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# The Marikana Killings and Labour Dispute Resolution in South Africa: Implications of an Inquiry

**Toby Fisher**

Representative of the South African Human Rights Commission, Marikana Commission of Inquiry

**Gary White MBE**

Director of Operations, Ineqe Group; Expert Witness on Policing, Marikana Commission of Inquiry

**Chair: Muzong Kodi**

Associate Fellow, Africa Programme, Chatham House

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## Introduction

In 2012 South Africa's President Jacob Zuma appointed a commission of inquiry into the killing of more than 40 miners at Marikana in August of that year, including 34 on 16 August – an incident described as the worst post-apartheid use of lethal force by the South African police. The massacre brought to light issues of labour-dispute resolution, public-order policing and accountability.

On 4 August 2015 the Africa Programme at Chatham House hosted a discussion centred on the commission of inquiry's recently published report on the Marikana killings. Toby Fisher and Gary White MBE discussed the report with an audience of interested parties, as well as the potential impacts of the report on industrial stakeholders, and the wider consequences of the Marikana killings for South Africa.

The meeting was held on the record. The following summary is intended to serve as an aide-memoire for those who took part, and to provide a general summary of discussions for those who did not.

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## Toby Fisher

Thirty-four miners were shot dead by the police in the afternoon of 16 August 2012 at Marikana. More than 70 others were seriously injured. The shootings took place in two separate areas, termed Scene 1 and Scene 2. At Scene 1, 18 people were killed in an incident where police claimed that they were acting in self-defence after coming under attack. Some mystery remains over the motive behind the killings at Scene 2, as no account has been given about what happened there. Many of those killed in the second area may not have been deliberately targeted but may have been hit by stray bullets.

Much criticism has been levelled at the commission of inquiry since it published a report on Marikana. However, a great deal of that criticism was overblown, and there remains substantial value in maintaining the commission. After Marikana, the police maintained that they had faced an unprovoked attack carried out by an armed mob determined to kill police officers. The commission found that this narrative contained discrepancies. According to its findings, the police had been ordered by senior command to carry out the attack despite warnings of likely deaths and injuries. The commission also found that all of the deaths at Marikana were unlawful. It is highly doubtful that the striking miners intended to attack the police.

The South African government should be credited for establishing a commission of inquiry. The government acted commendably in refraining from interfering with the commission, thereby enabling it to operate transparently. The commission's terms of reference evolved over time, limiting its scope. Originally, the terms of reference were much broader, and mandated the commission to investigate long-term causes of conflict including labour relations, inter-union rivalry and pay conditions. This could have provided South Africa with the opportunity to engage more objectively with long-standing issues, but unfortunately amendments to the terms of reference limited the scope of investigation to focus mainly on police culpability.

One of the most difficult challenges in organizing a formal investigation into the Marikana killings was locating an independent expert capable of making informed criticism about the situation.

## Gary White MBE

The contextual complexities of South Africa made taking on the position of independent expert for the commission of inquiry problematic, but a cursory examination of news footage of the Marikana incident clearly revealed that gross injustice had taken place.

A prominent concern at the outset of the investigation was that the commission's inquiry might focus too closely on the actions of individual police officers. While those who shot miners should be held accountable, there is also a need to investigate the chain of command that allowed officers to use such violence. Therefore, the commission also investigated the supply of weapons and the design of police protocol. Evidence was sought to explain both individual and organizational responsibility.

Several failures were discovered through this approach. These included shortcomings in the gathering of intelligence, police response to available intelligence, the police planning process, communication and briefing disconnects, and failures in command and control. The police readily acknowledged a particularly acute absence of control at Scene 2.

Another failure was in the use of force. During the investigation, focus was placed on collective excessive use of force. According to footage filmed by Reuters at Scene 1, 328 rounds of live ammunition were fired in just over a minute. These rates of shooting are *prima facie* evidence of the collective excessive use of force.

There is a culture of impunity within the South African police force. Senior police officials involved in the Marikana operation made several statements in the days immediately after the killings that implied a lack of accountability. The national police commissioner at the time described the operation as representing the 'best in professional policing'. The officer in charge on the ground stated on the day of the shootings that the police had done everything correctly. These statements reveal the extent of impunity among officials.

Police statements in conjunction with the evidence suggest that the Marikana incident was politically influenced. Political interference impacted the way the police engaged the crowd at Marikana. The police were also influenced by the antagonism that they had faced three days previously, and the killing of two policemen.

The evidence showed that police had no plan for the intervention in Marikana. The strategy that was apparent was made up very quickly, and the police planning documents submitted to the commission were found to have been prepared 10 days after the shootings. Nobody challenged the tactics suggested in the plan, which included intervention by the public order police armed with non-lethal weaponry such as tear gas.

The public order police were supposed to be supported by the Tactical Response Team (TRT), a more heavily armed group within the police service. TRT officers were captured in the footage filmed by Reuters, and were armed with R5 rifles. Most significantly, the police plan stated that officers were mandated to return to their vehicles and await TRT support if they came under attack. TRT intervention was to be carried out proportionately. The term 'proportionately' in the police plan facilitated the perpetuation of violence without accountability. Those in command were able to divorce themselves from the issues on ground, underlining the lack of accountability.

The attitude of senior officials regarding the incident affected the investigation. Many senior officials claimed that they were not aware of what happened at Scene 1, and statements provided by officials

during the investigation lacked detail. There was also an intentional withholding of material evidence. These factors influenced the commission's findings during its initial investigation, which focused heavily on the process of planning. At first, the investigation appeared to suggest that provisions for the relocation of the miners justified the violent response of the police force, but it was then discovered that the police plan had only been designed after the incident.

The commission of inquiry identified four elements that were key to the Marikana incident. It found evidence of a cover-up by the South African police, and of the possibility of political involvement – right up to cabinet level. Its recommendations followed the McCann principle as established by the European Convention on Human Rights,<sup>1</sup> and called for some senior leaders within the South African police to be referred to prosecutorial authorities and considered for prosecution.

Going forward, the lack of training for senior commanders, and for national and provincial commissioners, should be addressed. Political interference in policing and the culture of impunity must also be tackled.

### Toby Fisher

The violence perpetuated in Marikana was not unique, but represented a microcosm of recent policing crises in South Africa. In all recent incidents involving the death of civilians, the police response has suggested a general lack of accountability. Until accountability becomes the core of policing in South Africa, another Marikana could happen. The limit placed on the commission's remit resulted in a missed opportunity to use the inquiry to investigate why violent situations requiring police intervention occur in South Africa.

## Summary of Questions and Answers

### Questions

Can the speakers elaborate on the status of the police plans? Was there a plan made ahead of the Marikana killings that was then abandoned?

How heavily armed were the miners in comparison to the police? Could the South African police force seek international assistance to build on good practice and improve accountability?

### Toby Fisher, Gary White

On 15 August 2012 a secret meeting of the South African Police Service's National Management Forum took place where it was decided that all existing plans should be scrapped, and the strikers should be forced out of the area on the afternoon of 16 August. Crucially, no plan was made concerning how the strikers should be relocated. It is doubtful that any plan was set before the killings, as indicated by the evidence that plans were only designed after the killings had taken place.

The miners were armed with traditional weapons, including pangas, and also had firearms. The police did not have access to the fatal weapons that were deployed by the TRF at Marikana. There were two police

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<sup>1</sup> A summary of Article 2 of the European Convention on Human Rights, concerning right to life, is available at [http://www.echr.coe.int/Documents/FS\\_Life\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Life_ENG.pdf). *Inter alia*, the judgment of the European Court of Human Rights in the case of *McCann and Others v. the United Kingdom* (1995), which informs interpretation of Article 2, addresses the use of lethal force by the state.

water cannons, but the driver of one of the vehicles transporting the cannons had never been trained on how to use it. One of the recommendations of the commission was that an independent body should be established to consider the findings, and to invite international experts to contribute to a review on public order intervention in South Africa. Unfortunately, it is doubtful that such a body will ever be established.

### Questions

Is there anything about the contractual arrangements that govern mining in South Africa that lends to violent events?

Could lives have been saved at Marikana if there had been an adequate medical response?

To what extent was the intelligence used by the commission gathered from informants in the mining company and those involved in inter-union rivalry?

### Toby Fisher, Gary White

The commission was not privy to contracts, but Toby Fisher had seen a memorandum of understanding between the local police force and Lonmin. Nothing in this memorandum appeared unusual or inappropriate. Lonmin could not be faulted for calling the police, and the company does not, and should not, have mechanisms to restrict or dictate the manner of police intervention. However, many people still believe otherwise.

The use of R5 rifles created a situation in which at best only one miner could have been saved by an adequate medical response. The nature of R5 ammunition means that shootings with these rifles are usually fatal. Those who were wounded at Marikana but not fatally were mostly shot by handguns.

Women were just as involved in the Marikana protests as men. The involvement of women indicated that the miners' strike was not simply financially motivated, but also about the overall agreement between the mines and the community, and the poor living conditions to which the community was subjected.

Inter-union rivalry did impact the availability of intelligence to the commission. The intelligence available was insufficient, and it is doubtful that the documents that were made available could be described as intelligence. The police gave evidence admitting that they also faced difficulty in gathering intelligence. Overall, the quantity of intelligence was startlingly low, but even with the evidence available the actions taken by the police seem contrary. There was disagreement within the commission over the extent of intelligence, suggesting the contentious nature of this particular aspect of the investigation.