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South Africa: Marikana Commission Report only partly addresses accountability leaving families with a long struggle for closure

The long-awaited report from the Marikana Commission of Inquiry, released by President Jacob Zuma on 25 June, makes damning findings about the actions of the police. The lengthy report, however, stops short of identifying all those responsible for the killing of 34 protestors, the majority of them striking mine workers, on 16 August 2012, and holds back in some cases from justifiable recommendations. The circumstances of the deaths of ten other people in the preceding days also remain to be fully clarified, and the Commission referred them to the Director of Public Prosecutions to look into further.

The Commission's report confirmed that the "decisive cause" of the 34 deaths on 16 August was the decision taken by senior police officials on the previous night to implement what was accepted by the Commission as an "inexplicable" and "frankly reckless" plan to disperse the strikers, using force if necessary, by the end of the next day. The Commission concluded that all of the police officials in the meeting "must accept responsibility" for that decision. Despite being informed of the risks of bloodshed, they "nevertheless proceeded with that plan at a time when there was no reason to do so".

The operational commanders should have, but failed to challenge the order to carry out that plan, despite foreseeing the risks of loss of life. They too must be held accountable, the Commission concluded. The finding made by the Commission is an important step in identifying senior police officials who should be held accountable for the deaths on 16 August.

In a Briefing¹ on the events at Marikana issued last August, Amnesty International stated that the decision on the night of the 15th was unlawful under both international and domestic law. It led to the deployment of police armed with live ammunition, with its terrible consequences. It is critical that all those primarily responsible for the decision and its outcome should be investigated with a view to criminal prosecution, and that the families of the deceased as well as the survivors receive full reparations.

The Commission did not accept the view of some of the legal parties at the proceedings that the police deliberately led the dispersing strikers into a trap at what became known as Scene 1.

¹ Briefing here with link

Seventeen of the protestors died in a hail of semi-automatic rifle fire at that scene. While the Commission did not make a clear finding on the police version that the strikers had attempted to attack the police during the course of the operation, evidence in the report and presented to the Commission confirms that there was no attack. The Commission attributed the catastrophic outcome mainly to absent or reckless planning, the deviation from public order policing practices and a reliance on tactical units armed with assault rifles, which the Commission accepted as "effectively operating as a firing squad".

Shortly after, at a second location, which became known as Scene 2, some 500 meters away, police shot 295 rounds of live ammunition into a small rocky area to which some of the strikers had fled. Seventeen more of the strikers were fatally shot there. The Commission strongly criticised the police conduct in circumstances where very few of the strikers who had been killed had been shooting at the police. Although the police loss of command and control at that scene was one element in the high loss of life, the Commission accepted objective and other evidence that the police conduct amounted to a "paramilitary operation, with the aim of annihilating those who were perceived as the enemy".

In light of objective evidence and these assessments by the Commission, a more fitting recommendation would have been for the National Commissioner of Police and the North West Provincial Commissioner of Police to be referred for investigation for possible criminal charges by the prosecuting authorities, rather than the Commission's recommendation that they be subjected to an inquiry into their fitness for office. On their own evidence these two senior police officials admitted they were at the crucial decision-making meeting on 15 August which made the decision to use force to break-up the strikers' gathering in Marikana. The Provincial Commissioner oversaw the deployment of units using live ammunition. Moreover, both participated in the concealment of evidence relating to this crucial meeting.

In its report the Commission accepted the legal principle by which a decision to implement a plan on a particular day, which would require more force than if the plan were carried out on another day or at another time, this would be an "illegal order". The only qualification of this conclusion would be if there were "compelling circumstances requiring action" on that particular day. Evidence presented to the Commission and included in its Report indicate that there were no compelling circumstances on the evening of 15 August 2012 which would have justified the deployment of lethal force.

The Commission's recommendations were more robust in respect of a named police General who was both a shooter at Scene 2 and had failed without plausible explanation to lead the paramedic unit, which fell under his command, to Scene 1. Further unnecessary deaths were a consequence of this conduct. The Commission also recommended that the entire set of events at Scene 2 should be referred for criminal investigation under the direction of a senior Advocate in the Prosecuting Authority.

The Commission's report also criticised the sustained obstruction of its work by police officials and commanders. The extensive and intentional cover-up and destruction of critical evidence and creation of a "materially false version" of events affected the Commission's ability to get to the bottom of the chain of decision-making and responsibility. Police closed their ranks and with a few exceptions persisted in this conduct until the end of Commission proceedings in November 2014. Police witnesses, most particularly the National Commissioner of Police, continued

throughout the Commission proceedings to be evasive in their evidence concerning the meeting on 15 August and failed to provide any explanation for the decision taken at that meeting. The Commission concluded that "the only reasonable inference to be drawn from their failure to do so is that they [were] hiding something".

Reviewing available evidence concerning the role of the Minister of Police, among others, the Commission concluded that it could not rule out that pressure from the executive was one of the factors behind the decision of 15 August. It also criticised the top police officials for allowing "improper and inappropriate political considerations" to affect their decisions and conduct. This criticism also extended to relationships with LONMIN officials, most strikingly so by the Provincial Commissioner of Police, who had led the decision-making meeting on the night of the 15th and was in charge of the operation on the 16th.

For the families of those who died prior to and on 16 August 2012 or the injured, there was little consolation in the Commission's conclusion that a general compensation fund was unfeasible. They face many years of continued struggle to secure their right under international human rights law to full and adequate compensation and redress.

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