

FIREARMS CONTROL BRIEFING

LEARNING FROM MARIKANA: SA NEEDS A #TOPCOP WITH RIGHT SKILLS SET

INTRODUCTION

On 16 August 2012, South Africa witnessed the worst police-related massacre under democracy; when police officers, deployed by the National Police Commissioner, opened fire on striking mine workers with R5 automatic fire rifles. In total, 44 people were killed between the 10th and 16th August 2012,¹ of which 34 were Lonmin Mine miners killed by police during the aptly named Marikana Massacre.

As South Africa marks the fifth anniversary of the Marikana Massacre, this Briefing unpacks a key lesson emerging from the tragedy: If the National Commissioner of the South African Police Service (SAPS) had had the necessary skills, knowledge and experience, Marikana would never have happened.

LEARNING FROM MARIKANA: POOR POLICE LEADERSHIP KILLS

Soon after the Marikana Massacre, President Jacob Zuma established a commission of inquiry into the tragedy. Headed by former Supreme Court of Appeals Judge Ian Farlam, the Commission's findings and recommendations were made public by President Zuma on 25 June 2015.²

The Farlam Report examines in detail the *why* of the Marikana massacre, identifying and unpacking the various contributory factors that resulted in 44 deaths; 37 of whom were miners shot to death while a further 78 were injured by police officers.

One of the key findings arising from the Commission's work is the role of poor police leadership. Particular reference is made to the lack of necessary skills, training and experience of both the North West Provincial Police Commissioner as well as the National Police Commissioner. The Farlam Report quotes Gary White, an international policing expert called by the South African Human Rights Commission, to highlight how ill-equipped and unqualified both commissioners were to the task:

- Provincial Commissioner, Lt-General Zukiswa Mbombo, joined the police force in 1980; apart from working as a constable in her very first year with the police, she held "a desk job" from this time. In 2005 she was appointed Northern Cape Provincial Commissioner, becoming Provincial Commissioner in North West five years later. In 35 years of working for the SAPS, "She has had no experience of ever commanding any Public Order Policing... It should be self-evident that the Provincial Commissioner did not have the training, the skills or the experience to enable her to make decisions as to what should be done in the complex and difficult situation at Marikana. She was simply unqualified to do so."³

¹ In total, the South African Police Service shot and killed 37 people: SAPS killed three people at different points in the week prior to 16 August, when SAPS shot 112 people killing 34 in what became known as the Marikana Massacre. In addition, seven people were killed by elements within the mineworkers in the week preceding the Massacre: Two were police members, two were security guards and three were mineworkers, bringing the total number of people killed to 44.

² Farlam, Ian. 2015. Marikana Commission Of Inquiry: Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province. 31 March. Available online at www.thepresidency.gov.za/medialib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commission%20of%20Inquiry.pdf (accessed 13 August 2015).

³ Ibid, paragraphs 1066 and 1067, p367.

- National Commissioner, General Riah Phiyega, was, “if anything, in an even worse position. She had been appointed to head the SAPS just a few months earlier, after receiving professional training in social work and having had a professional career focused largely on human resources and on the management of state enterprises. She had no policing expertise and experience whatsoever.”⁴

According to White, “The consequence of this situation is that the two senior officers in the decision-making line were entirely unqualified to make any decisions at all bearing on police operational matters.”⁵

During the Farlam Commission’s enquiry, SAPS gave evidence that it had developed an operational plan to deal with the Lonmin miners’ strike and that it had no prior intention to effect phase 3 of this plan. According to police testimony, the implementation of phase 3, called the “tactical option” became unavoidable because of an escalation in violence on the morning of 16 August.

The Farlam Commission found otherwise, listing evidence that the police had lied: There was no operational plan and the decision to launch phase 3 of the plan was taken by Provincial Commissioner Mbombo before or during a meeting of SAPS’ National Management Forum on 15 August, a day before the Marikana Massacre. According to the Farlam Report, “The leadership of the police, on the highest level, appears to have taken the decision not to give the true version of how it came about that the ‘tactical option’ was implemented and to conceal the fact that the plan to be implemented was hastily put together without POP (public order police) inputs or evaluation.”⁶

Instead of effective scenario planning, the Farlam Commission found that both Phiyega and Mbombo participated in inappropriate discussions about political considerations which resulted in August 16th being declared as “D-Day”, *the* day the strike would be broken because the strikers “either voluntarily laid down their arms and left the koppie or were forced to do so as a result of police action.”⁷

As a result, rather than sending public order police units, which are trained in crowd management and crowd control, the police’s response to the Marikana strike was “a paramilitary operation, with the aim of annihilating those who were perceived as the enemy.”⁸ Instead of using the minimum amount of force necessary, police leadership gave the go-ahead to deploy police paramilitary units including the SAPS’ Tactical Response Team (TRT), the National Intervention Unit (NIU) and the Special Task Force, which deals primarily in high-risk life and death operations such as counter-terrorism and hostage situations.

All of these paramilitary SAPS units are armed with R5 automatic fire rifles – see Box 1 for more information on R5s. Evidence presented to the Farlam Commission tried to trace the shootings at Scene 1 (shootings caught on camera) and Scene 2 (shootings that took place on a koppie at which no cameras were present), as summarised below:

- **Scene 1:** Between 48 and 53 police officers fired R5 rifles, in approximately 8 to 12 seconds 328 rounds of live ammunition were fired, of which 233 were R5 rounds. In total, 17 miners were shot and killed.

⁴ Ibid, paragraph 1068, p368.

⁵ Ibid, paragraph 1069, p368.

⁶ Ibid, Chapter 23, Section C(4), p515.

⁷ Ibid, Chapter 9, Section C(4), p169.

⁸ Ibid, paragraph 1083, p375.

- **Scene 2:** Despite the fact that, there is “no ballistic evidence that any of the miners were involved in shooting at the police”⁹, three groups of police officers shot at least 295 rounds in a period of between 10 and 15 minutes; one group, SAPS’ National Intervention Unit, shot 115 rounds of live ammunition of which 103 were from R5 assault rifles.¹⁰ In total, 17 miners were shot and killed.

BOX 1: R5 ASSAULT RIFLES

1. WHAT IS AN R5 RIFLE?

The R5 rifle, capable of both semi-automatic and automatic fire, is a 5.56mm assault rifle locally manufactured by Vektor, Denel Corporation’s small arms manufacturing division. It was introduced into service with the then South African Police in the late 1980’s. In automatic mode, the R5 is capable of firing between 600 and 750 rounds per minute, with an effective range of 500 metres.

2. WHY IT IS NOT APPROPRIATE TO USE R5s IN CROWD MANAGEMENT SITUATIONS?

The original use of the R5 was for military purposes, hence its high range capability that allows for effective engagement of an ‘enemy’ up to 500 metres away: at this distance, the 5.56 round will “not distort or fragment, causing minimal wound cavity.”¹¹

However, because of its high kinetic energy, when an R5 bullet is fired at distances of less than 100 metres it will fragment on penetration, causing serious injury, and in most instances death.

Given the characteristics of the R5 rifle and its ammunition, it is impossible to reconcile the use of this weapon in crowd management operations with South Africa’s Constitutional imperative to “protect the right to life and bodily integrity” of the person,¹² as well as South Africa’s obligations under international law.

Despite this, when the National Police Commissioner gave evidence to the Farlam Commission in September 2014, she reported that R5 rifles continue to be used in public order operations, and that SAPS was “still considering the matter” of their ongoing use.¹³ Three years later, and despite assurances by SAPS that R5 weapons are never used in crowd management operations, there is no formal legal ban on their use.

The Marikana Commission of Enquiry is explicit in its recommendation that the use of automatic fire in crowd management situations is untenable due to it not being aligned with South Africa’s Constitution.¹⁴ The expert evidence given at the Commission was unanimous in their recommendation that “automatic rifles like the R5 have no place in Public Order Policing”, and should

⁹ Bruce, David. 2015. Summary and Analysis of the report of the Marikana Commission of Inquiry. Council for the Advancement of the South African Constitution (CASAC), paragraph 169 b, p61. Available online at www.polity.org.za/article/summary-and-analysis-of-the-report-of-the-marikana-commission-of-inquiry-august-2015-2015-08-13 (accessed 17 August 2015).

¹⁰ Ibid paragraph 162 c, p63.

¹¹ De Rover, Cees. 2016. Considerations on the Use of Assault Rifles in Law Enforcement. Correspondence with A. Kirsten of GFSa.

¹² The Constitution of the Republic of South Africa. 1996. Chapter 2: Bill of Rights.

¹³ Farlam, Ian. 2015. Marikana Commission Of Inquiry: Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province. 31 March, paragraph 1040 p356. Available online at www.thepresidency.gov.za/medialib/downloads/downloads/Full%20Report%20of%20the%20Marikana%20Commision%20of%20Inquiry.pdf (accessed 13 August 2015).

¹⁴ Ibid Chapter 25: Recommendation B(7), p549.

be immediately withdrawn.¹⁵ Furthermore the recommendation was that “any replacement weapon system should not be capable of ‘automatic fire’ mode.”¹⁶

MARIKANA IS NOT AN ISOLATED INCIDENT

Figures from the police watchdog, the Independent Police Investigative Directorate (IPID), show that police members are responsible for the deaths of an increasing number of people.¹⁷ According to the most recent IPID report, there has been a 30% increase in the number of people killed as a result of police action in the space of a year (207 deaths between April to September 2016, compared to 159 deaths between April to September 2015). The report also shows a 50% increase in the number of deaths in police custody (2016: 153, 2015: 103) as well as a 53% increase in incidents of discharging an official firearm (2016: 714, 2015: 468).

SOLUTION: A PROFESSIONAL AND DEMILITARISED POLICE SERVICE

South Africa’s aspirational 2030 National Development Plan (NDP) calls for the professionalisation and demilitarisation of the police service; an objective embraced in the 2016 White Paper on Policing which advocates for policing to be “underpinned by an approach which is demilitarised, community-centered, rights-based and accountable.”¹⁸

Moreover, the NDP calls for a clear merit-based process in appointing SAPS leadership at all levels, including the appointment of the National Police Commissioner. In this regard, the NDP also recommends that a National Policing Board be established with multi-sectoral and multi-disciplinary expertise. The Board would set the standards for recruitment, selection, appointment and promotion of police officers. This is particularly important because there are currently no clear criteria governing what is expected from the person holding the post of SAPS National Commissioner, unlike the comprehensive criteria listed to be a SAPS constable; this difference is summarised in Table 1.

| TABLE 1: CRITERIA TO BECOME THE NATIONAL POLICE COMMISSIONER AND A SAPS CONSTABLE¹⁹ | |
|---|--|
| National Police Commissioner | Constable in the South African Police Service |
| <ul style="list-style-type: none"> • Be a South African citizen by birth • Be over 18 years old • Not have a criminal record or any criminal | <ul style="list-style-type: none"> • Be a South African citizen by birth • Be at least 25, but under 40 years of age, documentary proof to be furnished • Not have a criminal record or any criminal or departmental cases pending against him or her (all criminal or departmental cases must be declared) |

¹⁵ Ibid Chapter 25: Recommendation B(1), p547.

¹⁶ Ibid.

¹⁷ Parliamentary Monitoring Group. 2017. Briefing by the Independent Police Investigative Directorate, ‘IPID reports on performance & police action crime; SAPS Crime Intelligence refocus’. Minutes and presentations available from <https://pmg.org.za/committee-meeting/24686/> (accessed 14 August 2017).

¹⁸ Civilian Secretariat for Police. 2016. White Paper on Policing, p13. Available online at www.policsecretariat.gov.za/downloads/bills/2016_White_Paper_on_Policing.pdf (accessed 10 august 2017).

¹⁹ #TopCopSA: How to appoint an honest and competent police commissioner. Joint Corruption Watch and the Institute for Security Studies campaign. Available online at <https://issafrica.org/about-us/press-releases/how-to-appoint-an-honest-and-competent-police-commissioner> (accessed 14 August 2017).

| | |
|--|---|
| <p>or departmental cases pending (all such cases must be declared)</p> | <ul style="list-style-type: none"> • Complete a health questionnaire, at his or her own cost, which is confirmed by a registered medical practitioner • Be medically, mentally and physically fit to perform duties • Be of good and sound character • Fit the psychometric profile and must successfully complete any other test that may be determined by the National Commissioner • Be in possession of at least a senior certificate (Grade 12) or must have successfully completed a SAQA accredited NQF level 4 qualification, of which documentary proof must be provided • Be able to speak, read and write at least two official languages, of which one must be English • Allow his or her fingerprints and a DNA sample to be taken • Be prepared to undergo such training as may be determined by the National Commissioner • Be prepared to take the prescribed oath of office • Understand that his or her services may be terminated at the age of 60 • Complete an assessment questionnaire • Be vetted or screened • Be employed and provide proof of employment • Provide proof of his or her residential address • Not have a tattoo which will be visible if the person wears a uniform |
|--|---|

Recognising that poor police leadership costs lives and undermines public safety, Corruption Watch and the Institute for Security Studies recently launched a #TopCopSA campaign to operationalise the NDP and ensure that South Africa’s next National Police Commissioner is appointed following a transparent selection process based on clear merit-based criteria, pointing out that this would serve two important functions:²⁰

- Both the public and police officials would better understand the abilities and characteristics needed for the job. An appropriately experienced appointee whose integrity is beyond reproach would therefore enjoy enhanced levels of support from the police and public.
- Proper screening and vetting would ensure that the individual selected is less likely to become embroiled in scandals.

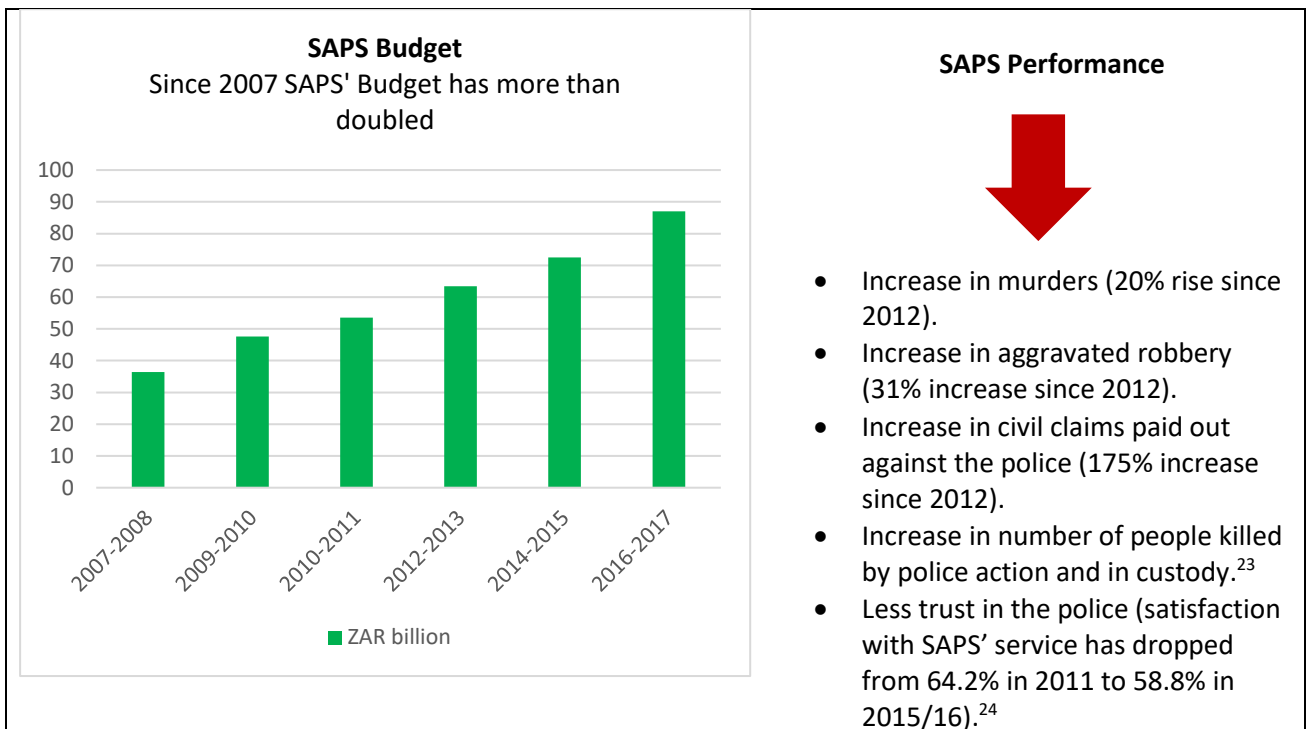
This #TopCopSA campaign is based on the fact that a total of eight people have held the post of National Police Commissioner in either a permanent or acting capacity since 1995. Since 2000 each of the three permanently appointed SAPS National Commissioner’s term of office has ended prematurely and engulfed in scandal.²¹

Poor police leadership over the years has led to a steady decline in SAPS’ performance, despite budget increases, as illustrated in the graphic below.²²

²⁰ Ibid.

²¹ Ibid.

²² Ibid, unless otherwise stated.



CONCLUSION

The White Paper on Policing recognises the key role played by South Africa's #TopCop: The role of the National Police Commissioner "is primarily to ensure effective service delivery to the public and that the police is seen as a trusted public institution."²⁵

Civil society urges policy makers and enforcers to take urgent action to ensure that South Africa's next National Police Commissioner is appointed in line with the country's NDP. An experienced, knowledgeable and respected leader of a professional and demilitarised police service is the foundation of effective policing in which lives are saved not lost and public safety is built not undermined.

²³ Parliamentary Monitoring Group. 2017. Briefing by the Independent Police Investigative Directorate, 'IPID reports on performance & police action crime; SAPS Crime Intelligence refocus'. Minutes and presentations available from <https://pmg.org.za/committee-meeting/24686/> (accessed 14 August 2017).

²⁴ Statistics South Africa. 2017. *Victims of Crime Survey 2015/16*. Available online at www.statssa.gov.za/?p=9553 (accessed 24 February 2017).

²⁵ Civilian Secretariat for Police. 2016. White Paper on Policing, p35. Available online at www.policesecretariat.gov.za/downloads/bills/2016_White_Paper_on_Policing.pdf (accessed 10 August 2017).