



BRIEFING NOTE

FOR INFORMATION

SUBJECT: Report of the Judicial Commission of Inquiry into the events at the Marikana Mine

Background

On June 26th 2015, the Judicial Commission of Inquiry into the events at the Marikana Mine in South Africa, where 44 people died and 70 injured in August 2012, published a 650 page report highlighting various security failures. The commission was mandated to inquire, make findings, report and make recommendations on the conduct of Lonmin Plc, the South African Police Service (SAPS) and two rival unions, the Association of Mineworkers and Construction Union (AMCU) and the National Union of Mineworkers (NUM). The commission insisted that the poor living conditions of mine workers in South Africa as well as poor crisis management by unions, Lonmin and public security forces were decisive factors and drivers of violence. The report describes the failures by public and private security forces in handling labour disputes and grievances near mining operations.

Identified causes of conflict

The evidence presented by the commission illustrates that the tragic events at Marikana are rooted in widespread labour disputes in the area, which were characterized by violence, intimidation and loss of life and the undermining of agreed collective bargaining processes. Worker grievances were exacerbated as soon as January 2012 when a 18% wage increase was given to only a specific category of workers which were mostly NUM members at Impala Platinum (Implats), a neighbouring mine. Large discontent arose between union members at Implats and workers began an unprotected strike that was characterized by high levels of violence and intimidation. Ultimately, 60 people were injured and four persons lost their lives in events on the Implats mine on January 2012. To resolve these issues, Implats acceded to the demands in April 2012 and granted wage increases to its entire workforce.

As a result, the Lonmin workers were lagging behind wages compared to neighbouring Implats workers. As intense rounds of negotiations between Lonmin management and Unions failed on August 9 2012, concerns by Lonmin management was already raised and parallels were already drawn with the events at Implats eight months before. The commission asserts that the overall labour context in the area was a contributing factor of the persistence of the demands by Lonmin employees and that previous episodes of violence should have reasoned the management that labour dispute could quickly escalate into violence.

Role of unions and strikers

The commission clearly identified that the direct cause originates from the decision and the conduct of the strikers in embarking on an unprotected strike and in enforcing the strike by violence and intimidation. Both unions, the NUM and AMCU are targeted by the report because they failed to exercise control over their members, which sang provocative songs and made inflammatory

statements. The unions failed to do everything possible to defuse tensions. While it is clear that Lonmin and SAPS did not respond appropriately to the threat and outbreak of violence, conclusions of the report strongly condemn violence of mine workers, who engaged in unjustified brutal attacks on security forces.

Role of Lonmin

The commission also identified various failures by Lonmin security. It found that Lonmin did not respond appropriately to the threat and outbreak of violence. For the commission, the company failed to employ sufficient safeguards and measures to ensure the safety of its employees. Among others, it failed to provide its security staff with the armoured vehicles they needed for their protection despite being requested to do so. It also insisted that its employees who were not striking come to work despite the fact that it knew that it was not in a position to protect them from attacks by strikers.

Role of public security forces

The report is far more critical of the work of the police security forces. As far as the events of August 16th 2012 are concerned, where most of the tragic events occurred, the commission underlines the failures of the SAPS in their crowd control duties. The police used a dubious operational plan, which entailed the encirclement of a relatively small group of strikers. This plan was deemed to fail since it would have been impossible to disarm protestors. The decision to implement the tactical option on that day when a large number of armed strikers were present at the site was unreasonable and unjustifiable. The plan put together on that day was defective and it appears that some of the SAPS members who fired at the strikers exceeded the bounds of self and private defence. The principle that only the minimum amount of force reasonable in the circumstances should be used was not complied with.

Lesson learned

The events at Marikana highlights the importance for companies and public security forces to integrate the Voluntary Principles on Security and Human Rights (VP), which promotes implementation of a set of principles that guide companies on providing security for their operations in a manner that respects human rights. More than ever, security management in the mining industry must follow international best practices in risk assessment, interactions with public security and interactions with private security. While Lonmin says publicly that the VP's inspires its policies, it is not listed as an official participant of the VP's. The chairman of the Institute of Business Ethics, Edward Bickham stated in 2015 at the Plenary of the VP's that: « *Our operations in South Africa, for example, were particularly resistant seeing no role for the VPs in a country with a strong constitution and rule of law. But the VPs are not just for countries with active conflicts but also for those where industrial and community relations may be volatile and can pill over in to violence. In the aftermath of Marikana I am sure that things are now seen very differently. It is regrettable that all parties in South Africa have not yet recognised the positive role that the VPs could play*».

Furthermore, the commission recommended that a panel should be established to review public order policing and analyse international best practice in that regard. Hence, the implementation of precise emergency plans by public security forces in collaboration with various stakeholders such as private security forces; unions and communities are essential to avoid tragic violent confrontations.

The implementation of international best practices could have predicted, mitigated and create appropriate responses to the crisis. To conclude, the Marikana events particularly underline the fact that mining operations are prone to security incidents and shows that the relation between the state, private firms, unions and communities is highly complex. The events at Marikana will surely continue to generate debate on the impact of mining on security in communities and on the role of private companies in the security realm.

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