



## **SUBMISSION TO PORTFOLIO COMMITTEE ON POLICE on the Report of the Marikana Commission of Inquiry**

### **1. Killings at Scene 1**

The Commission makes a prima facie finding that some of the members of the SAPS who fired at the strikers at Scene 1 exceeded the bounds of self and private defence. The SAPS is therefore obliged to identify those members who may reasonably be suspected of having exceeded the bounds of self and private defence, and suspend them pending the outcomes of disciplinary action and other investigations that are recommended by the Commission. The Commission finds that those police officers who continued firing at the strikers after the threat of an attack had dissipated, a point that was determined to have been reached approximately four seconds after the shooting started, should be subject to further investigation by the Director of Public Prosecutions (DPP) of the North West Province. The DPP is directed to consider whether to institute any criminal proceedings in this regard. The three police officers identified in the heads of argument of the SA Human Rights Commission (SAHRC) who indicated that their weapons were on automatic fire must be included as part of this investigation.

### **2. Killings at Scene 2**

The Report of the Commission 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”*. We submit that if the SAPS has not been able to provide credible justification for any of these shootings then they be presumed, prima facie, to be unlawful. According to the heads of argument of the SAHRC *‘Forty strikers who were injured and/ or arrested on 16 August allege that strikers were shot by police while surrendering or injured at Scene 2.’* Two SAPS members also provided evidence that there was an unlawful killing of an injured striker. Based on the testimony of at least two senior police officers, SAPS members at scene 2 continued shooting at the strikers when there was no evidence that any strikers were shooting at them. The statement by the Commission that the SAPS versions do not bear scrutiny also applies to the

killings where SAPS members allege that they shot strikers who were attacking them with spears. These killings too must be regarded as prima facie unlawful, and subject to further investigation with a view to criminal prosecutions.

It is further submitted that the only reasonable step that can be taken at this point in time is for all of the shooters at Scene 2 to be suspended pending an investigation. Should they not be exonerated by such investigation, they must be dismissed from the SAPS.

### **3. Investigative Team**

The Commission refers the deaths and injuries of all persons at Scenes 1 and 2 to the DPP of the North West Province. The Report states *“It is recommended that for the purposes of the investigation, a team is appointed, headed by a Senior State Advocate, together with independent experts in the reconstruction of crime scenes, expert ballistic and forensic pathologist practitioners and Senior Investigators from IPID, and any such further experts as may be necessary. The Commission recommends a full investigation, under the direction of the Director of Public Prosecutions, with a view to ascertaining criminal liability on the part of all members of the South African Police Services who were involved in the events at scene 1 and 2”*.

The Portfolio Committee must ensure that adequate resources are made available to this investigative team to fully discharge the mandate given by the Commission, and that timeframes are provided for this team to report back.

### **4. Board of Inquiry**

It is common cause that President Zuma had asked the national Police Commissioner to provide reasons why a Board of Inquiry should not be instituted to consider her fitness to hold office, and that such response was submitted to the President on 1 August 2015. The response of the National Police Commissioner has not been made public and the President has not indicated when he will determine whether such a Board is to be instituted. In the circumstances it is incumbent on the Portfolio Committee to request the President to provide such timeframes, given the turmoil in the top leadership of SAPS as evidenced by their presence before your committee on 12 August 2015.

### **5. Records of the NMF meetings on 15 August 2012**

The Commission expressed its concern that the leadership of SAPS did not make full disclosure to the Commission and sought to portray a version that was at odds with what actually transpired before, during and after the tragic events of 16 August 2012. At the heart of this lie two issues:

- The Report states: *“The decision not to implement it [the encirclement plan] was clearly dictated solely by the earlier decision that Thursday, 16 August, was to be D-Day. That decision, for which Lt Gen Mbombo and those present at the extraordinary session of the NMF on 15 August 2012 must accept responsibility, was the decisive cause of the 34 deaths on 16 August.”*

The Commission was not able to get a proper report of what transpired at the NMF meeting and the extraordinary meeting that followed on 15 August 2012. The Report states that *‘those who attended the extraordinary session of the NMF should have been able to tell the Commission the reason or reasons why the decision to implement the tactical option on 16 August if the strikers did not lay down their arms was taken and the only reasonable inference to be drawn from their failure to do so is that they are hiding something. This inference is fortified to some extent at least by the evidence relating to the missing memory stick.’*

- With respect to the lost memory stick the Commission recommends that: *“As the stick contained top-secret information it would appear prima facie that Brigadier Malahlela [in whose custody it was] is guilty of contravening section 4(1)(b)(dd) of the Protection of Information Act 1982 for neglecting or failing to take proper care of the memory stick.”*

It is submitted that the Portfolio Committee should insist that those police officers present at the NMF meeting and the extraordinary meeting that followed be called upon once again to make full disclosure of what was discussed at those meetings, and how and on what basis the decision to implement the operation on 16 August was taken, and by whom. The Committee must also insist that the SAPS, and any other appropriate agency, use its best endeavours to trace and locate the missing memory stick.

## **6. Suspensions**

As stated above it is imperative that all those members of the SAPS who are implicated in the Report of the Commission, and in respect of whom adverse findings have been made, or recommendations made for further investigation and/or disciplinary action be suspended immediately pending such investigations and due processes. It is indeed a singular failure on the part of the SAPS not to have taken such action already. Coupled with the failure of the top leadership to co-operate fully with the Commission, this contributes to further undermining the integrity of the SAPS and impacts on public confidence in the SAPS.

## **7. Compensation**

It is a sad indictment on the political and operational leadership of the SAPS and the Government as a whole that no efforts have been made to compensate the families of the 44 victims of the Marikana tragedy. Even if there is no determined legal

liability, the moral responsibility is an overwhelming one. It has unfortunately been left to the families to pursue remedies for compensation through the litigation in the courts, a process itself which will use up valuable resources that could be used for that very compensation. It is submitted that the Portfolio Committee should call on Government to initiate discussions with the families of the victims and their representatives to negotiate appropriate compensation for the families and dependents of those who lost their lives or were incapacitated by their injuries.

## **8. Public Order Policing**

The Commission recommended that a panel of experts be appointed to consider various aspects of public order policing. In addition the SAPS should be requested to provide a report of what steps it has taken to improve its capacity for public order policing especially in view of the Report of the SA Human Rights Commission into the killing of Mr Andries Tatane. As the Commission itself states these are urgent matters and the Portfolio Committee must demand strict timeframes for the implementation of these recommendations, particularly taking into account the likelihood of an escalation of public protests in the run-up to the local government elections in 2016.

It should not be necessary to await any report from this panel for the SAPS to be instructed to desist forthwith from using R5 rifles or other automatic weapons in public order policing operations.