⁶ At the Commission hearings, McIntosh agreed that these circumstances were not conducive to building mutual trust.¹⁶⁷

McIntosh said he emphasised to the strikers that the SAPS wanted them to disarm. He also informed them that the SAPS did not want to fight with them and wanted a peaceful solution to the problem. The strikers said they wanted to talk to Lonmin management and the police said they would convey this message to Lonmin. Early the next morning, a SAPS team that included Mpembe and McIntosh met with Lonmin management.¹⁶⁸ Management was adamant about not talking to the strikers, saying that there was a wage agreement in place already and that it would 'talk to the unions again when the workers lay down their weapons and return to normal duties.'¹⁶⁹

The negotiation team returned to the area in front of the koppie in their Nyala shortly before 10h00 on Wednesday. When they informed the strikers that Lonmin had refused to negotiate, the strike leaders were obviously unhappy. According to McIntosh, Mr Noki, the leader of the group, became 'agitated' and the group began 'singing, chanting, dancing and waving the weapons in the air.'¹⁷⁰

This was not the end of efforts to reach a negotiated resolution. The key figure in attempts to do so from that point onwards until the launch of the intervention was AMCU's Joseph Mathunjwa. Mathunjwa's involvement did not come about through the SAPS but was the result of the initiative of radio talk-show host Xolani Gwala.¹⁷¹ In effect, the SAPS negotiators made no progress after their exchange with the strikers on the Wednesday morning.

Lonmin's belated concession to Bishop Seoka

Part of the tragedy of Marikana is that Lonmin management ultimately indicated it would be willing to negotiate with the strikers. But this happened when it was too late to stop the police intervention.

One of the people who intervened at Marikana was Bishop Seoka, the Anglican Bishop of Pretoria. He arrived at Marikana in the early afternoon on Thursday, 16 August, and was at the koppie just after 13h45.¹⁷² He spoke to some of the strikers, who said that Lonmin management should come to the koppie to address them. Seoka then went to the Lonmin offices to convey the strikers' request. The first representative of Lonmin he spoke to rejected the request, but Barnard Mokwena suggested that the Bishop 'put his proposal' to Provincial Commissioner Mbombo. This was not successful either. Not long after, however, Mokwena told Seoka to go back to the koppie and say that mine management would talk to the strikers if they surrendered their weapons, elected between five to eight people to represent them, and dispersed from the koppie. Seoka was about to return to

the koppie but was told that he could not as it had been cordoned off by the police.¹⁷³ The police intervention was already under way and Seoka was not allowed to return.

We do not know the strikers would have accepted this concession, but it was in line with their central demand – a direct meeting with Lonmin management. It remains unclear why Mokwena changed his position at the last minute or if it was a genuine concession.¹⁷⁴ Nevertheless, this suggests that it would not have been difficult for the SAPS to get Lonmin to shift its position.

Safety issues versus labour issues

When he appeared before the commission, Lt Col. McIntosh repeatedly argued that the basic role of the negotiation team had been to engage with the strikers on safety issues, not on labour issues. The SAPS could act only as an intermediary on labour issues, he said. McIntosh repeatedly defended this position: ‘Chair, as I’ve said before, we were not there to end a strike. We were there to do the interests of public safety and security. The labour issues had to be dealt with by the striking parties, the mines and the unions, not by the police.’¹⁷⁵

However, McIntosh did say that he did not see Lonmin’s response on Wednesday morning as the final word and was thinking about other ways to get the strikers and management to talk. Though Lonmin had refused to speak to the strikers at the koppie, he thought it might be possible for a group of the strikers to be taken to meet Lonmin management at another location. If the strikers agreed, the SAPS would guarantee that they would be brought back safely to the koppie.¹⁷⁶ McIntosh maintained that this approach was consistent with the framework he had outlined. He stated this would be done ‘to allow the people to talk, but we were not trying to broker any type of resolution with regards to that.’¹⁷⁷

It is evident that McIntosh, like Scott, believed that the purpose of police negotiations was to persuade the strikers to comply with the law. Protests by armed protestors are illegal. Their view was that if the strikers wanted to continue gathering on the koppie, they needed to do so unarmed.¹⁷⁸

If the strikers agreed, the SAPS would guarantee that they would be brought back safely to the koppie

Judge Farlam, Chair of the Marikana Commission, agreed that the SAPS approach was the correct one,¹⁷⁹ but this approach was questioned at the Commission. Several of the legal teams indicated that the SAPS should have done more to encourage Lonmin management to engage with the strikers.

For instance, Dali Mpofo, one of the lawyers representing the injured and arrested strikers, argued that the SAPS negotiators should have recognised that they needed to focus on the conflict between Lonmin and the strikers (what he called the ‘underlying issue’) if they were to get the strikers to disarm.¹⁸⁰ Nevertheless Mpofo indicated he was not suggesting that the SAPS should have engaged with the wage dispute but should simply have tried to get Lonmin to talk to the strikers.¹⁸¹

Though the SAPS approach was criticised, the contention that the primary responsibility of the police is to address safety issues, is, in principle, correct. The argument that the police should be responsible for addressing ‘underlying issues’ can easily be taken too far. If the strikers’ bottom line had been that they would not surrender their weapons unless Lonmin agreed to a salary increase, it would be unreasonable to expect the police to resolve this issue. Despite criticising the SAPS, Mpofo indicated that he accepted this point.

Nevertheless, a concern with safety should mean that police are flexible in applying this principle when there is a threat to people’s lives. In the specific circumstances of Marikana, one ‘underlying issue’ was whether or not Lonmin management would talk to the strikers. If this had been resolved, it might have been possible to disarm the strikers without further endangering people’s lives. According to McIntosh, he still wanted to pursue this possibility.

The role of the SAPS commanders in the negotiations

The circumstances at Marikana should have motivated the police to pay more attention to how they could resolve the stand-off. Negotiations were the main alternative to launching a ‘tactical’ offensive against the strikers, which was likely to involve bloodshed, and breaking the deadlock was something the SAPS leadership at Marikana should have seen as a priority. For instance, one of the Commission’s evidence leaders, Thantaswa Lupuwana, indicated that the ‘SAPS upper echelons’ should have gone back to Lonmin management and said:

Well, we have heeded your call to become involved as the SAPS. The ball is now in your court. The strikers are demanding to talk to you. They are demanding an audience with you. Please come to the party. Our negotiators now need you and their success is in your hands. They depend on you for your cooperation.¹⁸²

The SAPS commanders’ approach to negotiations focused on getting the strikers to change their position. This objective was not only pursued through the negotiation process itself – once Mathunjwa and the NUM leadership became involved on the Wednesday afternoon, Mpmembe also tried to use them to get the strikers to disarm.¹⁸³ Earlier in the day, Lonmin’s Barnard Mokwena had committed to speaking to the strikers at the koppie, but now backtracked on this. According to the Commission’s evidence leaders, ‘Maj. Gen. Mpmembe seemed to confine himself to insisting that the two union leaders go to the koppie. He did not insist that Lonmin should also go.’¹⁸⁴ In the case of Lonmin, the SAPS commanders restricted their role to that of ‘messengers.’ They had ready access to Lonmin management and could have been more assertive about the need for them to speak to the strikers. They could have also appealed to the Provincial Commissioner to take up the matter directly or asked for the National Commissioner’s intervention.

Why did neither the SAPS commanders nor Mbombo put pressure on Lonmin to talk to the strikers? The Marikana Commission states that ‘the taking up of arms and the violence perpetrated by the strikers was partly responsible for the reluctance on the part

of the employer to engage in any manner whatsoever, whilst they remained armed.¹⁸⁵ However, Lonmin management was strongly resistant to negotiating with the strikers prior to the onset of the strike.¹⁸⁶ The violence of the strikers might be regarded as management's rationalisation for not negotiating, rather than the reason for its reluctance. As has been noted, at her meeting with Mokwena on Tuesday, Mbombo put direct pressure on Lonmin not to negotiate. This would likely have reinforced Lonmin's hard-line approach against negotiating.

As discussed, Mbombo's reasons for discouraging Lonmin from negotiating appear to have been political. But neither Mpembe nor Annandale, the key SAPS commanders, attended the meeting on Tuesday, 14 August at which she spoke to Mokwena. Why were they not more assertive with Lonmin? It seems reasonable to believe that if Mpembe had been firmer with Lonmin management at the meeting on Wednesday morning he would have stood a strong chance of getting concessions from them. He and Annandale could also have asked Mbombo to pursue the matter with Lonmin. The Commission rejected the argument that there was inappropriate collusion between the SAPS and Lonmin.¹⁸⁷ But the option of putting more pressure on Lonmin was readily available to the SAPS and it is not clear why they did not pursue it.

The impact of the senior leadership decision on the negotiations

Rather than saying that negotiations had failed, it seems reasonable to say that negotiations may have contributed to stabilising the situation but had not resolved it.¹⁸⁸ From the time negotiations started until the afternoon of Thursday, 16 August, 'there had been no further deaths and no significant violence.'¹⁸⁹ Negotiations were not taken further, not because they had failed, but because of the leadership decision made on Wednesday, 15 August that required the SAPS to end the stand-off with the strikers. However the SAPS negotiators may not have resolved the conflict unless the SAPS had been more assertive with Lonmin management.

What would have happened if the NMF had discussed the problems with the negotiation? As we know, Mbombo did not want Lonmin to negotiate with the strikers, so it is likely that the NMF would not have decided to put pressure on Lonmin to change its position. But if it had, it seems reasonable to believe that a single phone call to Mokwena or another senior Lonmin manager, from either Mbombo or Phiyega, could have resulted in Lonmin meeting the strikers, and thereby defused the situation.

The SAPS commanders in the build-up to the tactical intervention

Who was in command of the SAPS at Marikana?

What was the relationship between the two senior commanders, Maj. Gen. Mpembe and Maj. Gen. Annandale, in the command structure? The official answer provided at the Marikana Commission was that Annandale was Mpembe's deputy. This was described in a variety of different terms. According to Mpembe, he had to attend to many issues. Annandale worked as his deputy or 'as a JOC commander ... to be there and represent the overall commander when I'm not there.'¹⁹⁰ According to Lt Col. McIntosh, when he arrived at Marikana on the Tuesday, he was informed that Mpembe was in charge of the operation overall, assisted by Annandale.¹⁹¹ In the SAPS' opening submission to the Commission, Annandale was identified as 'the chief of staff.'¹⁹²

In reality it, was not as simple as this. Mpembe played a prominent role in some events. It was Mpembe and not Annandale who attended the meeting held early on Wednesday morning at which the strikers' request to negotiate was conveyed to Lonmin.¹⁹³ Mpembe also met with leaders of the NUM and AMCU later that day and briefed them on what the SAPS wanted them to say to the strikers.¹⁹⁴ After the union leaders had returned from the koppie, both Mpembe and Annandale met first with the NUM and then the AMCU leaders. However, the transcripts of the meetings show that only Mpembe was involved in dialogue with them.¹⁹⁵

As North West Provincial Commander of Operational Services, Mpembe was the overall commander of the main uniformed police units in the North West province, including all 'visible policing' as well as units falling under the provincial Operational Response Services (ORS) division. Annandale, who had the same rank as Mpembe, was head of the Specialised Interventions component, which was part of the ORS national division. Units located in Specialised Interventions included the STF and NIU as well as public order units. Annandale was therefore in charge of the national programme that many of the units at Marikana were part of. With the exception of Provincial Commissioner Mbombo, Maj. Gen. Mpembe and Brig. Caltiz,¹⁹⁶ most of the other commanders involved in the operation belonged to units that were part of the Specialised Interventions component, either in North West province or elsewhere in South Africa.¹⁹⁷

Annandale was therefore the de facto (actual) commander of a large proportion of the police at Marikana, including the SAPS tactical units and public order police. As head of Specialised Interventions, he would have enjoyed higher informal status in the SAPS than a provincial commander in Mpembe's position. Annandale chaired all the JOCCOM meetings. According to Mpembe, this was because his role as overall commander demanded that 'there were times where I had to pursue other role-players to engage them.'¹⁹⁸ One of the JOCCOM meetings that Mpembe did attend was the critical JOCCOM at 13h30 on Thursday, 16 August, although the minutes give no indication that he contributed to the meeting. In fact, they state that Mbombo 'instructed Maj. Gen. Annandale' to proceed with the intervention against the strikers.¹⁹⁹ The minutes indicate that Annandale issued all other instructions at the meeting.²⁰⁰ After the confrontation on the Monday, Mpembe had been in a state of shock and had received threats from SAPS members. Although Mpembe retained the position of overall commander on a formal level, Mbombo may have lost confidence in him as a result of this.²⁰¹

Significantly, Lt Col. Scott was a senior member of the Special Task Force, a national SAPS unit that was part of Specialised Interventions. Scott said in his evidence that he understood Annandale to be the overall commander, and reported to him.²⁰² A critical element of the operation, the planning process, was therefore not something that Mpembe was directly concerned with. (Standing order 262, which governed public order policing at that time and gives the overall commander responsibility for planning, was largely disregarded at Marikana.)

As the 13h30 JOCCOM shows, a certain ambiguity was created not only by the relationship between Mpembe and Annandale but also in relation to the presence of Provincial Commissioner Mbombo. Annandale testified that, 'in relation to operational matters, decisions get taken by the overall commander and not by the national or provincial commissioners' and that 'an overall commander does not act on the instructions of the provincial commissioner unless he agrees with it.'²⁰³ Mpembe also confirmed this principle.²⁰⁴

Nevertheless, the evidence shows that Mbombo played a highly directive and interventionist role. In various situations, including on Thursday, she assumed the role of overall commander. Both on Monday and at the JOCCOM on Thursday, the instructions for police to intervene came directly from her. Mpembe did not accompany her to the meeting with Lonmin management on Tuesday. Mbombo took on the role of presenting the SAPS position on the strike to Lonmin and gave no indication that decision-making authority lay with anyone else. In his statement, AMCU president Joseph Mathunjwa says Mpembe repeatedly told him on Thursday that he was not in charge and that Mbombo was commanding the operation.²⁰⁵

The South African Human Rights Commission (SAHRC) legal team argued that 'Although Maj. Gen. Mpembe remained Overall Commander in name, in reality the Provincial Commissioner took over overall strategic command, with Maj. Gen.

Annandale taking over day-to-day command responsibility [...] Maj. Gen. Annandale's role was substantially greater than the "chief of staff" role that the SAPS claimed that he occupied.²⁰⁶ Mbombo clearly exercised overall authority in a very direct way. Despite the command principles articulated by Mpembe and Annandale, no one other than Mbombo put themselves forward as a source of final authority. More generally, it appears that there was a blurring of lines of authority and responsibility. Whatever command was exercised by Mpembe, his authority was subordinate to that of Mbombo. The evidence shows that, especially during the build-up to the launch of the tactical intervention on Thursday, Annandale had displaced Mpembe, although Annandale was not formally categorised as Mpembe's superior.

Recognition of the likelihood of bloodshed

The SAPS commanders Mbombo, Mpembe and Annandale were aware that the intervention was likely to result in bloodshed.²⁰⁷ In her meeting with Lonmin, Mbombo stated that if the strikers did not surrender their arms, 'then it is blood.'²⁰⁸ Mbombo also acknowledged under cross-examination that she 'foresaw that if the strikers did not surrender there would be injury or death.'²⁰⁹ Scott's approach to the situation was based on his understanding of what had happened on Monday. He saw it as likely that the strikers would attack the police if the police took action against them. There can be no doubt that this understanding was shared by Annandale, who was the main person Scott consulted in his work as chief planner. In his meetings with union leaders on the Wednesday, Mpembe repeatedly referred to the probability of bloodshed if the police tried to disarm the strikers.²¹⁰ Several of Mpembe's statements to this effect were made at the two later meetings, after the union leaders had been to the koppie, which Annandale also attended.²¹¹

At roughly 15h10 on Thursday, 16 August, more than an hour after the JOCCOM meeting had finished, Annandale instructed the JOC commander to record in the order book that the instruction for the 'tactical intervention' to proceed had come from the provincial commissioner.²¹² He clearly had misgivings about the decision and did not want to be held responsible for it. Beyond this, evidence shows that the police at Marikana were preparing for bloodshed. Steps were taken to order 4 000 additional rounds of ammunition and secure four mortuary vehicles, with space for 16 corpses, before the launch of the intervention. The evidence leaders referred to the intelligence report presented to the JOCCOM at the 06h00. Meeting, which 'indicated that the strikers would not peacefully relinquish their weapons and were likely to resist any attempt to disarm.' They go on to state that 'having regard to the conduct of the strikers earlier in the week ... any reasonable police officers would have anticipated' the risk of bloodshed.²¹⁴

The recklessness of launching the intervention

The SAPS launched an intervention on the afternoon of Thursday, 16 August, when senior SAPS members knew it was likely to result in bloodshed. Under cross-examination,

Mbombo said that on the Thursday morning, Mpembe and Annandale warned her that there was a risk of bloodshed if the intervention went ahead.²¹⁴ They also allegedly assured her that ‘all endeavours would be done’²¹⁵ to prevent bloodshed. She said that she would have been open to postponing the intervention to Friday, 17 August if the commanders had motivated for this.²¹⁶ Whether or not this is true, it does not exempt her from responsibility. If she was exercising overall authority, she had a responsibility to establish that everything was being done to avoid the risk of bloodshed. At the 13h30 JOCCOM, she simply gave the instruction for the intervention to go ahead. Despite the warnings she received, she took no steps to confirm that adequate safeguards had been put in place to prevent bloodshed.

Mbombo therefore acted recklessly.²¹⁷ But what does this tell us about Mpembe and Annandale? If they did warn her of the risk of bloodshed, they were not assertive enough. Mpembe and Annandale were experienced police officers and knew that Mbombo did not have operational experience. It may be that Mbombo did not fully understand the implications of launching the tactical phase, but it is clear that Mpembe and Annandale did. Although there was some ambiguity about who was the overall commander, they were both, at the very least, aware of being central figures in the command of the operation. As such, they had a responsibility to guide Mbombo.

Mpembe and Annandale are alleged to have told Mbombo that they would ‘use every endeavour’ to keep bloodshed ‘to the absolute minimum.’²¹⁸ Whether or not they said this, they clearly did not do so. As the report of the Commission states, even though they were aware of the likelihood of bloodshed, the SAPS ‘moved to the tactical phase without putting in place any substantive measures to mitigate against bloodshed and the loss of life.’²¹⁹ The intention was for heavily armed police units to ‘disperse, disarm and arrest’ a very large crowd of strikers, many of whom were also armed. The commanders knew there was no precedent for this intervention.²²⁰ They also knew there was only a rudimentary outline of the details of the intervention, that they had not discussed the merits and potential risks of the plan, and that the commanders and police responsible for implementing it would receive only a basic briefing. The dynamics of the situation had not changed in the last two days. There were no urgent grounds for acting at that point and there were other approaches available.

The intention was for heavily armed police units to ‘disperse, disarm and arrest’ a very large crowd of strikers

It would have been necessary to consult with the POP commanders about how to minimise the risk of bloodshed. But no POP commanders were at the 13h30 JOCCOM. It was not just the POP who were absent. Brig. Calitz, the operational commander (the person who exercises direct authority over police personnel who are carrying out an intervention ‘in the field’), was also not at the 13h30 JOCCOM. The only information he had on the plan was that provided in the hastily conducted briefing that Scott held with the field commanders at 14h30. Failing to ensure that Calitz and the other unit commanders

understood their tasks and relayed them properly to the SAPS members under their command was also enormously reckless. As indicated, the Commission noted that Calitz and other key people did not understand important details of the plan.²²¹

It should have been clear to Mpembe, Annandale and others that it was not advisable to launch the intervention and that a different approach should be taken. They could have simply told Mbombo that the intervention needed to be postponed until the following morning. This would enable them to use the less-risky plan that had already been developed. It would also have enabled them to brief the commanders and members of the various units properly. They could also have told Mbombo that more pressure needed to be put on Lonmin to talk to the strikers. Both these options were readily available to the SAPS. Although there was pressure from senior leadership for them to launch the tactical phase, there was no other urgent reason to do so.

Why did the SAPS commanders not challenge the decision?

Why did the SAPS commanders allow themselves to be rushed into launching the intervention? Why did they not choose to delay it, in the interests of preventing bloodshed? Why did they not try to resolve the situation by other means? As the evidence leaders stated, Provincial Commissioner Mbombo 'did not have the training, the skills or the experience to enable her to make decisions as to what should be done in the complex and difficult situation at Marikana.'²²² By giving instructions for the intervention to be launched, she in effect took on the role of 'overall commander.' Recklessly, she did not combine this with any attention to the detail of what the police were doing. She did not ascertain whether the SAPS would be able to go ahead without exposing SAPS members and the strikers to unnecessary danger.

These actions took place in circumstances where the lines of authority between Mpembe and Annandale were already blurred, something that might have contributed to neither Mpembe nor Annandale being more assertive in challenging the decision to launch the intervention. They also failed to act in a manner consistent with their status as senior commanders in the SAPS and central command figures in the overall the SAPS operation. Rather than emphasising the risks involved and encouraging Mbombo to consider other options, they acted in a negligent and reckless manner.

Situational factors

Part of the explanation for this appears to be that, while they envisaged the likelihood of bloodshed, they did not anticipate that so many people would be killed. Scott says he envisaged the potential for multiple points of conflict. If the situation had unfolded in some of the ways Scott anticipated, many more than 34 people, including strikers and police, might have been killed. But from what we know, none of the commanders paid much attention to how the intervention would probably unfold. As a result, it is likely they did not fully recognise the potential for catastrophe. Under cross-examination, Mpembe conceded

that although he foresaw the possibility of strikers shooting at the police²²³ and police shooting at strikers, he did not anticipate the scale of bloodshed at Marikana.²²⁴

As they did not foresee the outcome of 34 deaths and multiple injuries, Mpembe and Annandale may have anticipated that any killings by police would, as is often the case, not receive a great deal of attention.²²⁵ It was the scale of the casualties that meant Marikana was seen differently. Mpembe and Annandale were likely to be familiar with the fact that mechanisms for investigating shootings by police are often ineffective.²²⁶ They may have believed that the involvement of the provincial commissioner and the evidence of high-level approval for intervention would mean that their actions would not be questioned at a political level, so they did not need to worry about being held accountable for them. It is evident that Annandale started having some misgivings in this regard, as reflected in his order for an entry to be made in the order book that the intervention was launched on Mbombo's orders.

The general disposition of the police towards the strikers is likely to have been fairly negative, at least, if not overtly hostile. Antipathy towards the strikers was likely to be shared by many police, including the police commanders. In this, they were probably of one mind with the national commissioner, Riah

Antipathy towards the strikers was likely to be shared by many police, including commanders

Phiyega,²²⁷ political leaders and Lonmin. Between Sunday, 12 and Tuesday, 14 August, strikers had killed seven people. The seriousness with which these killings were perceived by police would have been dramatically aggravated by the fact that two of the seven were SAPs members. That a small number of the strikers was responsible for the killings was not a point that anyone seems to have raised. The strikers had come to be seen in an undifferentiated way as 'a single violent entity rather than a grouping of different individuals.'²²⁸ The police perception may have been that they would target strikers who directly resisted. The careless way in which the intervention was implemented indicates the police did not consider it might expose all the strikers to harm. The fact that police commanders were not too concerned about the risks to police officers, and their confidence that the police would get the upper hand over the strikers, would have been based on the presence of the heavily armed tactical units. This did not reflect proper engagement with how the intervention might unfold. It was launched recklessly in terms of the safety of both the strikers and the police.

It also seems clear that Mpembe and Annandale understood that Mbombo was executing a decision that came from a higher level. There is evidence that the SAPS commanders were notified about the decision after the NMF 'special session' on the Wednesday night.²²⁹ Their failure to challenge the decision may therefore partly reflect the persistence of a culture of deference to political directives within the SAPS,²³⁰ something that continues despite the principles embodied in the Constitution.²³¹ This view assumes they might have had a tendency to disagree with their instructions. It may also be that they agreed to follow Mbombo's instructions because they identified with them.²³²

Concern that racial bias plays a major role in the use of force by police has been prominent in the US.²³³ In South Africa, it is equally if not more likely that a double standard applies, and it can be seen as 'more acceptable' to kill certain people or groups of people than others. The status of the strikers as partly literate, rural black men may have contributed to the fact that senior SAPS members were not overly concerned about the possibility that some of them would be killed.

In trying to understand the responses of the SAPS commanders to the instruction from the provincial commissioner, we should not lose sight of the conditions under which police were acting. Antipathy and indifference towards the strikers may have played a role. Mpmembe and Annandale may also have identified with the instructions given by Mbombo. But these factors may have been aggravated by a degree of exhaustion. Some of the SAPS members were staying in accommodation at Marikana but others were going home, sometimes late at night, and were required to return early each morning.²³⁴ In his evidence, Calitz, the operational commander, said '*vir daardie week het ons minimum slaap gehad* [for that week we had minimum sleep].'²³⁵ It is possible that fatigue played some role in contributing to how Annandale and Mpmembe responded to the situation.

Poorly defined principles regarding the use of force

A key finding of the Marikana Commission is that the decision to initiate the police intervention on the afternoon of 16 August 2012 involved a breach of the McCann principle.²³⁶ Referred to by the SAHRC lawyers as the 'the principle of prevention/precaution', it requires that 'those in command of policing operations in which higher levels of force are anticipated as a possibility' must 'plan and command those operations in such a way as to minimise the risk that lethal force will be used.'²³⁷

The tactical phase was a police intervention in which it was seen as likely that lethal force would be used. Yet even though the police expected that people would be killed, it seems they did not see themselves as acting unlawfully. The reason for this is that they assumed police would be protected against legal liability by the common-law principle that authorises the use of lethal force in self-defence or 'private' defence. In terms of this principle, a person is entitled to use force (including lethal force) to protect themselves or another person against attack. The use of force must also conform to principles of proportionality, meaning that it must not be 'excessive in relation to the danger' and is 'the only or least dangerous means' the defender can use to avoid the danger.²³⁸

The law of private defence, like other principles governing the use of force (notably the law regulating the use of force during arrest),²³⁹ is expressed in such a way that it is generally understood as being situational in nature. These principles regulate what a police officer may or may not do in an immediate situation where the use of force may be considered. However, the McCann principle is not a situational principle but a planning principle. It applies to situations when police are planning an intervention in which they anticipate lethal force may be used.

The McCann principle is clearly applicable to the police in South Africa. The Constitution protects the right to life as well as the right to be protected ‘from all forms of violence from either public or private sources.’²⁴⁰ Though the SAPS lawyers argued that the McCann principle was not part of South African law,²⁴¹ the report of the Commission shows that the principle had been recognised in South African common law from as early as 2001 by means of a judgment of the Transkei High Court. This judgment held that ‘in deciding whether the use of force was the only or least dangerous means of avoiding the danger’ a court should ‘have regard not only to the events immediately preceding the use of force by the defender but also to the question as to whether some other form of intervention was available to the defender at an earlier stage.’²⁴² In other words, one cannot say that the use of force was ‘necessary’ if one had another course of action readily available that would have been far less likely to require it.

In deciding to launch the ‘tactical phase’, the SAPS commanders were therefore content to hide behind the technicalities of private defence while disregarding ‘the sanctity of life’, which the Transkei Court referred to as a ‘fundamental right enshrined in Section 11 of the Constitution.’²⁴³ Mpembe, Annandale and Mbombo should have recognised that the intervention violated this fundamental principle. Their failure to do so reflects inadequate engagement by the SAPS with questions about the principles that should govern the use of force by police. The concern about ‘minimum force’ should clearly apply to the planning of police interventions and not just to situations in which police are already involved in situations of confrontation.

Conclusion: critical shortcomings of the SAPS operation at Marikana

At Marikana, police were brought into a situation of already intense conflict. In these situations, police are supposed to act impartially, prioritising the safety of all concerned. At Marikana, the difficulty of sustaining an impartial approach was affected by the violence of the strikers. Inadequate command and control and poor discipline resulted in the police coming into violent conflict with the strikers on Monday, 13 August. That evening, when Mbombo, Mpembe, Annandale, Scott and Phiyega were at Marikana, two of their colleagues lay dead. It is inevitable that something like this would affect the way the police understood the situation they were facing. It was difficult for them not to see their relationship with the strikers as adversarial. Nevertheless, some elements of a professional commitment to neutrality remained, with the SAPS making some effort to achieve a negotiated resolution to the situation.

Marikana shows how easily professional commitment to safety can be compromised by pressure from, and partisanship towards, political and economic elites. Although the clash on Monday affected police understanding of the situation, it was not the critical factor that determined the subsequent course of events. The critical factor was that senior leaders of the SAPS were partisan in relation to the conflict. The SAPS negotiation team's first engagement with the strikers was on Tuesday afternoon. They did not know that earlier that day Mbombo had put pressure on Lonmin not to reach a compromise with the strikers, thereby reinforcing Lonmin's resolve not to negotiate.

Prior to this, the senior leaders of the SAPS had started coming under political pressure to deal with the conflict at Marikana in a decisive way. This was communicated to them by Minister of Police Nathi Mthethwa. The desire of these senior leaders to show they were taking the concerns of their political bosses seriously was shown first in the shift towards a national operation dominated by the tactical units, on Monday. With the benefit of hindsight, it is evident that this had profound consequences that were not recognised at the time. After this point, there was little clarity about what kind of operation the SAPS was actually conducting. Many of those in charge had little knowledge of public order policing and the final plan that was put in place would rely heavily on the SAPS tactical units. National involvement also contributed to ambiguity around lines of authority, with both provincial and national SAPS commanders in senior roles.

After this shift, the decision taken by high-level police officials on Wednesday, 15 August, most likely with the input of Minister Mthethwa, further undermined any control that the SAPS commanders at Marikana were exercising. This decision put pressure on them to rush into the ‘tactical phase’ intervention even though it was likely to lead to bloodshed and had not been properly planned or prepared for. By issuing this instruction, the SAPS senior leadership took on the role of operational decision making without allowing for the operational commanders ‘on the ground’ to give their input and help inform the decision.

The SAPS intervention at Marikana was unique. It mobilised a formidable part of the SAPS’ capability to use force for an unfamiliar task. None of the units had any experience in disarming large and potentially hostile groups of people, or of cooperating jointly in interventions for this purpose.

In addition, the task was undertaken without any real concern for exercising appropriate control over it. Once they were faced with having to implement the intervention, the commanders apparently warned Mbombo that there was a risk of bloodshed. But the evidence indicates that they themselves did not take this warning seriously enough. It was not necessary for them to launch the intervention on the Thursday afternoon. There were less risky options still open to them. Drawing on their experience, they should have motivated firmly against the SAPS launching the intervention. They also could have put greater pressure on Lonmin management to meet with the strikers.

Their lack of concern about the likely consequences of the intervention highlights the high level of impunity that members of the SAPS, including members of the tactical units, enjoy in relation to the use of force. It also indicates a persistent culture of deference to authority in the SAPS, as opposed to one that is based on values and prioritises the obligation of state officials to respect and promote people’s rights.²⁴⁴

It should have been abundantly clear to the commanders that the SAPS should not launch the intervention; however, the evidence we have does not indicate they had that clarity. This exposes major shortcomings in the SAPS’ fulfilment of its obligation to ‘teach and require their members to act in accordance with the Constitution’²⁴⁵ and shows a profound lack of depth in the SAPS’ understanding about the principles that should govern the use of force. Notably, it shows a failure of the SAPS to recognise that planning for police operations should reflect a concern to minimise the potential that lethal force will be used. Crowds are not homogeneous. The SAPS at Marikana were aware of this. They identified the fact that there was a ‘militant group’ of roughly 300 people that was distinguishable from the majority of strikers. Their analysis was that they were most likely to face armed resistance from members of the militant group. Nevertheless, they launched a tactical intervention that exposed all the strikers as well as the police involved to danger, and unnecessarily so. The commanders should have insisted on a professional approach to the situation. This would have involved ensuring that the situation was managed successfully and the need to use force was minimised.

Key issues raised by this monograph

Key issues that are raised by the SAPS Marikana operation therefore include:

- **Police positioning in relation to social conflict and the potential impact of political pressure.** Police in a democratic country must be responsive to societal concerns, including those of political office bearers. But Marikana highlights the difficulties that police may face in maintaining a position of neutrality, and ensuring that safety is prioritised, in situations of social conflict, notably situations where elite groups see their interests as threatened. One factor that may add to the difficulties that police face in this regard is pressure from the Executive. High-level political concern about a situation should not require that police compromise their professionalism and overall mission of ensuring safety. The Marikana Commission stated that ‘it is recognised and accepted that in large and special operations there is a role for consultation with the Executive, in particular the Minister of Police.’ However, it recommended that ‘the Executive should only give policy guidance and not make any operational decisions and that such guidance should be appropriately and securely recorded.’²⁴⁶ One way of trying to ensure that inappropriate pressure is not put on senior police is by requiring that ‘guidance’ from the Executive is subject to scrutiny. Not only does this require that such guidance be recorded but it also needs to be subject to scrutiny by Parliament or another appropriate body.
- **Ensuring that senior leaders in the SAPS, as well as other people in leadership roles, are appropriately qualified.** The Marikana Commission recommended that the 2012 National Development Plan recommendations on policing must be implemented.²⁴⁷ These state, among other things, that the national commissioner should be appointed on a competitive basis and a professional body should set standards for the selection of officers.²⁴⁸
- **Problems in decision making at Marikana were partly a result of senior leaders not being appropriately qualified but also reflected problems with the nature of decision making.** In police operations, those with knowledge of the situation ‘on the ground’ should always be involved in decision making, especially in more complex situations. Leadership and decision making at all levels should also reflect a values-based approach rather than simply carrying out the directives of those in authority.
- **Marikana also raises questions about how leadership and command are exercised in large-scale public order and crowd management operations,** including minimum standards for ensuring that such operations are carried out professionally and crowd management principles are applied in an appropriate way. These questions also include the status of public order commanders and POP units in these operations. The Marikana Commission, for instance, recommends that ‘in Public Order Policing situations operational decisions must be made by an officer in overall command with recent and relevant training, skills and experience in Public Order Policing.’²⁴⁹ The issues here also include questions about: coordination and cooperation

in operations that combine different types of units; the need for high levels of clarity about lines of command, particularly in operations that involve senior commanders of the same rank from national and provincial units; the need for effective planning and decision-making models; and other aspects of the preparation for interventions, including the briefing of operational members.

- **The SAPS leadership at Marikana launched an intervention that was likely to result in death and injury when it was not necessary to do so.** They apparently did not recognise that they were acting wrongfully and unlawfully. This reflected a failure of the SAPS to pay attention to developments in common law. It also shows the SAPS has followed a narrow, legalistic approach to questions about the use of force and has failed to fully engage with the implications of the Constitution for the use of force. In preparing for actions by the police where the use of force, particularly lethal force, is anticipated, the governing principle should be that police should seek to resolve situations effectively while minimising the potential that force may have to be used. This principle applies to all policing in South Africa and not only to crowd management.

Notes

- 1 D Scott, Consolidated statement of Duncan Scott, Marikana Commission of Inquiry, Exhibit HHH20, 10 July 2013, 6, www.marikanacomm.org.za/exhibits/Exhibit-HHH-20.pdf.
- 2 One of those killed, Mr Gwelani, was not a striker but an unemployed man (Marikana Commission of Inquiry, Heads of argument of evidence leaders, 27 October 2014, 404, www.marikanacomm.org.za/docs/201411-HoA-EvidenceLeaders.pdf).
- 3 Karee is one of three operations that make up the Lonmin mine at Marikana (G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, 30).
- 4 Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West province, 31 March 2015, 259-261 www.thepresidency.gov.za/medialib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commission%20of%20Inquiry.pdf; Marikana Commission, Heads of argument of evidence leaders, 295-299 [Note 2].
- 5 Marikana Commission, Report, 2-4 [Note 4].
- 6 Marikana Commission, Heads of argument of evidence leaders, 601-606 [Note 2].
- 7 The decision at the special JOCCOM at 13h30 on 16 August was that the intervention would start at 15h30. However, there was a slight delay and the rolling out of barbed wire started at about 15h40.
- 8 Marikana Commission, Report, 34 [Note 4].
- 9 T Maluleke, Is this all that 44 men's lives are worth? *Mail & Guardian*, 3 July 2015, <http://mg.co.za/article/2015-07-02-is-this-all-that-44-mens-lives-are-worth>; G Marinovich, In the shadow of Marikana, a lost opportunity for justice, *Daily Maverick*, 29 June 2015, www.dailymaverick.co.za/article/2015-06-29-op-ed-in-the-shadow-of-marikana-a-lost-opportunity-for-justice/#.WD7wTxp97cc; S Wilson, Judge Farlam's accidental massacre, *Daily Maverick*, 26 June 2015, www.dailymaverick.co.za/opinionista/2015-06-26-judge-farlams-accidental-massacre/#; C de Rover, Marikana report wastes a chance to excise festering sores in the SAPS, *Sunday Times*, 5 July 2015, www.timeslive.co.za/sundaytimes/opinion/2015/07/05/Marikana-report-wastes-a-chance-to-excite-festering-sores-in-the-SAPS; F Rabkin, Callous Marikana report reduces casualties to mere dead bodies, *Rand Daily Mail*, 23 July 2015, www.rdm.co.za/politics/2015/07/23/callous-marikana-report-reduces-casualties-to-mere-dead-bodies; P Alexander, Marikana Commission of Inquiry: From narratives towards history, *Journal of Southern African Studies*, 42:5, 2016.
- 10 Marikana Commission, Report, 248 [Note 4].
- 11 Marikana Commission, Report references, 232-247 [Note 4].
- 12 Marikana Commission of Inquiry, Exhibit UUU10.3, Annexure V2 – Video presentation on the movement of the strikers from koppie to the kraal. The evidence is well summarised by G Marinovich, *Murder at the small koppie*, 156-160 [Note 3].
- 13 Warrant Officer Kuhn was a POP member who fired at the strikers with an R5 at the same time the TRT opened fire.
- 14 Marikana Commission, Report, 248 [Note 4].
- 15 D Bruce, Summary and analysis of the report of the Marikana Commission, Council for the Advancement of the South Africa Constitution, 2015, 53-55, www.casac.org.za/wp-content/uploads/2015/02/Summary-and-Analysis-of-the-Report-of-the-Marikana-Commission-of-Inquiry.pdf.
- 16 Marikana Commission, Report, 558 [Note 4].
- 17 Marikana Commission, Report, 316 [Note 4].
- 18 Proclamation No. 50 of 2012 published in Government Gazette No. 35680 of 12 September 2012, 6, www.justice.gov.za/legislation/notices/2012/20120912-gg35680-nor50-marikana.pdf.
- 19 One shortcoming is highlighted: D Bruce, Summary and analysis of the report of the Marikana Commission, 27-33 [Note 15].
- 20 Marikana Commission, Report, 545-6 [Note 4].
- 21 Independent Police Investigative Directorate, Briefing to the Portfolio Committee on Police on 'The implementation of Farlam judicial commission's recommendations', 2 February 2016, 11-12.
- 22 *Ibid.*, 18-19. Note
- 23 Z Maine, 19 miners in court as Marikana trial resumes, *SABC News*, 29 August 2016, www.sabc.co.za/news/a/00a29d804e0a159dbaf5bb5173dc1eac/19-miners-in-court-as-Marikana-trial-resumes-20162908.
- 24 N Makgetla and S Levin, A perfect storm: Migrancy and mining in the North West province, Pretoria: Trade & Industrial Policy Strategies, 2016, 40, www.tips.org.za/research-archive/inequality-and-economic-inclusion/item/3099-a-perfect-storm-migrancy-and-mining-in-the-north-west-province; G Marinovich, *Murder at the small koppie*, 29 [Note 3].
- 25 N Makgetla and S Levin, A perfect storm, 12-15, 56 [Note 24].
- 26 *Ibid.*, 6.
- 27 Marikana Commission, Report, 46-47 [Note 4].
- 28 G Marinovich, *Murder at the small koppie*, 40, 51 [Note 3].
- 29 N Makgetla and S Levin, A perfect storm, 3 [Note 24].
- 30 P Stewart, The 2012 strike wave, Marikana and the history of rock drillers in South African mines, *Global Labour Column*, 121, 2013, <http://column.global-labour-university.org/2013/01/the-2012-strike-wave-marikana-and.html>.
- 31 G Marinovich, *Murder at the small koppie*, 41-42 [Note 3].

- 32 N Makgetla and P Levin, A perfect storm, 15-16 [Note 24]; K Forrest, Marikana Commission of Inquiry: Phase 2 Preliminary Report, Marikana Commission of Inquiry Exhibit NNNN 2, 2014, 36.
- 33 G Marinovich, *Murder at the small koppie*, 41 [Note 3].
- 34 Marikana Commission, Heads of argument of evidence leaders, 254 [Note 2].
- 35 G Marinovich, *Murder at the small koppie*, 29-30, 41, 65, 68-72 [Note 3]; J de Lange, The rise and rise of AMCU, News24, 18 August 2012, www.news24.com/Archives/City-Press/The-rise-and-rise-of-Amcu-20150429; D Bruce, The operation of the criminal justice system in dealing with the violence at Amplats, Centre for the Study of Violence and Reconciliation, 2001, 15, www.csvr.org.za/docs/policing/operationofthecriminal.pdf.
- 36 J de Lange, The rise and rise of AMCU [Note 35].
- 37 Marikana Commission of Inquiry, Exhibit XX-1, Statement of Erick Gcilitshana, undated, 5, www.marikanacomm.org.za/exhibits/Exhibit-XX-1.pdf.
- 38 Marikana Commission, Heads of argument of evidence leaders, 47-48 [Note 2]; T Bell, Confusing roots of the upheaval at Implats, *Terry Bell Writes*, 19 February 2012, <http://terrybellwrites.com/2012/02/19/confusing-roots-of-the-upheaval-and-implats/>; G Marinovich, *Murder at the small koppie*, 57 [Note 3].
- 39 T Bell, Confusing roots of the upheaval at Implats [Note 38].
- 40 Marikana Commission, Heads of argument of evidence leaders, 41-42, 44, 46, 92, 665-668 [Note 2].
- 41 Marikana Commission, Report, 46 [Note 4].
- 42 See the email correspondence of NUM regional official Daluvuyo Bongo: Marikana Commission of Inquiry, Exhibit XX-2, NUM bundle, 71-78, www.marikanacomm.org.za/exhibits/Exhibit-XX-2.pdf; G Marinovich, *Murder at the small koppie*, 59, 80 [Note 3].
- 43 Marikana Commission, Heads of argument of evidence leaders, 37-38 [Note 2].
- 44 See also: J Cronin, Some of the underlying systemic factors behind the Marikana tragedy, *Umsebenzi Online*, 30 August 2012, www.sacp.org.za/main.php?ID=3733. Suspicions of a similar nature were articulated at the time of the conflict at Amplats from 1996 to 2000 (D Bruce, The operation of the criminal justice system in dealing with the violence at Amplats, 95 (footnote 9) [Note 35]).
- 45 In May 2016, press reports indicated there was evidence that Mr Mokwena had been an agent of the State Security Agency at the time of the Marikana events (P Myburgh, Lonmin boss was a 'spy', *City Press*, 29 May 2016, <http://city-press.news24.com/News/lonmin-boss-was-a-spy-20160528-2>).
- 46 Marikana Commission of Inquiry, Exhibit JJJ192, Untitled document with header '16/08/2012, Lonmin/ Briefing with the SAPS Commissioner' [transcript of meeting between Provincial Commissioner Mbombo and representatives of Lonmin on 14 August 2012], www.marikanacomm.org.za/exhibits/Exhibit-JJJ-192.pdf.
- 47 G Marinovich, *Murder at the small koppie*, 40, 51 [Note 3].
- 48 *Ibid.*, 57.
- 49 *Ibid.*, 57.
- 50 Marikana Commission, Heads of argument of evidence leaders, 348-350 [Note 2]; G Marinovich, *Murder at the small koppie*, 153-155 [Note 3].
- 51 Marikana Commission of Inquiry, Exhibit JJJ192, 4 [Note 46].
- 52 Marikana Commission, Report, 51 [Note 4].
- 53 *Ibid.*, 53-54.
- 54 D Bendile, Reports of intimidation as Pikitup strike continues, *Eyewitness News*, 22 March 2016, <http://ewn.co.za/2016/03/22/Reports-of-intimidation-as-Pikitup-strike-continues>; T Moodie, Igneous Means Fire from below the Tumultuous History of the National Union of Mineworkers on the South African Platinum Mines, *Review of African Political Economy*, 42:146, 2015.
- 55 Marikana Commission, Heads of argument of evidence leaders, 101 [Note 2].
- 56 Marikana Commission, Report, 77-78 [Note 4].
- 57 *Ibid.*, 77.
- 58 *Ibid.*, 77-78.
- 59 *Ibid.*, 76.
- 60 *Ibid.*, 97.
- 61 D Bruce, Summary and analysis of the report of the Marikana Commission, 32-33 [Note 15].
- 62 *Ibid.*, 30-31.
- 63 G Marinovich, *Murder at the small koppie*, 83 [Note 3].
- 64 Marikana Commission, Report, 115 [Note 4].
- 65 Marikana Commission of Inquiry, Exhibit L, South African Police Service: Mine unrest at Lonmin, Marikana – history and build-up, 107.
- 66 Marikana Commission of Inquiry, Written submissions of the South African Human Rights Commission regarding 'phase one', 29 October 2014, 150, www.marikanacomm.org.za/docs/201411-HoA-SAHRC.pdf.
- 67 Marikana Commission, Report, 98-99 [Note 4].
- 68 Marikana Commission, Heads of argument of evidence leaders, 139-142 [Note 2].
- 69 S Vermaak, Statement, Marikana Commission of Inquiry, Exhibit LLL8, 21 January 2014, 1.
- 70 Marikana Commission, Exhibit L, 85-87, 122 [Note 65].
- 71 Marinovich, *Murder at the small koppie*, 92 [Note 3]. See also: Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 155 [Note 66].
- 72 Marikana Commission, Report, 59-60, 7 [Note 4].

- 73 Marikana Commission, Heads of argument of evidence leaders, 110, 181 [Note 2].
- 74 The title refers to the fact that Maj. Gen. Mpenbe was in overall charge of both visible policing and the Operational Response Services division in the North West province.
- 75 Marikana Commission, Heads of argument of evidence leaders, 181 [Note 2]; Marikana Commission, Transcript Day 110 (21 June 2013, Mpenbe), 11792.
- 76 Marikana Commission, Transcript Day 110 (21 June 2013, Mpenbe), 11792. This passage also refers to the fact that in his statement Mpenbe provided reasons for not tasking Calitz with the interception on the 13th, even though strictly this should have been Calitz's role as operational commander.
- 77 Marikana Commission, Heads of argument of evidence leaders, 195 [Note 2].
- 78 Marikana Commission, Report, 136 [Note 4].
- 79 Marikana Commission, Report, 137-138 [Note 4].
- 80 Marikana Commission, Transcript Day 119 (19 August 2013, Mpenbe), 12282.
- 81 Marikana Commission, Heads of argument of evidence leaders, 223 [Note 2].
- 82 Marikana Commission, Report, 557 [Note 4].
- 83 Marikana Commission, Report, 139-143 [Note 4]; Marikana Commission, Heads of argument of evidence leaders, 233-238 [Note 2].
- 84 Marikana Commission, Exhibit L, 42, 64, 115, 131, 136-147 [Note 65].
- 85 Names included are primarily those who were central to the command system up to the launch of the 'tactical intervention' on Thursday, 16 August. Note that Brig. Calitz is more significant for his acts and omissions once the intervention was launched and not prior to this point. Maj. Gen. Naidoo is not included in the table as he was not a key figure in the command system in the build-up to the launch of the 'tactical phase' on the 16th. Naidoo was singled out for criticism in the Marikana Commission report for his role during the intervention.
- 86 Marikana Commission, Heads of argument of evidence leaders, 420 [Note 2].
- 87 Scott, Consolidated statement, 17 [Note 1].
- 88 Marikana Commission, Report, 411-418 [Note 4].
- 89 J Nichols, The shocking collusion behind the Marikana miners' massacre, *Media for Justice*, 19 August 2013, www.mediaforjustice.net/the-shocking-collusion-behind-the-marikana-miners-massacre/.
- 90 *Ibid.*
- 91 M Marks and D Bruce, Groundhog Day? Public order policing twenty years into democracy, *South African Journal of Criminal Justice*, 27:3, 2014.
- 92 See, for instance: Marikana Commission, Heads of argument of evidence leaders, 57-62 [Note 2]; Scott, Consolidated statement, 111-2 [Note 1].
- 93 In respect of Mbombo: Marikana Commission, Report, 366-7 [Note 4]; Mpenbe, Marikana Commission of Inquiry, Exhibit HHH2, Major General MW Mpenbe Deputy Provincial Commissioner: Operational Services North West Province, 8, www.marikanacomm.org.za/exhibits/Exhibit-HHH-02.pdf; Marikana Commission of Inquiry, Exhibit GGG27.1, Major General Annandale, Career developments, www.marikanacomm.org.za/exhibits/Exhibit-GGG-27-1.pdf; Scott, Consolidated statement, 105 [Note 1].
- 94 Scott, Consolidated statement, 105 [Note 1]. Standing Order 262 has since been replaced by National Instruction 4 of 2014.
- 95 Marikana Commission, Report, 551 [Note 4].
- 96 See: Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 164-165 [Note 66].
- 97 *Ibid.*, 165-166.
- 98 G White, Supplementary statement of Gary White MBE, Marikana Commission of Inquiry, Exhibit BBBB4, 21 June 2014.
- 99 Marikana Commission, Heads of argument of evidence leaders, 341 [Note 2].
- 100 Marikana Commission, Transcript Day 11 (9 November 2012, Scott), 1270; Marikana Commission, Exhibit L, 174 [Note 65].
- 101 Marikana Commission, Report, 513-515 [Note 4]; Marikana Commission, Heads of argument of evidence leaders, 293-296, 341 [Note 2]; M Phiyega, Statement of National Commissioner of the SAPS – General M.V. Phiyega, Marikana Commission of Inquiry, Exhibit FFF2, 12 March 2013, 6-7. www.marikanacomm.org.za/exhibits/Exhibit-FFF-02.pdf.
- 102 Marikana Commission, Report, 183 [Note 4].
- 103 Later, the report refers to the decision as having been made 'on 15 August, allegedly by Lieutenant General Mbombo.' (*Ibid.*, 444).
- 104 Marikana Commission, Transcript Day 295 (5 November 2014, Budlender), 38681.
- 105 Marikana Commission, Transcript Day 77 (22 April 2013, Annandale), 8198-9.
- 106 She was appointed on 13 June 2012.
- 107 Marinovich, Murder at the small koppie, 149 [Note 3]; D Bruce, Mthethwa set the scene at Marikana, *Mail & Guardian*, 10 July 2015, <http://mg.co.za/article/2015-07-11-mthethwa-set-the-scene-at-marikana>.
- 108 Marikana Commission, Report, 444-5 [Note 4].
- 109 *Ibid.*, 452.
- 110 *Ibid.*, 341.
- 111 *Ibid.*, 444-5.
- 112 Marikana Commission, Report, 445-448 [Note 4]; D Bruce, Mthethwa set the scene at Marikana [Note 107].

- 113 Marikana Commission, Heads of argument of evidence leaders, 529-557, 559 [Note 2].
- 114 The Constitution of the Republic of South Africa (Act 108 of 1996), section 199(7).
- 115 Marikana Commission, Report, 366-7 [Note 4].
- 116 *Ibid.*, 367.
- 117 I am partly indebted to Gary White for this observation (email message, 28 July 2015).
- 118 Scott, Consolidated statement, 21 [Note 1].
- 119 *Ibid.*, 25.
- 120 *Ibid.*, 26.
- 121 *Ibid.*, 26.
- 122 This would have been in terms of regulations passed under section 2(2) of the Dangerous Weapons Act (Act 71 of 1968, as amended). In terms of section 2(4) and 2(1) of the Act, the strikers could be liable to a fine or imprisonment for up to two years. The 1968 Act was repealed in 2013 in terms of the Dangerous Weapons Act (Act 15 of 2013). The Act also amended the Regulation of Gatherings Act (Act 205 of 1993). The offence of carrying dangerous weapons at a gathering is now an offence under the latter Act.
- 123 Scott, Consolidated statement, 23, [Note 1].
- 124 *Ibid.*, 47.
- 125 Marikana Commission, Report, 10 [Note 4].
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- 129 *Ibid.*, 54.
- 130 *Ibid.*, 27.
- 131 *Ibid.*, 44.
- 132 *Ibid.*, 49.
- 133 Marikana Commission, Heads of argument of evidence leaders, 318-9 [Note 2].
- 134 Marikana Commission, Heads of argument of evidence leaders, 301-6 [Note 2].
- 135 Scott's plan is outlined in: Scott, Consolidated statement, 82-89 [Note 1]; Marikana Commission, Heads of argument of evidence leaders, 319-325, 636 [Note 2]. Criticism of the plan includes: Marikana Commission, Report, 339-40 [Note 4]; Marikana Commission, Heads of argument of evidence leaders, 329, 337-339, 366, 575-576 [Note 2]; Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 374 [Note 66]; G White, Final statement of Gary White MBE, Marikana Commission of Inquiry, Exhibit JJJ178, 4 October 2013, 68-73, 86.
- 136 Scott, Consolidated statement, 27.
- 137 *Ibid.*, 83-4.
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- 155 Marikana Commission, Report, 205 [Note 4].
- 156 *Ibid.*, 346.
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- 163 Scott, Consolidated statement, 44 [Note 1].
- 164 Marikana Commission, Transcript Day 231 (20 May 2014, McIntosh), 28629.
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- 170 McIntosh, Further statement of Colonel McIntosh, 5 [Note 169].
- 171 Marikana Commission, Report, 177 [Note 4].
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- 174 Marikana Commission, Heads of argument of evidence leaders, 348 [Note 2] PLUS 2 AFTER THIS
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About this monograph

This monograph examines the South African Police Service (SAPS) in the build-up to the Marikana massacre: the killings by police of 34 striking miners on 16 August 2012 at the Lonmin Marikana mine. The monograph focuses on decision-making and the exercise of authority and influence by the senior leadership of the SAPS.

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Strikers moving between the small kraal and South African Police Service vehicles while being fired on by Public Order Police with rubber bullets at Marikana on 16 August 2012. The picture was taken 13 seconds before Tactical Response Team (TRT) members and other police fired on the strikers, killing 17. Some police involved in the shooting apparently believed they were being attacked by the strikers. Mgcineni Noki, leader of the strikers, has a green blanket and is partially visible on the left of the group. Another 17 strikers would be killed 500 metres away in another series of shootings that started 15 minutes later.

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