



POLICY BRIEF

REPARATIONS FOR VICTIMS OF THE MARIKANA MASSACRE



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Summary

This policy brief presents a summary assessment of the progress made in providing redress for victims of the Marikana Massacre,¹ when 34 striking miners were killed by the South African Police Service (SAPS) in 2012 and ten people were killed in the conflict that led up to it. In the ten years since the massacre, there has been meagre progress in addressing its consequences. Direct victims and their relatives have not received full reparations, the community of Marikana remains underdeveloped and deeply divided, and the apartheid legacy of the mining sector in South Africa remains an unresolved wound in the national psyche. An integrated approach is required to address both the systemic injustices and the specific legacies of the Marikana Massacre, while being clear about the specific responsibilities of all the stakeholders.

This policy brief spells out key facts about the events, outlines what progress that has been made in the last ten years in seeking truth, justice and reconciliation, and spells out recommendations for state, corporate and civil society actors on the way forward.

These findings and recommendations are based on research conducted by the Centre for the Study of Violence and Reconciliation (CSV) in collaboration with the University of St Gallen over the past two years,² and builds on the CSV's local engagement with community members in Marikana over the last decade.

Background

Historically, the mining sector in South Africa operated in close collaboration with the South African apartheid government and used the repressive political and economic system to exploit mineworkers, subjecting them to inhumane working and living conditions. This exploitation encompassed the migrant labour system, low wages, racially discriminatory hiring practices, accommodation in single-sex dormitories and unhealthy working conditions.

The living conditions of mineworkers and their neighbouring communities did not significantly change after the transition to democracy in 1994. The 1996 Constitution of South Africa altered the ownership of mineral rights and created new social, economic and labour rights for mineworkers and affected communities. Other significant reforms included the introduction of Social and Labour Plans (SLPs) as a condition for mining rights and a black economic empowerment (BEE) policy for the mining sector, a provision that particularly benefitted politically connected members of the black elite, such as Cyril Ramaphosa,³ and cemented their support for the mining companies.⁴ Despite these reforms, wages remained low and social conditions in the mining communities desperate, with Marikana in particular lacking basic social services in the informal settlements where many miners resided.

After the transition to democracy, the Truth and Reconciliation Commission (TRC) held a special hearing on the business sector that explored the issue of business complicity in the state's apartheid policies and businesses' direct participation in practices of discrimination and repression. The TRC concluded that many businesses, and particularly the mining companies, were directly complicit in the policies of apartheid:

To the extent that business played a central role in helping to design and implement apartheid policies, it must be held accountable. This applies particularly to the mining industry.⁵

While the TRC identified different avenues through which this legacy of corporate complicity could be addressed, including a wealth tax and a voluntary development fund, it ultimately failed to make clear recommendations in this regard and provided little direction in relation to how future labour conflict could be prevented.

It is this unresolved legacy of apartheid that erupted into violence in Marikana in 2012, 18 years after the transition to democracy. Workers at Lonmin staged a strike, demanding to be paid a minimum of ZAR12 500 per month.⁶ They were protesting not only against low wages but also poor living and working conditions. Their living conditions reflected those created under apartheid, involving informal settlements where basic needs such as water, sanitation and electricity were not provided. This situation had persisted despite the SLP lodged by Lonmin in 2006, whereby it had committed to building 5 500 new homes by 2011. However, by 2009, only three new houses had been built.⁷

The mineworkers at Lonmin had lost confidence in the National Union of Mineworkers (NUM), the union that officially represented them and mineworkers at other platinum companies. They perceived NUM as having been co-opted by Lonmin management and unable to represent their demands effectively. They thus chose to go on an unprotected strike without NUM support, with tensions then escalating between striking and non-striking workers. Lonmin management refused to negotiate with striking miners and insisted that negotiations could only happen through official channels with NUM. Various attempts to facilitate negotiations with striking workers were turned down.

In the absence of effective communication channels, tensions escalated, leading to the killing of ten people, including three non-striking mineworkers, three striking mineworkers, two mine security guards and two police officers.⁸

During the escalation of the conflict, senior African National Congress (ANC) government officials, police leadership and mining officials were in direct communication with each other and cemented a common understanding of the situation as one that required strong and decisive police intervention.⁹ Cyril Ramaphosa engaged directly with then National Police Commissioner Riah Phiyega and called for resolute action to be taken against the workers, urging that police take 'concomitant action' against 'criminal' protesters.¹⁰

In the lead up to the massacre and during its aftermath, Lonmin management worked very closely with the police at a strategic and logistical level:

They briefed the police officers and police generals at least once every day. They provided helicopters and went on surveillance expeditions with police. They provided detention facilities. And at the very end of the day, when all the killings were done, they provided the Lonmin game farm for the debriefing.¹¹

Police intervention was ramped up. On the day of the massacre, the SAPS ordered 4 000 live rounds of ammunition for R5 rifles and four mortuary vans. The police also called in the Tactical Response Team, a specialised police section responsible for dealing with incidents such as bank heists.

In the Lonmin boardroom on the morning of 16 August 2012, North West Provincial Police Commissioner Lieutenant General Zukiswa Mbombo told journalists during a media conference that 'we are ending this today, don't ask me how, but today we are ending this'. In an interview with television news channels shortly after the media briefing, Mbombo said: 'If they resist, like I said, today is a day that we intend to end the violence.'¹²

Police surrounded the koppie (small hill) where about 3 000 protesting mineworkers had assembled and erected razor wire fencing to cut off escape routes. At this point, there had been no violence in the previous 24 hours and mineworkers had taken a decision to leave the koppie. Police however fired tear gas and rubber bullets, and the miners fled in panic. In the ensuing chaos, some ran in the direction of the police, who then shot at them with a live ammunition. Within eight seconds, the police fired 284 rounds of live ammunition, killing 17 miners. The police then pursued the fleeing miners into the surrounding rocky area, killing another 17 in what has been described as 'execution-style'. At least another 78 miners were severely injured, whilst another died in a police truck whilst being ferried to a police station.¹³

The massacre resulted in the deaths of 34 miners, with no police deaths or injuries reported. Shortly after the Marikana Massacre, National Police Commissioner Phiyega praised the police involved: 'Whatever happened represents the best of responsible policing.'¹⁴

Progress on justice and truth seeking in the last ten years

Seeking truth and justice for the victims of the Marikana Massacre has entailed a number of separate judicial and non-judicial initiatives that have been implemented in a very slow and uncoordinated manner. These include a commission of inquiry, civil and criminal cases against state actors, civil claims against the company, company reparations initiatives and a range of memorialisation processes.

The Farlam Commission

In response to the public outrage that followed the massacre, President Jacob Zuma appointed a commission of inquiry, chaired by a retired judge, Ian Farlam. The Commission (popularly known as the Farlam Commission) sat for two-and-a-half years, listening to testimony from victims, police, company officials and other parties.

On 25 June 2015, the Farlam Commission presented its findings in a 665-page report.¹⁵ In its conclusions relating to the responsibility of Lonmin, it found that:

- Lonmin did not use its best endeavours to resolve the disputes that arose between itself and the members of its workforce who participated in the unprotected strike, and between the strikers and those workers who did not participate in the strike. It also did not respond appropriately to the threat and outbreak of violence.
- Lonmin failed to employ sufficient safeguards and measures to ensure the safety of its employees. In this regard, 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 it was not in a position to protect them from attacks by strikers.
- Lonmin's failure to comply with its housing obligations 'created an environment conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct.'¹⁶

While the Commission did not recommend any criminal action against Lonmin officials, it nevertheless did not exonerate them from criminal accountability. In relation to the state, the Commission's report states that:

- The state was liable because the plan that was implemented was found to be 'prepared in haste'¹⁷ and defective.
- 'In the case of certain shooters, there is *prima facie* evidence that the [police officers] concerned may well have been guilty of attempted murder but it cannot be said that any shooter is guilty of murder because it cannot be shown which of the shooters actually killed anyone.'¹⁸

Evidence leaders had suggested that the Commission ought to compel the state to pay compensation to the dependants of those who were killed and injured by the SAPS and to the striking mineworkers.¹⁹ However, in its final report, the Commission held that its terms of reference were not broad enough for it to recommend compensation for the victims.²⁰

Police reform

The Commission's report recommended that a panel of policing experts be established to examine the problems regarding policing identified in the report and to make recommendations regarding reforms. The panel submitted its report in July 2018, but the findings were only released publicly in March 2021, raising concerns about how seriously these reforms were being taken by the Minister of Police.²¹ Their report provided 136 recommendations addressing a range of problems in police systems and policies that had contributed to the massacre and which may contribute to the recurrence of such events. While there has been an indication by the Minister that some of these are being implemented, no comprehensive reform process appears to have been undertaken.²²

Criminal accountability

The criminal cases against police involved in the massacre as well as the civil cases against the state and Lonmin are yet to be concluded. While police and mineworkers have been charged with the murders of those killed in the lead-up to the massacre, no police have yet been charged for the murders perpetrated on the actual day of the massacre.

Investigations into police actions were handled by the Independent Investigative Directorate (IPIID), who claimed that they were not provided with sufficient funds to conduct effective investigations.²³ There were numerous delays in finalising the IPIID investigations, with cases only being referred to the National Prosecuting Authority (NPA) in August of 2017, five years after the massacre.²⁴ The NPA only brought charges against nine police officers involved in a few of the killings.²⁵ IPIID investigations appear to be continuing, with further charges still possible. There is, however, little transparency about this process.²⁶

In contrast, the state appears to have taken much more urgent action in bringing charges against the mineworkers. After the massacre, police arrested 259 striking workers who had participated in the protest and charged them with the murder of their colleagues under the 'common purpose' doctrine. These charges were later dropped.²⁷ Charges were brought against 15 striking mineworkers accused of a number of murders in the days leading up to the massacre.²⁸ These cases have also not been finalised.

Civil claims

At the Commission hearings, the Socio-Economic Rights Institute (SERI), a civil society organisation, represented the families of 33 of the mineworkers killed at the massacre, and three families of those killed by police on 13 August. Subsequently, SERI also represented these families in pursuing civil and criminal claims against the state and in negotiating reparations with the company.

Injured miners and those arrested at the time of the massacre were represented by three private firms, namely Nkome Incorporated Attorneys, Maluleke Msimang and Associates, and Tlhatlha Attorneys. After initially pursuing civil claims against the state, they also instituted civil claims against Cyril Ramaphosa (in his individual capacity) and the mining company.

The civil cases against the state and Lonmin are yet to be concluded. Some elements of the civil claims against the state have been settled, and some of these settlement payments have been received by the victims and survivors. Where settlements have been reached, they have been subject to serious delays and not transparently handled.

Specific financial settlements have been reached whereby the state has agreed to pay (or has already paid):

- More than ZAR70-million (USD4.5 million) in compensation for the loss of support to 35 families of those killed by the police.²⁹
- ZAR97.6 million (USD6.3 million) to the 253 miners who were unlawfully arrested and detained.³⁰

Aspects that remain unresolved are the families' claims for constitutional and general damages. And no settlement has yet been reached on payments to the injured miners.³¹ The settlements thus far have purely provided for financial payments to the victims and their families for loss of support; they do not include any form of acknowledgement of wrongdoing by any officials, any apology or any commitment to a public commemoration of the event.³²

Mining company remedy initiatives

The mining company, owned since 2019 by Sibanye-Stillwater,³³ undertook various initiatives to: support the families of those who had died (including the 34 who died during the massacre and the ten who died in the conflict leading up to the massacre); commemorate the massacre; and contribute to rebuilding the community. These initiatives included:

- **Provision of houses to the widows of those who had died:** A number of houses have been provided to the widows of the miners who were killed. Some of these were provided by the Association of Minerworkers and Construction Union (AMCU) while others were built by the mining company. Some of these houses are still under construction.
- **Bursaries for the children of those who had died:** Bursaries to attend private schools and institutions of higher learning were provided to the dependents of those killed in Marikana. While there was some appreciation of the value of these bursaries for the individuals involved, some family members expressed unhappiness that some of their children were not working after completing their studies.
- **Employment for family members of those who had died:** For each mining employee who was killed, the company offered a position to one family member, which was taken up by either their wife or an adult child. This arrangement was viewed with resentment by some of those who took up these positions as they thought the mining company should pay out the deceased's salary without requiring a family replacement to do their job. Nevertheless, they took the offers of employment out of desperation. For some, this meant leaving behind their families in rural areas to work at Marikana.³⁴

Symbolic remedies

Memorialisation of the massacre and those who died during the related events has taken various forms. The mining company has taken the lead in certain of these processes while AMCU and others have also played an active role in documenting and memorialising the event. The state has been noticeably absent and unresponsive in addressing this remedy.

The company constructed a memorial wall at the entrance to the mine listing the names of the 44 victims. Family members were, however, upset that the memorial was erected at the company offices rather than on the site where the massacre had happened. Concern was also expressed because certain names had been spelled incorrectly, there are problems with accessing the site, and the whole initiative lacked consultation.

The mining company organised an annual commemoration event with prominent speakers and one family member to address the gathering. These events have served to mourn the losses but also to present

messages of hope and to create awareness of the contributions made by the company to the victims and the community.

AMCU has also organised annual commemorations where the victims of the massacre are remembered and the continued injustices are recalled. At these events, prominent figures have lent their support for calls for reparations and state engagement with the memorialisation of the massacre events. The families of deceased mineworkers are also invited to these events.

There have been attempts to develop plans for a physical memorial on the koppie where the massacre happened. This has, however, been stymied by competing perspectives and a dispute regarding the ownership and control of the land, an obstacle which seems to be moving towards resolution in 2022. As has been noted, the state has been conspicuously absent in the process of memorialisation. Not only has the government shown no interest in the development of a memorial, but it has also been silent on the annual memorial events, ignoring calls from various quarters to declare 16 August a national holiday.

The events in Marikana have been documented through a range of books, film documentaries and art exhibitions. These have all sought to provide different perspectives, particularly to give a voice to local stories about what happened and the subsequent impact on the people of Marikana. These diverse perspectives have been critical in countering the official narrative about the events of 2012 presented by the police and state officials.

Social and economic development in Marikana

In 2020, Sibanye-Stillwater enlisted a civil society organisation, Reimagine SA, to coordinate the implementation of the Marikana Renewal Programme, through which the company aspires towards 'co-creating a shared vision, and delivering tangible and sustainable socio-economic programmes for the benefit of local communities'. Focusing on honouring the legacy of Marikana, it has sought to engage with a wide range of stakeholders to promote an integrated multi-stakeholder plan for addressing the broad range of deficits faced by the direct victims and the community more broadly.³⁵

The living conditions in Marikana remain substandard, with many mineworkers still living in informal housing and subject to poor access to water, electricity and sewerage. Part of the problem is the local government's failure to provide adequate service delivery to the informal settlement. Although the mining company has converted the mining hostel into family accommodation, there remains a large housing backlog.

Reparations gap: Recognising the right to reparations

Victims of human rights violations have an internationally recognised right to reparations,³⁶ which is also a central component of the international normative framework on business and human rights.³⁷ The responsibility for ensuring access to reparations falls very directly within the state's duty to protect human rights as rooted in the body of international human rights law.³⁸ The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations recognise the state's duty to:

- (a) *Take appropriate legislative and administrative and other appropriate measures to prevent violations;*
- (b) *Investigate violations effectively, promptly, thoroughly, and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;*
- (c) *Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice; and*
- (d) *Provide effective remedies to victims, including reparation.*³⁹

Furthermore, the United Nations Guiding Principles on Business and Human Rights establish that the state's duty to protect also concerns human rights abuses by third parties, including business enterprises.⁴⁰ Hence, when a business entity contributes, either directly or through third parties, to human rights abuses, the state is obliged to take appropriate steps to ensure – through judicial, administrative, legislative, or other appropriate means – that those affected have access to an effective remedy.⁴¹

Business actors, for their part, also have a responsibility to respect human rights: they should avoid infringing on the human rights of others and address the adverse impacts of any human rights infringements in which they are involved.⁴² As such, where they have contributed to adverse impacts, they should provide for and/or cooperate in their remediation through legitimate processes.⁴³ This responsibility encompasses all human rights, including the right to remedy. Hence, businesses' role in the provision of remedies should be understood as independent but also complementary to that of the state. Furthermore, when businesses engage in remedy provision, they should not undermine the state's efforts to meet its human rights obligations.⁴⁴

The provision of access to an effective remedy requires keeping victims and rights holders at the centre of the process. Remedies should be accessible, affordable, adequate and timely from the perspective of those seeking them. Affected individuals should be able to claim remedies without fear of victimisation and be able

to choose from a range of remedies that ensure prevention, redress and deterrence.⁴⁵ Remedies should be responsive to the diverse experiences, preferences and expectations of rights holders for which meaningful consultation with the affected community is required.⁴⁶

In light of the above reporting on the gaps and delays in finalising justice and redress for the Marikana victims, it is clear that the state has failed to fulfill most of its obligations and remains responsible for delivering on the right of victims to reparations according to international standards and recommendations spelled out in the Farlam Commission report. Furthermore, the state has yet to take appropriate steps to fully investigate, punish and redress the alleged participation of the company, Cyril Ramaphosa and others in the Marikana massacre. The state has a duty to both address its own role in committing abuses and to ensure that the mining company fulfills its human rights responsibilities.⁴⁷

After moving rapidly in appointing the Marikana Commission in 2012, the state has dragged its feet at every point in the process since then. There has been a failure to fully settle reparations claims, a failure to investigate and prosecute all of those responsible, and a failure to initiate or even support memorialisation processes. In a context where the state has not fulfilled its own obligations, it is perhaps not surprising that it has also failed to ensure that the company meets its responsibilities to the victims.

In the aftermath of the massacre, the mining company engaged in a diverse range of material and symbolic initiatives that sought to address some of the consequences of the harm inflicted on victims and the broader community. Yet, these initiatives failed to live up to the internationally recognised standards set by United Nations Guiding Principles on Business and Human Rights. Both the nature of engagement with victims and the nature and scope of remedies offered have proven to be inadequate in terms of these responsibilities. The lack of a clear acknowledgment of its role in the massacre, the lack of an apology and the failure to provide adequate remedial action to address its human rights responsibilities have undermined the reparative and preventative potential of the company's initiatives.

Sibanye-Stillwater undertook a broad array of activities under the banner of its Marikana Renewal Programme. Yet, these socio-economic developmental initiatives cannot offset the company's responsibility to respect human rights,⁴⁸ which in the case of the Marikana Massacre includes the provision for remediation through legitimate processes.⁴⁹ According to the United Nations Guiding Principles on Business and Human Rights, respecting human rights requires businesses to adopt three tools: a policy commitment; a human rights due diligence process; and mechanisms enabling the company to remediate any adverse human rights impact they may have caused or contributed to.⁵⁰ Despite claims that these instruments are in place,⁵¹ the company seems ill-prepared to effectively deliver on its basic responsibilities to respect human rights, including the right to remedy.

Ten years after the massacre, the acknowledgement of accountability and the provision of remedies to the victims of the Marikana Massacre remains incomplete, belated and unsatisfactory. When assessed against the relevant international normative standards, both the South African state and Sibanye-Stillwater fall short of meeting their corresponding obligations and responsibilities to protect and redress victims, and to prevent future abuses.

The unresolved legacy of apartheid-era corporate abuses

The challenges of addressing human rights abuses in Marikana takes place against the backdrop of the unresolved legacy of apartheid-era corporate abuses. Although the TRC raised these concerns and made recommendations, these were never followed through. Addressing more recent corporate abuse is compounded by mining companies' previous complicity in apartheid legislation, paying exploitative wages and subjecting miners and mining communities to unsafe and undignified living and working conditions. Apartheid is considered a crime against humanity, leaving a legacy of inequality and mistrust. Unless this legacy is confronted, efforts to deal effectively with the Marikana Massacre will continue to be undermined. The fact remains that the South African state has the obligation to ensure criminal accountability for corporate abuses during the apartheid era and to ensure redress for its victims.

Recommendations

In the wake of the Marikana Massacre, the state and the mining company had various responsibilities to the victims and to society. As reported in this policy brief, few of these responsibilities have been fulfilled. While important progress has been made and various legal and consultative processes are still underway, deep unhappiness and mistrust still characterise these relationships. Since a much more coordinated and proactive approach is needed to address these shortcomings, we make the following recommendations.

Responsibilities of the state

Criminal and civil claims

- The state has a responsibility to expedite criminal accountability, most particularly where senior figures have been implicated in serious offences.
- The state needs to allocate sufficient resources to IPID to conduct proper investigations to hold the police accountable.
- The state needs to allocate sufficient resources to NPA to prosecute cases effectively and timeously
- Following the conclusions of the Farlam Commission, the state needs to conduct appropriate investigations to assess whether the involvement of the mining company and its officials amounts to any form of legal liability.
- The state needs to expedite the settlement of victims and their families' outstanding civil claims.
- The state needs to provide clear and regular communication to victims and the public on their progress in pursuing civil and criminal justice.

Material and symbolic reparations

- The state needs to make sure that all victims of the massacre, including injured workers and the families of those who died,⁵² have access to a comprehensive reparations programme that encompasses both the symbolic and the material.
- The state needs to make sure that victims of the massacre have access to remedy mechanisms and to address any potential cost, legal, logistical, procedural or jurisdictional barriers to their access.
- State officials need to acknowledge their role and apologise on behalf of various state institutions (e.g. the Presidency, SAPS and Department of Minerals and Energy) for their part in the massacre.
- The state needs to support efforts to memorialise the Marikana Massacre, including the call for a national holiday, annual memorial events, the development of a memorial centre, and other victim and community memorialisation initiatives.

Governance and development in Marikana

- The state should invest in social services and basic infrastructure.
- The state has the responsibility to urgently address basic service delivery and housing shortfalls in Marikana.
- The state should invest resources into rebuilding relationships between state institutions and the community.

Addressing the legacy of apartheid

- To prevent the continuation of apartheid-era discrimination in the mining industry, the state should ensure that mining companies fulfil their corporate responsibilities with respect to human rights as stipulated by the United Nations Guiding Principles on Business and Human Rights.
- The state should explore establishing a Mining Sector TRC to expose the sector's apartheid-era complicity and uproot persistent exploitative practices.
- Mining companies' commitments to addressing living conditions in mining communities should be more seriously evaluated through the transparent development and monitoring of designated SLPs.
- The excessive use of force and authoritarian police practices remain a problem that should be countered by the adoption and implementation of the recommendations in the panel of mining experts report.
- The state should develop guidelines to prevent political leaders with private interests in companies from abusing and manipulating state resources to further these interests.

Responsibilities of the mining company

Civil and criminal claims

- The mining company should expeditiously settle the legitimate and credible claims lodged against it.
- The mining company should support calls for the state to expedite criminal cases.
- The mining company should support victims and their families who want to attend criminal trials as part of their right to access remedies.

Reparations to victims and survivors

- The mining company should acknowledge the support it provides to victims as reparations –admitting their responsibility for victims' unjustified suffering.
- The mining company should engage victims in a way that recognises their rights, agency and diversity.
- Reparations processes need to be designed after a more comprehensive assessment of victims and survivors' needs.
- Reparations processes need to engage fully with the families of the deceased, as well as with those who were injured, unlawfully arrested and detained.
- All stakeholders need to negotiate, and agree on, a comprehensive reparations plan and implementation process.
- Given the Marikana legacy, the mining company should invest more seriously in developing and implementing internationally recognised tools to effectively fulfil their corporate responsibilities as framed in the United Nations Guiding Principles on Business and Human rights. These instruments should include a clear policy commitment, a human rights due diligence process, and appropriate operational grievance mechanisms.

Memorialisation

- The mining company should conceptualise, develop and implement memorialisation processes and structures in a more collaborative manner.
- The mining company should use its leverage with the state to encourage its full participation in the memorialisation initiative at the Marikana koppie.

Development and community healing

- The mining company should support social and psychological interventions and services in Marikana.
- The mining company should support and invest in collaborative economic development initiatives in Marikana.
- The mining company should engage transparently and collaboratively with all relevant stakeholders regarding its SLP and other development programmes in Marikana.

A gendered reparations and healing programme

- Reparations need to take into account the gendered nature of the harm suffered by direct victims and other community members when developing appropriate remedies.
- Reparations need to be tailored to address the gender, cultural and other differences among beneficiaries.
- Engagement with victims and community members needs to recognise and adapt to the gendered constraints on their ability to participate in all consultations and negotiations.

An agenda for civil society and mining sector unions

Advocacy for redress and accountability

- Civil society and the mining unions should collaborate on campaigns to ensure that criminal and civil claims are settled expeditiously and fairly.
- Civil society and the unions should collaborate in advocating for state support for inclusive and collaborative memorial events and the development of an appropriate and sustainable memorial site.
- Civil society and the unions should actively monitor all state and mining company commitments to development and service delivery initiatives in Marikana.
- Civil society should continue their services to victims and survivors and expand them to include the Marikana community more broadly.
- Civil society and unions should advocate for broader processes to address the apartheid legacy in the mining sector, including the possibility of a mining sector truth commission.

A collaborative approach

There is significant scope for collaborative initiatives to address victims rights and build a more sustainable and peaceful community in Marikana. All stakeholders have a responsibility to explore potential avenues for pursuing common interests that can overcome historical and recent divisions.

Endnotes

- 1 The Marikana Massacre resulted in the death of 34 mineworkers at the hands of the police. However, this policy brief engages with truth, justice and redress for all 44 people killed, including those killed in the lead-up to the the massacre on 16 August 2012.
- 2 The research involved interviews with 40 participants, ranging from direct victims, community leaders, sector experts and Lonmin/Sibanye-Stillwater officials. The full research report can be found at *****INSERT WEB PAGE ADDRESS
- 3 Cyril Ramaphosa was previously Secretary General of the National Union of Mineworkers (NUM) and became a key shareholder, owning 9.1% of Lonmin Plc (the owners of the Marikana mine) shares through an investment company he had founded. His role in the massacre at a time when he was both shareholder and serving on the ANC's National Executive Committee proved to be particularly controversial.
- 4 The Mineral and Petroleum Resources Development Act (MPRDA) of 2002 requires that mineral companies have at least 26% black ownership.
- 5 Report of the Truth and Reconciliation Commission, vol. 4, Chapter 2, Introduction, point 23.
- 6 The monthly salary for a rock drill operator, the core of the striking workers, was approximately ZAR7 500 per month (plus medical and provident fund benefits).
- 7 Pete Lewis, 'Marikana: Lonmin's dodgy housing record', *GroundUp*, 4 September 2017, <https://www.groundup.org.za/article/marikana-lonmins-dodgy-housing-record/>. The state in fact agreed to changes to the SLP which reduced Lonmin's obligations for building houses.
- 8 Responsibility for these deaths is still contested, with charges brought against police, striking workers and union officials.
- 9 Lonmin Chief Commercial Officer Ibert Jamieson wrote to Minister of Mineral Resources Susan Shabangu urging her to 'bring the full might of the state to bear on the situation' – cited in Maeve McClenaghan and David Smith, 'The British mine owners, the police and South Africa's day of blood', *The Guardian*, 24 November 2013, <https://www.theguardian.com/business/2013/nov/24/lonmin-mine-shooting-police>. In an email to Jamieson, Cyril Ramaphosa wrote: 'The terrible events that have unfolded cannot be described as a labour dispute. They are plainly dastardly criminal and must be characterised as such. There needs to be concomitant action to address this situation' – cited in Athandiwe Saba, 'Marikana court case back to haunt Ramaphosa', *Mail and Guardian*, 3 September 2021, <https://www.theguardian.com/business/2013/nov/24/lonmin-mine-shooting-police>.
- 10 Ranjeni Munusamy, 'Cyril Ramaphosa: The true betrayal', *Daily Maverick*, 27 October 2012, <https://www.dailymaverick.co.za/article/2012-10-27-cyril-ramaphosa-the-true-betrayal/>.
- 11 James Nichol, lawyer for families of deceased miners, interviewed in *Miner Shot Down* (dir. Rehad Desai, Uhuru Productions, 2014), at minute 56.
- 12 Lucas Ledwaba, 'Extract: We are going to kill each other today – the Marikana story', *City Press*, 16 August 2019, <https://www.news24.com/citypress/trending/books/extract-we-are-going-to-kill-each-other-today-the-marikana-story-20190816>.
- 13 Khuselwa Dyantyi and Thato Masiangoako, 'Marikana massacre: The devastating impact of the narrative painted by business, police and the state', *Daily Maverick*, 26 August 2020, <https://www.dailymaverick.co.za/article/2020-08-26-marikana-massacre-the-devastating-impact-of-the-narrative-painted-by-business-police-and-the-state/>.
- 14 David Bruce, 'Here's the main reason Phiyega must go', *City Press*, 12 Aug 2015, <https://www.news24.com/citypress/voices/heres-the-main-reason-phiyege-must-go-20150807>.
- 15 Farlam, I.G., Hemraj, P.D. and Tokota. B.R. (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*, <https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>.
- 16 Ibid., at page 542.
- 17 Ibid., at page 514.
- 18 Ibid., at page 258.
- 19 Ibid., at page 518.
- 20 Claire-Ann Louise Lester, 2020, *Legal truth and discourses of violence in post-apartheid commissions of inquiry: The TRC and Marikana Commission* (PhD Dissertation, Department of Sociology and Anthropology, Stellenbosch University).
- 21 David Bruce, Gareth Newham, Themba Masuku and Adele Kirsten, 'Marikana experts report points the way to better policing', *ISS Today*, 18 August 2020, <https://issafrica.org/iss-today/marikana-experts-report-points-the-way-to-better-policing>.
- 22 Alex Mitchley, 'Marikana Massacre: 136 recommendations by expert panel for reforms in SAPS', *News24*, 29 March 2021, <https://www.news24.com/news24/southafrica/news/marikana-massacre-136-recommendations-by-expert-panel-for-reforms-in-saps-20210329>.
- 23 Marianne Thamm, 'Marikana Massacre – IPID investigates massacred miners' deaths, and SAPS' lies, without the promised funding', *Daily Maverick*, 30 August 2018, <https://www.dailymaverick.co.za/article/2018-08-30-marikana-massacre-ipid-investigates-massacred-miners-deaths-and-saps-lies-without-the-promised-funding/>.
- 24 Ibid.
- 25 Socio-Economic Rights Institute, 'The Marikana criminal trial relating to the murders of 13 August 2012 resumes', SERI media statement, 27 July 2021, <http://www.seri-sa.org/index.php/more-news/1166-marikana-the-marikana-criminal-trial-resumes-26-july-2021>.
- 26 The state has also invested significant resources in providing legal support to police facing charges, while showing much less concern for supporting the rights of victims in these cases.
- 27 Khuselwa Dyantyi and Thato Masiangoako, 'Marikana massacre: The devastating impact of the narrative painted by business, police and the state', *Daily Maverick*, 26 August 2020, <https://www.dailymaverick.co.za/article/2020-08-26-marikana-massacre-the-devastating-impact-of-the-narrative-painted-by-business-police-and-the-state/>.
- 28 Poloko Tau, 'Marikana: Still no justice', *City Press*, 15 August 2021, <https://www.news24.com/citypress/news/marikana-still-no-justice-20210815>.

- 29 Greg Nicolson, 'Marikana – a massacre still without any criminal consequences', *Daily Maverick*, 19 May 2022, <https://www.dailymaverick.co.za/article/2022-05-19-marikana-a-massacre-still-without-any-criminal-consequences/>. The number of families cited in the article is 34, but SERI has pointed out that the correct figure is 35 (personal correspondence). It is also reported that other families have not received any compensation yet.
- 30 This is according to Solicitor-General Fhedorisani Pandelani, quoted in a news report by Earnest Mabuza, 'Millions paid out to Marikana families but disputes remain over millions more', 17 August 2021, <https://www.timeslive.co.za/news/south-africa/2021-08-17-millions-paid-to-marikana-families-but-disputes-remain-over-millions-more/>.
- 31 The North Gauteng High Court has set the the court date to decide the amounts to be paid by the state to the injured workers for 26 July to 19 August 2022.
- 32 There also appears to be a gap in compensation relating to the families of the security guards and non-striking workers who were killed in the days before the massacre. The responsibilities of the state and the mine in relation to these families remains unclear.
- 33 See <https://www.sibanyestillwater.com/>.
- 34 Lonmin also assisted the families in claiming statutory benefits which have subsequently been paid and it paid for funeral costs.
- 35 Sibanye-Stillwater, 'Marikana Renewal Fact Sheet', 21 August 2021, https://thevault.exchange/?get_group_doc=245/1628608210-ssw-marikana-renewal-factsheet-aug2021.pdf.
- 36 United Nations, 2005, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted 16 December 2005, General Assembly Resolution 60/147, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation#:~:text=IX.-Reparation%20for%20harm%20suffered,violations%20and%20the%20harm%20suffered>.
- 37 United Nations, 2004, 'The rule of law and transitional justice in conflict and post-conflict societies'. Report of the Secretary-General, vol. S/2004/616; United Nations, 2011, Human Rights Council, Seventeenth session, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; United Nations, 2011, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework, Advanced edited version, UN Doc. A/HRC/17/31, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.
- 38 United Nations, 2005, *supra* n 33.
- 39 *Ibid.*, at para 3.
- 40 United Nations, 2011, 'UN Guiding Principles on Business and Human Rights' (*supra* n 34), Principle 1.
- 41 *Ibid.*, Principle 25.
- 42 *Ibid.*, Principle 11.
- 43 *Ibid.*, Principle 22.
- 44 *Ibid.*, Principle 11; United Nations, 2017, 'Human rights and transnational corporations and other business enterprises', A/72/162, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises', at para 65, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/218/65/PDF/N1721865.pdf?OpenElement>.
- 45 United Nations, 2017, Report of the Working Group, at para 81.
- 46 *Ibid.*, at para 86 and 87.
- 47 United Nations, 2011, Guiding Principles on Business and Human Rights (*supra* n 34), Principle 25.
- 48 *Ibid.*, Principle 11.
- 49 *Ibid.*, Principle 22.
- 50 *Ibid.*, Principle 15.
- 51 Sibanye-Stillwater, 2022, 'Complaints and grievance procedures', https://thevault.exchange/?get_group_doc=245/1648637316-ssw-complaints-grievance-procedure-2022.pdf; Sibanye-Stillwater, 2021, 'Sibanye-Stillwater's compliance report on responsible sourcing of Platinum/palladium', https://thevault.exchange/?get_group_doc=245/1634918836-ssw-responsible-sourcing-compliance-reportsigned-2021.pdf; Stillwater, 2021, 'Human rights policy', https://thevault.exchange/?get_group_doc=245/1623770079-ssw-human-rights-policy-june-2021.pdf.
- 52 Obligations to additional partners also need recognition in cases where mineworkers had such partners according to customary law and/or long-term partners.

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