

MARIKANA COMMISSION OF INQUIRY

The obligation to investigate and an opportunity for reform

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On 16 August 2012, members of the South African Police Service (“SAPS”) lethally shot 34 people at Lonmin Mine, Marikana. The shooting occurred after a week of violent events at the mine due to an ongoing labour dispute. The strike started in the week of 9 August and culminated in the shooting by the SAPS on 16 August, a shooting that has been compared to events in a pre-democratic South Africa.

In the closing submissions on behalf of some of the families of mineworkers who were shot and killed in the week of 9 to 16 August 2012, Advocate Dumisa Ntsebeza SC, describing the tragic events on 16 August 2012¹ and the claim of self-defence by the SAPS said²:

Is that, what can be justified on any basis in a democratic constitutional State? I have no doubt that even if it was in my personal safety defence, even if a member of the SAPS was acting in my interest, I would never find it was justified for them to use high velocity firepower to remove a perceived threat 30 metres away in that fashion, not in my name. It should not be in our name as a society. It should not be in the name of this Commission that this Commission has sanctioned the disfigurement of persons in that fashion. It should never be in the name of our democracy, not in the name of the Constitution. It just should not happen.

Factual background to the events at Lonmin mine

A demand for an increase in wages by Rock Drill Operators (“RDOs”) at Lonmin’s Marikana operations resulted in strike action at the mine. The strike action and the demand for a living wage by approximately three thousand mineworkers started on 9 August 2012 and continued through the week. The labour dispute at Lonmin arose as part of broader dissatisfaction across the platinum industry and followed unrest at neighbouring mines. The week was violent. On 12 August 2012, four individuals were killed. Two Lonmin security guards were brutally hacked to death and two mineworkers were killed with multiple stab wounds and fractures to the skull. On 13 August 2012, five people including two policemen and three mineworkers tragically lost their lives in a confrontation between striking mineworkers and members of the SAPS. On 14 August 2012, a mineworker was found

¹ See <http://www.reuters.com/video/2012/08/16/south-african-police-open-fire-on-striki?videoid=237100070> (Warning: video contains content that may be upsetting)

² Transcript Day 297, p.39237, 11 November 2014 (available at <http://www.marikanacomm.org.za/transcripts/day297-141111Marikana.pdf>)

brutally stabbed to death. On 16 August, 34 people were lethally shot by members of the SAPS. In addition to those who lost their lives, many were injured and some suffered devastating and permanent disablement. There was widespread damage and destruction to property.³

Establishment of the Marikana Commission of Inquiry

Shortly after these events on 23 August 2012, President Zuma appointed a commission of inquiry under section 84 of the Constitution of the Republic of South Africa, 1996.⁴ Retired Judge of the Supreme Court of Appeal, Judge Ian Farlam was appointed as Chairperson, and senior advocates Advocate Bantubonke Tokota and Advocate Pingla Hemraj were appointed as additional commissioners. The Marikana Commission of Inquiry was appointed to:

*Investigate matters of public, national and international concern arising out of the events at the area commonly known as Marikana Mine in Rustenburg, North West Province from Saturday 9 August – Thursday 16 August, 2012 which led to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested and damage and destruction to property.*⁵

The Marikana Commission of Inquiry (“Marikana Commission / the Commission”) was mandated to inquire into, make findings, report on and make recommendations concerning the conduct of Lonmin Plc.; the conduct of the SAPS; the conduct of the trade unions, namely the Association of Mineworkers and Construction Union (“AMCU”) and the National Union of Mineworkers (“NUM”); and the conduct of individuals and loose groupings.⁶ Under its Terms of Reference, the Commission is also empowered to refer any matter for prosecution, further investigation or the convening of a separate enquiry where appropriate.

The Commission started hearings in October 2012. Those hearings continued through to November 2014. The Commission heard evidence for 300 days and also considered large volumes of documentary, video and photographic evidence. The Commission is due to file its final report, findings and recommendations at the end of March 2015.

This note is not intended to cover all aspects of the Commission’s investigations or to cover the evidence before the Commission in any detail. Nor is it meant to presuppose findings or recommendations that may be made by the Commission. In the context of accountability for violations of the right to life this note provides a basic overview of the domestic legal framework governing the use of force by law enforcement officials, and examines relevant international standards. Without focusing on findings that may be made by the Commission in March 2015, it discusses key recommendations to improve accountability mechanisms in the SAPS, as proposed by expert policing witnesses and various parties before the Commission.

³ For further details on the events in the week of 9 – 16 August 2012, see Amnesty International at <http://www.amnesty.org/en/news/south-africa-full-accountability-marikana-killings-urgently-needed-2014-08-15>; the South African Human Rights Commission at <http://www.sahrc.org.za/home/index.php?ipkContentID=114&ipkMenuID=95>; and the Socio-Economic Rights Institute of South Africa at <http://www.seri-sa.org/index.php/advocacy-8/marikana>

⁴ Presidential Proclamation 50 of 2012, Government Gazette No. 35680. See also <http://www.marikanacomm.org.za/>

⁵ Presidential Proclamation 50 of 2012, Government Gazette No. 35680

⁶ The Commission was originally mandated to investigate the role played by the Department of Mineral Resources and any other government department or agency. This paragraph was deleted by an amendment to the Terms of Reference on 25 April 2014, see <http://www.marikanacomm.org.za/docs/20140425-tor-amendment.pdf>

The conduct of the SAPS at Marikana

In respect of the investigation into the conduct of the SAPS, the Commission must investigate the policing operation at Marikana, and in particular:

1.2.1 *The nature, extent and application of any standing orders, policy considerations, legislation or other instructions in dealing with the situation which gave rise to this incident;*

1.2.2 *The precise facts and circumstances which gave rise to the use of all and any force and whether this was reasonable and justifiable in the particular circumstances;*

1.2.3 *To examine the role played by SAPS through its respective units, individually and collectively in dealing with this incident; and*

1.2.4 *Whether by act or omission it directly or indirectly caused loss of life or harm to persons or property.*

Violations of the right to life

There are two components to the right to life – preventative and investigatory. The preventative component recognises that every person has the right to be free from the arbitrary deprivation of life. Where it is alleged that there has been an arbitrary deprivation of the right to life, the investigatory component requires a proper investigation into the alleged deprivation and that those responsible are held to account. Herein lies the duty that is placed on the state to investigate all suspected arbitrary deprivations of the right to life.

The duty to investigate

The failure to conduct a full, proper and impartial investigation into suspected arbitrary killings is itself a violation of the right to life.⁷ An exhaustive and impartial investigation will include the following factors: an official investigation initiated by the State; an investigation independent from those implicated; an investigation that has the capability of leading to a determination of whether force was justified in the circumstances; a level of promptness and reasonable expedition of the investigation; and a level of public scrutiny.⁸ As reflected in the Commission's Terms of Reference and in accordance with the duty to investigate, the Marikana Commission is required to make findings on whether the force used by members of the SAPS at Marikana was reasonable and justified in all the circumstances.

⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns, A/HRC/26/36, p.14; *Kaya v. Turkey*, European Court of Human Rights, application No. 22729/93 (19 February 1998); and *McCann and others v the United Kingdom*, European Court of Human Rights, application No. 18984/91 (27 September 1995)

⁸ *Isayeva v Russia*, European Court of Human Rights, Application No. 57959/00 (24 February 2005)

International principles governing the requirements for the use of force

The conditions under which force can be used by law enforcement officials are set out in detail in two soft law instruments, *the Code of Conduct for Law Enforcement Officials, 1979* and *the Basic Principles on the Use of Force and Firearms, 1990* (“*Basic Principles*”)⁹. These instruments provide content to the requirements for the use of force and serve as useful guidelines for law enforcement.

The [principle of precaution](#) has been explained as¹⁰:

Once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken “upstream” to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as possible. A failure to take proper precautions in such a context constitutes a violation of the right to life.

According to the principle of precaution, a state may be found to have violated the right to life by not taking sufficient care in placing individual officers in a particular situation, even where the actions of those officers are found to be justifiable in the circumstances.¹¹ Some of the precautions a State is required to take include ensuring that proper command and control structures are put in place; to provide proper training of law enforcement officials in the use of force; ensuring medical assistance is properly available; and adhering to standards on facilitation and control of demonstrations to prevent volatile situations from escalating out of control.¹² The international principle of precaution finds application in South African law and the Terms of Reference of the Marikana Commission.

Under international law, in addition to the measures that are to be taken under the principle of *prevention / precaution*, the following requirements must be met in order for the use of force to be lawful:

Legal basis

The use of force must have a sufficient legal basis, provided in domestic law that is in compliance with international standards and human rights principles.

Legitimate objective

Force may only be used in pursuit of a legitimate objective. The only legitimate objective when lethal force is used is to save the life of a person or to save them from serious injury.

Necessity

The requirement of necessity provides that force should only be used as a last resort and when force is used, the minimum amount of force necessary must be applied. The level of force that is used must also be escalated as gradually as possible.

Proportionality

The requirement of proportionality sets the maximum amount of force that might be used to achieve a legitimate objective. This requirement is reflected in Principle 9 of the Basic Principles as follows:

⁹ Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> and <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

¹⁰ A/HRC/26/36, p.11

¹¹ See *McCann and others v the United Kingdom*, European Court of Human Rights, application No. 18984/91 (27 September 1995)

¹² A/HRC/26/36, p.9

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against an imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person representing such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Relevant domestic law against which the use of force should be assessed

The Marikana Commission must assess the use of all and any force and whether it was reasonable and justifiable in the circumstances, and the role played by the SAPS through its units individually and collectively and whether it directly or indirectly caused loss of life or harm to any person. The right to life and to a large extent the requirements for the use of force under international law have been incorporated into South African law.

The Constitution of the Republic of South Africa, 1996

Chapter Two of the Constitution contains the Bill of Rights, which recognises and protects fundamental human rights. The right to life is protected by section 11 of the Constitution. Section 10 protects the right to human dignity, section 12 protects the right to freedom and security of the person, section 16 protects free speech and freedom of expression, while section 17 entrenches the right to peaceful and unarmed assembly.

Sections 231, 232 and 233 serve to give effect to and to domesticate South Africa's international law obligations. Customary international law is considered law in South Africa, unless it is inconsistent with the Constitution or an Act of Parliament. The Constitution provides that the police service must act, teach and require its members to act in accordance with the Constitution and the law, including customary international law and binding international agreements.¹³ All courts and forums are mandated under section 39 of the Constitution to interpret the Bill of Rights in a manner that promotes the values that underlie an open and democratic society based on human dignity, equality and freedom. In doing so, international law must be considered and foreign law may be considered.

Section 198(d) of the Constitution provides that national security must be pursued in compliance with the law and under section 199(6) no member of any security service may obey a manifestly unlawful order.

The South African Police Service Act, 68 of 1995

The powers, duties and functions of members of the SAPS is provided in section 13 of the SAPS Act, where a member of the police is obliged to perform an official duty in a manner that is reasonable. Section 13 further mandates that where a member is authorized by law to use force, only the minimum force that is reasonable in the circumstances may be used.

Criminal Procedure Act, 51 of 1977

Section 49(2) deals with the use of force in effecting an arrest. In August 2012, section 49(2) provided that where an arrest is resisted and the suspect cannot be arrested without the use of force, force as may be reasonably necessary and proportional in the circumstances to overcome resistance or to prevent the suspect from fleeing may be used. In relation to the use of deadly force, the section provided that such force would be justified in being used where there are reasonable grounds to believe that the force is immediately

¹³ Section 199 of the Constitution

necessary for the purpose of protecting any person from imminent or future death or serious injury; that there is substantial risk that the suspect will cause imminent or future death or serious injury if the arrest is delayed; or the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause serious injury.¹⁴

Regulation of Gatherings Act, 205 of 1993

This Act regulates the holding of public gatherings and demonstrations at certain places and provides for processes related to notice of intended gatherings, consultation and negotiations, the conduct at a gathering, and related matters. Section 9 provides for the powers of police at a gathering, including the powers of the police to call for the gathering to be dispersed under certain circumstances. Section 9 further allows the police to use force in the dispersal of a gathering but such force must exclude the use of weapons likely to cause serious bodily injury or death. The section further prescribes that the degree of force used shall not be greater than is necessary for dispersing the persons and shall be proportionate to the circumstances and to the object to be achieved. Section 9(2)(d) allows, when other methods have proved to be ineffective or inappropriate and where a person's life is in danger or under threat of serious injury, or where a person destroys or does serious damage to valuable movable or immovable property, the police to order the use of force including lethal force by means of firearms and other weapons. The use of force shall not be greater than necessary for prevention of the contemplated actions and the force shall be moderated and be proportionate in the circumstances and for the object to be attained.

Standing Order 262: Crowd Management during Gatherings and Demonstrations

The purpose of Standing Order 262 ("SO 262") is to regulate crowd management during gatherings and demonstrations in accordance with the democratic principles of the Constitution and accepted international standards. SO 262 provides that "the use of force must be avoided at all costs and members deployed for the operation must display the highest degree of tolerance". The use of force and crowd dispersal has to comply with the requirements set out under the Regulation of Gatherings Act. Where the use of force is deemed unavoidable, SO 262 requires that such use of force be in strict compliance with the following:

- Minimum force must be used to accomplish the goal;
- The degree of force must be proportionate to the seriousness of the situation and the threat posed;
- The use of force must be reasonable in the circumstances and must be the minimum force to accomplish the goal; and
- The force must be discontinued once the objective has been achieved.

In addition, SO 262 mandates that the SAPS must play a proactive role in attempting to identify and diffuse any possible conflict before it escalates to violence. It provides *inter alia* for proactive conflict resolution, receiving notice or information of a gathering, threat assessment once information has been received, pre-planning operations, briefing of members, reporting and record-keeping and debriefing.

¹⁴ Section 49(2) has been amended since August 2012 and now provides that deadly force may be used only if the suspect poses a threat of serious violence to any person; or the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later

Public Order Policing (POP) Policy Document on Crowd Management

In its introduction, the POP Policy Document recognises that the vast socio-political changes that have occurred in South Africa require the development of new approaches, tactics and techniques to align the management of crowds with the democratic principles of transparency and accountability and that police actions must be reconciled with the Bill of Rights and statutory provisions pertaining to crowd management. The document deals with a range of activities relevant to crowd management principles. It mandates that any use of force must be graduated in terms of situational appropriateness and deterioration in the mood of the crowd; proportionate to the threat; reasonable in the circumstances; and minimal to accomplish the goal. It mandates that initial alternative options (“less-lethal” options) should first be used.

Other

There are other relevant national orders and instructions of relevance. These include:

- *Standing Order 251: Use of firearms;*
- *Ministry of Police: Policy Guidelines: Policing of Public Protests, Gatherings and major events;*
- *(Draft) National Instruction # of 2012 Crowd Regulations and Management during Public Gatherings and Demonstrations;*
- *Procedural manual: Public Order Police Information Management and Annexure A (Edition 1/2000); Administrative Directive: Public Order (POP) Division: Operational Response Services;*
- *Divisional Directive XX/2012;*
- *POP Operational Standards;*
- *Use of force directive: Public Order Police (POP) Division: Operational Response Services (ORS); and*
- *Public Order Police (POP): Use of force during crowd management – 3/1/5/1/174 dated 2012-07-20.*

Principles of criminal law and private or self-defence

The provisions on the use of force by law enforcement officials in the different contexts described above do not in any manner detract from principles of South African criminal law and the common law principles of private or self-defence. The SAPS and its individual members largely claim that those members, who fired shots at the striking mineworkers and other individuals present at the time, were acting in private or self-defence.

The Independent Police Investigative Directorate

The Independent Police Investigative Directorate (“IPID”) was established under Act 1 of 2011, as required under section 206 of the Constitution. IPID is a body independent from the SAPS, established to ensure oversight of the police, by *inter alia*, undertaking independent and impartial investigations of criminal offences allegedly committed by members of the police and enhancing accountability and transparency by the police, in accordance with the principles of the Constitution. IPID announced that it would undertake a full investigation into the events at Marikana shortly after they occurred, although nothing further is known about the status of its investigation at this stage.

Importance of findings of Marikana Commission of Inquiry both to satisfy the obligation under right to life but also as part of longer-term change in policing

Not only is the investigation by the Marikana Commission in part-fulfillment of the South African State's obligation under the right to life, so too is it an opportunity to genuinely and critically reflect on policing in a democratic South Africa and has the potential to make important recommendations in this regard. Under its Terms of Reference, the Commission is empowered to make findings, report on and make recommendations on those matters inquired into and may refer any matter for prosecution, further investigation or the convening of a separate enquiry.

Systemic accountability of the SAPS

The SAPS were criticized in the Commission by various parties not only for its conduct during the policing operation at Marikana but also for its conduct after the events and throughout the Commission process. The SAPS were criticized for the failure to self-criticize, introspect or investigate events that took place at Marikana. They were also criticized for taking an overly defensive approach and withholding from and / or failing to disclose important evidence to the Commission.¹⁵ They have been accused of fabricating evidence in favour of their case before the Commission.¹⁶ The message that was sent from senior police leadership directly after the events at Marikana was a message that the SAPS had done their best, that they had done nothing wrong and that the police actions at Marikana represented the best of responsible policing.¹⁷

The Commission is yet to make its findings and will have to determine whether the conduct of the police, during the policing operation, directly after and as a party under investigation at the Commission, was one that could be expected of a police service in a constitutional democratic state.

Chapter Twelve of the National Development Plan ("NDP") 2030, "Building Safer Communities" includes in its vision for 2030 a well-resourced and professional police service, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice. The NDP recognizes that in order to achieve this vision, the police service must be professionalised and demilitarised.¹⁸ The NDP also recognizes that the SAPS has a serial management crisis that needs to be addressed urgently. The systemic problems and challenges faced by the SAPS are well-known and reported on a regular basis.¹⁹

The Marikana Commission presents an opportunity to examine some of these challenges. How could such a tragic event take place in a democratic South Africa based on fundamental values of equality and dignity? What are the deeper underlying issues that need to be addressed to avoid similar tragedies from taking place?

¹⁵ Heads of argument of the Evidence Leaders, p.627; Part 4, section 1 of the South African Human Rights Commission's heads of argument; and Submission made by Amnesty International to the Marikana Commission (the heads of argument of all parties are available at <http://www.marikanacomm.org.za/documents.html>)

¹⁶ Heads of argument of the Evidence Leaders, p.628; Part 4, section 1 of the South African Human Rights Commission's heads of argument

¹⁷ See <http://www.citypress.co.za/news/phiyega-thanked-cops-for-best-of-responsible-policing-at-marikana/>

¹⁸ The Vision Statement and NDP is a plan for 2030 by which time South Africa seeks to eliminate poverty and reduce inequality. The NDP is available at <http://www.npconline.co.za/medialib/downloads/home/NPC%20National%20Development%20Plan%20Vision%202030%20lo-res.pdf>

¹⁹ See Presentation by Gareth Newham, Institute for Security Studies, <http://www.marikanacomm.org.za/docs/20140409-SeminarPhase02-Newham.pdf>; <http://www.ssrresourcecentre.org/2013/03/21/policing-in-south-africa-a-state-of-crisis>; and <http://www.issafrica.org/iss-today/roots-of-the-crisis-facing-the-south-african-police>

Key recommendations on systemic change and accountability within the SAPS

A number of recommendations were made to the Marikana Commission by policing experts and parties to the Commission, following two years of investigations into the events. Some of these recommendations are discussed below. Overall, strong and consistent leadership, which sets transparency and accountability as key objectives of the SAPS, is required.²⁰

The appointment and establishment of an Independent Oversight Body

As a starting point, it is recommended that an Independent Oversight Body (“IOB”) be established to ensure the implementation of all recommendations made by the Commission and endorsed by the Executive.²¹ Such a body will not only provide oversight of the implementation process but will also provide additional expertise to the police during the course of the implementation process.

Recommendations to improve accountability within the SAPS

1. The Standing Orders must more clearly require a full audit trail and adequate recording of policing operations.²²

2. The SAPS and its members must accept that they have a duty of public accountability and truth telling.²³ Linked to this duty there is a need to properly train SAPS members in their obligations for providing evidence.²⁴

3. Those in command of public order policing events must introduce decision-making logs to record all planning and operational decisions.²⁵

4. A system to monitor the use of force by its members should be introduced by the SAPS.²⁶

5. Disciplinary codes should provide for additional responsibility of those officers in command or supervisory positions, for the actions of those who work under their command.²⁷

6. The SAPS must ensure that firearms and ammunition issued to members can be forensically matched. Robust systems of accounting for firearms and ammunition issued to individual officers must be introduced.²⁸

7. The IPID staffing and resourcing must be reviewed to ensure it is able to carry out its functions effectively. The IPID system must be reviewed and revised to ensure that it does not create a perverse incentive for SAPS members to conceal errors and mistakes made.²⁹

8. The introduction of a post-incident management regime should be introduced, to assist in resolving disputes and contradictions in the roles of the SAPS and IPID, following an operation.³⁰

9. A parliamentary review on the existing SAPS provisions for accountability of tactical units should be undertaken with a view to making recommendations for more systemic oversight of their functioning.³¹

²⁰ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument, available at <http://www.sahrc.org.za/home/index.php?ipkContentID=114&ipkMenuID=95>

²¹ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²² Heads of argument of the Evidence Leaders, p.676

²³ Heads of argument of the Evidence Leaders, p.677

²⁴ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²⁵ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²⁶ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²⁷ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²⁸ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

²⁹ Heads of argument of the Evidence Leaders, p.677; recommendations made by Mr. de Rover, p.3

³⁰ Recommendations made by Mr. White MBE: Annexure B to the South African Human Rights Commission’s heads of argument

³¹ Submission by Robert David Bruce, available at <http://www.marikanacomm.org.za/documents.html>. Similarly, see recommendations made by Mr. de Rover, p.2

Recommendations on professionalizing and depoliticizing SAPS

1. Senior appointments within the police should be depoliticised. Only persons with expert knowledge, who have a role in operational decisions, should be appointed to senior police positions.³²

2. There needs to be public commitment and follow through actions to professionalize the police service.³³

3. In respect of the control of operational decisions, in large and specialised policing operations, the role of the executive in operational decisions should be limited to providing guidance as to policy. Such guidance should be appropriately and securely recorded, and be made public.³⁴

4. The operational decisions in public order policing operations must be made by an officer in overall command with relevant and recent training, skills and experience in public order policing.³⁵

Recommendations to demilitarize the SAPS

Demilitarization of the police must be undertaken as a top priority. This includes a critical review of the organizational culture and sub culture of the SAPS to assess the effects of militarization, demilitarization, remilitarization and the serial crises of top management.³⁶

Conclusion

The Marikana Commission was established to investigate the truth, in search of restoration and justice. It is hoped that the resource intensive commitment to the investigation over the past two years will yield positive results. A result that will uncover the truth, ensure restoration and bring those accountable to justice. It is also hoped that the Commission will look forward and make recommendations that will serve to prevent similar incidents from occurring again.

³² Heads of argument of the Evidence Leaders, p.673 and submission by Robert David Bruce, p.21 and the South African Human Rights Commission's heads of argument

³³ Heads of argument of the Evidence Leaders , p.671

³⁴ Heads of argument of the Evidence Leaders, p.671 and submission by Robert David Bruce, p.19

³⁵ Heads of argument of the Evidence Leaders, p.673

³⁶ Heads of argument of the Evidence Leaders, p.672 and recommendations made by Mr. Hendrickx, p.3

Further reading

1. Release by President Jacob Zuma of the Report of the Judicial Commission of Inquiry into the events at the Marikana Mine in Rustenburg, Union Buildings, Pretoria.

The report includes recommendations to law enforcement, the businesses, and the participants of the protests.

<http://www.thepresidency.gov.za/pebble.asp?relid=19997>

2. The murder fields of Marikana. The cold murder fields of Marikana.

Some of the miners killed in the 16 August massacre at Marikana appear to have been shot at close range or crushed by police vehicles. They were not caught in a fusillade of gunfire from police defending themselves, as the official account would have it. Greg Marinovich spent two weeks trying to understand what really happened. What he found was profoundly disturbing

<http://www.dailymaverick.co.za/article/2012-08-30-the-murder-fields-of-marikana-the-cold-murder-fields-of-marikana#.VJQQcMACKQ>

3. Marikana Commission: Police's defence collapsing

Late last week, the SAPS expert on policing blew away the police and state's narrative on Marikana, even going as far as to say that the massacre was an executive decision imposed on the police.

<http://www.dailymaverick.co.za/article/2014-09-09-marikana-commission-polices-defence-collapsing/%23.VA6-L2OHPIU#.VJQRNcACKQ>

4. Marikana: The end of a bitter road promises little closure

Vested interests have conspired to keep the truth about the Marikana massacre buried and the curse of unchecked mining goes on

<http://mg.co.za/article/2014-11-13-marikana-the-end-of-a-bitter-road-promises-only-closure>

5. The closing of the Marikana Commission: The Thin Blue Lie.

As the final days of the Marikana Commission of Inquiry draw to a close, and a disputation of lawyers encapsulate their work over the last two years, Greg Marinovich reports on what has changed from 2012 until now

<http://www.dailymaverick.co.za/article/2014-11-18-the-closing-of-the-marikana-commission-the-thin-blue-lie#.VJMBrSACKQ>

6. Marikana massacre and neoliberal plunder

The biggest massacre by police of civilians in post-apartheid South Africa continues to haunt the collective conscience of a nation.

<http://mg.co.za/article/2015-08-17-marikana-massacre-and-neoliberal-plunder>