



REPORT

THE MARIKANA MASSACRE:
REPAIR AND CORPORATE ACCOUNTABILITY
10 YEARS ON
2012–2022

 **University of St Gallen**
Institute for Business Ethics


CSV
Centre for the Study of
Violence and Reconciliation

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2012–2022**

MALOSE LANGA, HUGO VAN DER MERWE, MODIEGE MERAPE AND
JORDI VIVES-GABRIEL

Partnering organizations:



“there is no reparation in this
act of being employed by
the mine because we work
for these salaries”

(Marikana widow, 2021)

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TABLE OF CONTENTS

About the authors	3
Acknowledgements	4
List of acronyms	5
1. Introduction	6
1.1 Aim of the report	7
1.2 Key concepts	8
1.3 Methodology	8
2. History and Background	11
2.1 History of Mining and the Truth and Reconciliation Commission (TRC)	11
2.2 The Marikana Massacre	14
2.3 Farlam Commission of Inquiry	16
3. Present Context: Development Deficits, Ongoing Conflict, and Mistrust	18
3.1 Marikana: a community fraught with distrust, gender violence, and alcohol abuse	18
3.2 Poor living conditions in Marikana	20
3.3 Shift from Lonmin to Sibanye and retrenchments	22
3.4 Failure to implement Social and Labour Plans (SLP)	24
3.5 Trade union relationships and divisions within the community	26
3.6 2022 Strike at Sibanye	25
4. Material Reparations	28
4.1 Employment for Family Members:	29
4.2 Payment of School Fees	31
4.3 Housing	31
4.4 Financial Compensation	33
4.5 Marikana Renewal Programme and Other Corporate Social Responsibility Initiatives	36
5. Symbolic Reparations	39
5.1 Commemorations	40
5.2 Memorialization	41
5.3 Apologies	45

6. Seeking Truth And Serving accountability	48
6.1 Civil claims against Lonmin and other key stakeholders	50
7. Challenges, Opportunities, and Recommendations	52
7.1 Acknowledgement of wrongdoing and human rights responsibilities	52
7.2 Integrative and inclusive reparations plans	53
7.3 Comprehensive reparations plans	53
7.4 Participatory approach to reparations	54
7.5 Integrative approach to reparations, truth and justice	55
7.6 Service delivery and Social Labour Plans	55
7.7 Addressing apartheid legacies	56

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We are deeply appreciative of the inputs provided by the various participants in this study. This includes Marikana community members, victims and survivors of the massacre, civil society activists and leaders, lawyers, sector experts and Sibanye Stillwater officials.

List of Acronyms

AMCU	Association of Mineworkers and Construction Union
ANC	African National Congress
BEE	Black economic empowerment
CEO	Chief Executive Officer
CSVR	Centre for the Study of Violence and Reconciliation
EFF	Economic Freedom Fighters
NUM	National Union of Mineworkers
PGM	Platinum group metals
SAPS	South African Police Service
SERI	Socio-Economic Rights Institute
SLP	Social and Labour Plan
UN	United Nations

1. Introduction

1.1 Aim of the report

This report focuses on the process of corporate redress in response to the Marikana Massacre, which occurred on 16 August 2012. The study sought to examine the various forms of reparations that have been provided to victims by the mining company and to understand this process in the context of other processes of justice and repair to address the consequences of conflict and violence. As such, this report forms part of a broader international study on the role of corporate actors in transitional justice processes.¹

The report provides a brief description of the events in Marikana against the backdrop of the history of mining in apartheid South Africa and the subsequent transition to democracy. It frames the causes of the massacre as embedded in the unresolved transition and South Africa's failure to confront the legacy of exploitation and repression in the mining sector. It also seeks to unpack the various initiatives undertaken in response to the massacre, focusing particularly on the measures to address the needs of injured and arrested mineworkers as well as the families of those who were killed.

In seeking to unpack corporate accountability and corporate responses, the report focuses particular attention on the initiatives undertaken by the mining company (Lonmin and later Sibanye) in addressing victim and community needs in the wake of the massacre. The report seeks to understand the various perspectives of different stakeholders on these initiatives, and the opportunities and challenges faced in taking these processes forward.

The role of the state is also discussed in this report through the introduction of Social and Labour Plans (SLPs) and black economic empowerment (BEE) provisions for the transformation of mining ownership. The report critically discusses how these provisions did not effectively improve the living and working conditions of mineworkers that had contributed to the violent strike in 2012. Issues of criminal and civil liability of the state are also discussed as being deeply intertwined with perceptions of corporate accountability and a broader holistic reparations process.

This report is presented on the eve of the tenth anniversary of the Marikana Massacre in 2022. It seeks to contribute to a deeper understanding of the shortcomings of the reparations processes that have been implemented thus far and to identify avenues that can still be pursued in order to promote justice, reconciliation and healing.

¹ More details of the project can be found at: <https://www.csvr.org.za/corporate-symbolic-reparations-in-transitional-justice-contexts/>.

The report is accompanied by a policy brief² that is focused on framing recommendations for policy and clarifying the responsibilities of different actors in ensuring effective redress for victims and survivors.

This report unfolds as follows. After presenting the aims of this study, we introduce key concepts that underpin our research and frame our findings and conclusions. Section 2 provides a historical background to the mining industry, including its role in the Truth and reconciliation Commission (TRC), the Marikana Massacre and the Marikana Commission of Inquiry. The following sections present the findings in relation to four core themes: the current community context, material reparations, symbolic reparations, and seeking truth and criminal accountability. The findings are accompanied by illustrative quotes and excerpts from the data gathered through our desk and field research. Finally, section 7 concludes by discussing challenges, opportunities and recommendations moving forward.

1.2 Key concepts

In seeking to understand the needs and perceptions of various local stakeholders in Marikana in their own right, the report uses various certain key concepts to frame how the rights and obligations of these stakeholders can be more clearly conceptualised and understood in the context of African and international human rights frameworks. It is, however, not the intention of this report to evaluate the process against these international norms. Nevertheless, this framing does seek to present human rights as a key lens to understand the violations that occurred, and as an avenue to ensure that full and effective reparations are secured for the victims and affected communities.

The report examines the response to the events in Marikana through the lens of **transitional justice**. This approach suggests that the normal justice system is inadequate to provide a sufficient response to the scale and nature of harm caused by the massacre, and that a regular judicial response would also not sufficiently respond to the underlying causes of conflict that gave rise to it. Transitional justice calls for a more holistic response from various stakeholders, one that combines both judicial and non-judicial processes and develops systemic responses that seek to prevent future recurrences of such abuses.³

The process of transitional justice is generally recognised as a complex long-term process that includes many interrelated parts such as **truth seeking, criminal accountability, reparations, memorialisation and institutional reform**.⁴ These processes are viewed as interdependent and mutually reinforcing, and thus require an integrated approach that ensures their complementarity. These processes are not seen as alternative avenues but rather as equally important components of transitional justice.

Transitional justice is conventionally understood as a state-centric process in which state responsibility and state intervention are the main focus. This study also seeks to highlight the central role of corporate entities in transitional justice. This focus points to the need for a clearer understanding of **corporate accountability**

2 The policy brief is available at <https://www.csvr.org.za/reparations-for-victims-of-the-marikana-massacre/>

3 The African Union defines transitional justice as ‘the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopted in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation’ (African Union, 2019, Transitional Justice Policy, at p. 4, <https://au.int/en/documents/20190425/transitional-justice-policy>). The approach adopted by the United Nations (UN) Secretary General frames transitional justice as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’ (United Nations, 2010, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf).

4 Transitional justice is conventionally conceived of by the United Nations as encompassing four pillars, namely the right to truth, justice, reparations and guarantees of non-recurrence. This has more recently been extended to include the pillar of memorialisation. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/175/70/PDF/G2017570.pdf?OpenElement>

and repair, specifically in regard to business involvement and complicity in human rights abuses. Respect for human rights is a globally recognised standard of corporate responsibility grounded in the body of international human rights law that all companies are expected to fulfil.⁵ For corporate actors, respecting human rights requires that they avoid causing or contributing to human rights abuses and, where needed, remediating their adverse human rights impacts.⁶ For their part, states have the duty to protect citizens against corporate human rights abuses by holding businesses accountable through appropriate preventive efforts, investigation, punishment and redress.

In this report, we understand the term ‘reparations’ as a synonym for the notion of ‘making amends’ – that is, ‘intentionally reparative actions by parties who acknowledge responsibility for wrong, and whose reparative actions are intended to redress that wrong.’⁷ In line with the transitional justice literature, reparations encompass not a single act but a set of mechanism or processes with ‘the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations.’⁸

Victims of human rights violations have a **right to reparations**, which has become a key component of both transitional justice and corporate accountability that is recognised globally,⁹ regionally and in South Africa. This includes the right to (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.

Remedies for victims of human rights violations may adopt a wide variety of forms that depend on the particular context and circumstances of the harm caused.¹⁰ Transitional justice literature typically distinguishes between two types of reparations: material and symbolic reparations.¹¹ **Material reparations** include those measures that seek to restore the victim to their previous status (e.g. medical treatment, access to employment), restitute assets lost (e.g. land, a home) or compensate them for their loss (e.g. financial payments). **Symbolic reparations** are those measures that seek to acknowledge the significance of the events that occurred, acknowledge responsibility, and seek to ascribe meaning to what happened. This can take many forms, such as memorial events or structures, apologies, or narrative accounts. Material and symbolic reparations are seen as complementary processes that cannot substitute for each other.¹²

5 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, at para 11, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

6 Ibid., at paras 13 and 15.

7 M.U. Walker, 2006, *Moral Repair* (New York: Cambridge University Press), at p 16.

8 R. David and S.Y.P. Choi, 2005, ‘Victims on transitional justice: Lessons from the reparation of human rights abuses in the Czech Republic’, *Human Rights Quarterly*, 27(2), 392–435, at p. 393.

9 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>.

10 R Dudai, 2011, ‘Closing the gap: Symbolic reparations and armed groups’, *International Review of the Red Cross*, 93(883), 783–808, at p. 787, <https://doi.org/10.1017/S1816383112000082>.

11 P. de Greiff, 2006, ‘Justice and reparations’, in P. de Greiff (Ed.), *The Handbook of Reparations* (Oxford University Press); United Nations, 2008, *Rule of Law Tools for Post-conflict States: Reparation Programmes* (Vol. HR/PUB/08/1) (New York and Geneva: Office of the United Nations High Commissioner for Human Rights).

12 M. Richards, 2007, ‘The design and implementation of an optimal reparation program: How should limited resources for material reparation be distributed across victims of the Colombian conflict?’, at p. 32; F. Mégret, 2009, ‘The International Criminal Court Statute and the failure to mention symbolic reparation’, *International Review of Victimology*, 16(2), 127–147, <https://doi.org/10.1177%2F026975800901600202>.

Reparations are conventionally viewed as mainly an individual right but have also been increasingly understood in terms of communal harms. In contexts where communities have been collectively harmed through mass violation and where the consequences of violation impact on a whole community, the need for **community reparations** is also increasingly recognised.¹³

Consultation and participation have been recognised as key elements in ensuring that transitional justice and reparations processes are able to address victim and community needs effectively. In transitional justice settings, participation can become a source of empowerment for victims and an opportunity to challenge a range of exclusions and imbalanced power relations.¹⁴ This principle is critical in all aspects of conceptualisation, design and implementation, and is viewed as a key component of an effective and legitimate strategy.¹⁵

The issues of **gender-responsive transitional justice and gender-responsive reparations** have also become a key principle in regional and international transitional justice policies. It is universally recognised that women are affected differently by mass human rights violations and that a gendered understanding of reparations needs is critical when developing appropriate responses. This is also the case in corporate human rights abuses where women experience harm differently and disproportionately, and are confronted with additional barriers when seeking effective remedy.¹⁶

As suggested above, transitional justice also involves processes of **institutional reform**. This is viewed as both a key pillar in transitional justice policies and as a key element of the duty to prevent the recurrence of abuses.¹⁷ In the context of the mining industry in South Africa, this raises questions both about reforms in how the mining company operates (in engaging with workers and with affected communities) and in how the sector more broadly is regulated by the state. These questions point to the **transformation of the mining sector**, which could involve broader reform of mine ownership and mining rights, and regulations relating to the responsibilities of mining companies for the environment and affected communities.

1.3 Methodology

The approach used in this study was qualitative in nature. Qualitative research refers to the diverse (sometimes contradictory) concepts, definitions, characteristics, perceptions, metaphors and symbols that people use to describe and create the meaning of their experiences.¹⁸ Overall, qualitative research focuses on developing explanations for the qualities of social phenomena as they occur naturally.¹⁹ It is concerned with the opinions, experiences and feelings of individuals (what, how, when and where) and the descriptive ways

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- 13 The African Unions transitional justice policy makes specific note of ‘Collective reparation, which may include the restitution of communal lands; rebuilding health, education, security, judicial and other public service infrastructure as well as the livelihood systems of affected communities, with due regard to the interests of children and youth; and compensation in the form of money or services to the community’ (African Union, 2019, at p. 13).
- 14 P. Gready and S. Robins, 2014, ‘From transitional to transformative justice: A new agenda for practice’, *International Journal of Transitional Justice*, 8(3), 339–361, <https://doi.org/10.1093/ijtj/iju013>.
- 15 H. van der Merwe and N. Masiko, 2020, ‘Addressing diversity and inclusion through transitional justice’, CSVR Policy Brief, <https://www.csvr.org.za/wp-content/uploads/2020/01/Addressing-Diversity-and-Inclusion-Policy-Brief-2020.pdf>.
- 16 United Nations, 2019, UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Gender Dimensions of the Guiding Principles on Business and Human Rights, <https://www.undp.org/library/gender-dimensions-guiding-principles-business-and-human-rights>.
- 17 M. Davidovic, 2021, ‘The law of ‘never again’: Transitional justice and the transformation of the norm of non-recurrence’, *International Journal of Transitional Justice*, 15(2), 386–406, <https://doi.org/10.1093/ijtj/ijab011>.
- 18 M.T. Blanche, M.J.T. Blanche, K. Durrheim and D. Painter (Eds), 2006, *Research in Practice: Applied Methods for the Social Sciences* (Cape Town: Juta).
- 19 I. Parker, 2004, ‘Criteria for qualitative research in psychology’, *Qualitative Research in Psychology*, 1(2), 95–106, <https://doi.org/10.1191/1478088704qp010oa>.

these experiences are captured in words.²⁰ Thematic analysis was chosen as the method of analysis.²¹ Through its theoretical freedom, thematic analysis provides a flexible and useful research tool that can potentially provide a rich and detailed, yet complex, account of the data. This approach also helps to identify commonalities and differences in perspectives among and between different stakeholders, a key concern in understanding ongoing tensions and exploring options for taking the process forward.

Purposive and snowballing sampling techniques were used to access potential respondents. In so doing, we purposively targeted individuals such as representatives of Sibanye, trade unions, local traditional councils, community-based organisations, and political parties. We also interviewed activists, pastors, human rights lawyers, injured and arrested mineworkers, as well as the widows of those who were killed. All these individuals were identified through various channels and the process snowballed in which other respondents connected us with many other respondents.

It is important to note that some interviews were conducted during the COVID-19 lockdown period. As a result, some of the interviews were either conducted online or through phone, Zoom or MS Team calls. Depending on their availability, other respondents were interviewed in-person while ensuring compliance with COVID-19 protocols. Themes were identified and developed based on the reading and re-reading of the transcripts.

In total, 40 people were interviewed. The study aimed at a gender balance, with 20 men, 19 women and one gender-nonconforming participant. All ethics were considered, including the signing of forms consenting to be tape recorded and the use of pseudonyms for those who preferred to remain anonymous.

Secondary sources – such as reports from civil society organisations, academic journal and online media articles, documentaries, public company communications and official statements, as well as video footage and transcripts from interviews, and events concerning the Marikana Massacre – were also relied upon for data collection and analysis.

20 Blanche et al., 2006; Parker, 2004.

21 V. Braun and V. Clarke, 2006, 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, 3(2), 77–101, <http://dx.doi.org/10.1191/1478088706qp063oa>.

2. History and background

2.1 History of mining and the Truth and Reconciliation Commission

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 and subject them to inhumane working and living conditions. This encompassed paying low wages, racially discriminatory hiring practices, housing them in single-sex dormitories, and subjecting them to unhealthy working conditions.

The relationship between mining and the South African government is, however, a complex one, with the white government (even before the introduction of apartheid in 1948 and its implementation by subsequent Nationalist Party governments) instituting laws to protect white workers at the expense of black workers. Mining was a key sector of the South African economy and its needs were a major consideration in the development of national economic and political policies. The mines operated within a political system in which the mining companies were directly complicit in enforcing and benefiting from the apartheid system. This system was one that workers viewed as being used by the mines to keep their wages low and to subject them to unhealthy work environments and inhumane living conditions. It also undermined the workers' ability to organise and have their grievances effectively resolved through the courts. In addition, it implemented practices of racial discrimination in its treatment of white and black workers.

The key mechanism for addressing the legacy of human rights abuses in South Africa was the Truth and Reconciliation Commission (TRC). While having a narrow mandate for addressing only 'gross human rights violations' and no direct responsibility for holding corporate actors accountable, the TRC did convene a special sectoral hearing to look at abuses that occurred in the business/labour sector.

It was argued during these hearings that many businesses were complicit in human rights violations under apartheid. Through these hearings, the TRC sought to provide a clearer public record of these abuses and make recommendations for reforms and reparations. In its submission, the African National Congress (ANC) argued that

a number of core discriminatory laws were both actively sought and tolerated by business. Historically privileged business as a whole must, therefore, accept a degree of co-responsibility for its role in sustaining the apartheid system of discrimination and oppression over many years.²²

22 D. Tutu, A. Boraine, M. Burton, B. Finca, S. Khampepe, R. Lyster, W. Malan, K. Mgogo, H. Mkhize, D. Ntsebeza, W. Orr, D. Potgieter, F. Randera, Y. Sooka and G. Wildschut, 1998, Truth and Reconciliation Commission: Final Report, Volume 4, Chapter 2, at p. 22, <https://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>.

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.'²³ It went on to state:

*The first-order involvement of the mining houses and the Chamber of Mines (COM) in shaping the migrant labour system is the clearest example of business working closely with the minority (white) government to create the conditions for capital accumulation based on cheap African labour. The evidence shows that, rather than relying simply on the forces of supply and demand, the mining industry harnessed the services of the state to shape labour supply conditions to their advantage. Thus, the mining industry bears a great deal of moral responsibility for the migrant labour system and its associated hardships.*²⁴

The TRC also concluded that:

*There is plenty of evidence to show that, directly due to the monopsonistic²⁵ power of the Chamber of Mines (which was set up with this purpose explicitly in mind), black wages on the mines were lower – at least until the mid-1970s – than they would almost certainly otherwise have been. Similarly, the opposition of the Chamber of Mines to the unionisation of black mineworkers effectively prevented the growth of trade unions for black mineworkers until the beginning of the 1980s.*²⁶

The TRC berated the mining companies for not acknowledging the extent of their involvement in practices that abused workers' rights:

*Anglo [-American]'s submission was also flawed. Its most glaring failure was to sidestep the African wage issue. The submission blames 'race politics' for depressing black wage levels and, like the Chamber of Mines, fails to address the active measures taken by mining magnates to ensure the continued supply of cheap migrant labour.*²⁷

The TRC also found that the mining industry had neglected its obligations regarding workers' health and safety and noted that they had not been forthcoming on the real state of health and safety measures in the mines during apartheid:

*[T]here appears to be some evidence that profitability ranked higher than people's lives – as evidenced by the asbestos scandal and the continued use of polyurethane in mines long after the dangers had become known. It is regrettable that more details were not forthcoming on health and safety issues from the Chamber of Mines or the Anglo-American Corporation.*²⁸

23 Ibid., at p. 24.

24 Ibid., at p. 33.

25 Monopsonistic – single buyer of labour. Workers were forced to engage with the Chamber and could not negotiate directly with the companies.

26 Tutu et al., 1998, at pp. 33–34.

27 Ibid., p. 34.

28 Ibid., p. 36.

The TRC identified different avenues through which the legacy of corporate complicity could be addressed, including a wealth tax and a voluntary development fund, but the Commission ultimately failed to make clear recommendations in this regard. It also expressed some scepticism about the adequacy of a voluntary fund:

The virtue or otherwise of the above proposals must be left to experts in the field to assess. The extent to which voluntary responses of the kind suggested by Mr Tucker are likely to prove sufficient to address the problem facing the nation needs at least to be questioned.²⁹

In response to these recommendations, the state opted to simply support the idea of a voluntary fund and did not follow up on any of the suggestions for a wealth tax or other impositions on business that would address the legacy of complicity. No specific recommendations were made in relation to addressing the legacy of health and safety abuses and the racially discriminatory implementation of this system. Tracy-Lynn Humby, a legal scholar at the University of the Witwatersrand, notes that there were many issues left unaddressed by the TRC engagement with corporate actors and that ‘there is still extensive scope for processes of revelation, recognition, apology and forgiveness.’³⁰ She argues that many of the exploitative practices highlighted by the TRC (such as the migrant labour system) have simply continued largely untransformed, and that these have directly contributed to present patterns of conflict and violence. She concludes that:

The mining industry in South Africa has unfinished business with the past. It is hasty to cross the bridge of transformation, wanting to formulate programmes of redress without first truly seeing and acknowledging its shadow side, without recognising the ecosystems and people who have been rendered invisible as the fodder of production [...] The past is likely to continue [haunting] the industry until it confronts it with humility, gravity, remorse, regret and full revelation and recognition. The symbolic and material forms of this reparation can be the subject of a lively debate. Like therapy, the process of restoration is unlikely to be quick or painless but is in the industry’s own long-term interests to embark on this journey.³¹

The conditions of mineworkers and the communities where they live 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 mining communities. Despite these reforms, wages remained low and social conditions in the mining communities were desperate, with Marikana lacking basic social services in the informal settlement where many miners resided. These tensions gradually escalated however and burst into public view when violence erupted in Marikana. While illustrative of tensions more broadly in the mining sector, the specific developments at Marikana came to illustrate very clearly the continuities between the history of apartheid mining and the present-day realities of the poor living conditions of mineworkers and the lack of development of mining communities neglected by both the state and the mining companies.

29 Ibid., p. 57. The report notes that ‘Mr Bob Tucker, executive director of the Banking Council, argued (without being mandated to do so by members of the Banking Council) that business should contribute to ‘reconstruction and development’ rather than a reparations fund’ (at p. 56).

30 T.-L. Humby, no date, ‘Time for a Mining Truth and Reconciliation Process in South Africa?’ Unpublished report, University of the Witwatersrand, at p. 1. <http://www.jstor.org/stable/24736097>.

31 Ibid., at p. 10.

1.2 The Marikana Massacre

In 2012, Lonmin Plc³² workers staged a strike demanding to be paid a minimum of ZAR12 500 per month (approximately USD860). The mineworkers were not only protesting against low wages but also against poor living and working conditions. The mine did not provide adequate housing for its workers and incentivised them to find their own accommodation by providing a living-out allowance. The informal settlement where many of them lived consisted of shacks with no electricity, water, or sewerage. The main informal settlement, Nkaneng, is situated on land owned by the Bapo Ba Mogale traditional authority, which maintained that the settlement had been illegally occupied and insisted that the inhabitants were relocated. A number of single-sex hostels had existed in Marikana before they were converted into family units. The living situation was one that reflected the conditions created under apartheid, involving inhumane living conditions in informal settlements where basic needs such as water, sanitation and electricity were not provided.

This situation had persisted despite the Social and Labour Plan (SLP) lodged by Lonmin, a legal contractual obligation to the South African state that had to be fulfilled in order to receive a mining licence.³³ In its 2006 SLP, Lonmin had committed to building 5 500 new homes by 2011; however, Lonmin admitted that only three houses had been built by 2009.³⁴ The main demand of the mineworkers during the strike was for higher wages, specifically a minimum salary of ZAR12 500 per month. This was significantly more than the average salary of mineworkers in the sector. 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).³⁵

The union representation process for Lonmin miners had shifted dramatically in the lead-up to the strike. The mineworkers at Lonmin had lost confidence in the National Union of Mineworkers (NUM), the union that had officially represented them and other platinum mineworkers for a number of decades.³⁶ They perceived NUM as having been co-opted by Lonmin management and no longer able to represent their demands effectively.³⁷ They thus chose to go on an unprotected strike without NUM backing and tensions escalated between striking and non-striking workers.³⁸ Many of the striking workers voiced support for a newly established union, the African Mining and Construction Union (AMCU), but this union was not officially recognised as representative of the workers. Various attempts to facilitate negotiations with striking workers were turned down as Lonmin management refused to negotiate with strikers and insisted that negotiations only happen through official channels brokered by NUM.³⁹

In the absence of effective communications channels, tensions escalated, leading to the killing of ten people including three non-striking workers, three striking mineworkers, two mine security guards and two police officers. During the escalation of the conflict, senior ANC figures, government officials, police leadership and mining officials engaged in communications that cemented a common understanding of the situation as one

32 On 10 June 2019, Sibanye-Stillwater completed the acquisition of Lonmin Plc.

33 L. Molebatsi, 2015, 'Building houses, mending fences', *Imiesa*, 41(7).

34 R. Hamann, 2019, 'Dynamic de-responsibilization in business–government interactions', *Organisation Studies*, 40(8), 1193–1215, <https://doi.org/10.1177%2F0170840618815927>.

35 Staff reporter, 2012, 'Miners earn a R7000 "pittance"', *Mail & Guardian*, 24 August, <https://mg.co.za/article/2012-08-24-miners-earn-a-r7000-pittance/>.

36 C. Chinguno, 2013, *Marikana and the Post-Apartheid Workplace Order* (Johannesburg: Sociology, Work and Development Institute, University of the Witwatersrand).

37 *Ibid.*

38 L. Sinwell, 2013, 'The Marikana strike: The origins of a living wage demand and changing forms of worker struggles in Lonmin platinum mine, South Africa', *Labour, Capital and Society*, 46, 92–115.

39 *Ibid.*

that required strong and decisive police intervention.⁴⁰ Mining officials also engaged directly with state officials to urge stronger action against striking workers. Lonmin Chief Commercial Officer (CEO) Albert Jamieson wrote to Minister of Mineral Resources Susan Shabangu, urging her to 'bring the full might of the state to bear on the situation'.⁴¹

President Cyril Ramaphosa was a shareholder in Lonmin at the time. He was also a senior ANC leader and member of the National Executive Committee, with strong political ties to senior leadership figures. He directly engaged with the ministers of Police and Mineral Resources and called on National Police Commissioner Riah Phiyega to request that resolute action be taken against the workers.⁴² Rather than urging for a better deal for workers or a commitment to peaceful negotiations, Ramaphosa argued for police to move in. Ramaphosa labelled strikers as criminals and suggested that action be undertaken accordingly.⁴³ In response to Lonmin management pleas, Ramaphosa urged police to take 'concomitant action' against 'criminal' protesters.⁴⁴ Using similar language, Ramaphosa also wrote in an email to Lonmin CEO Albert Jamieson that: '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'.⁴⁵

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.

*We now know that this was a joint operation between Lonmin and the police, that Lonmin was completely integrated into the police strategy, and assisted the police strategy. It provided a senior executive to be part of the police team. 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.*⁴⁶

In the days leading up to the massacre, police intervention was escalated. The day before the massacre, the police ordered 4 000 rounds of live ammunition for R5 rifles and four mortuary vans.⁴⁷ The police also called in the Tactical Response Team, a specialised police unit responsible for dealing with extremely volatile incidents such as bank heists. As the strike progressed, mineworkers began using a koppie (small hill) between Lonmin's platinum mine operations and the informal settlement of Nkaneng for their meetings and discussions.⁴⁸ As had become routine during the strike, the workers went to the koppie on the morning of 16 August 2012 to deliberate among themselves about the wage dispute with Lonmin. Coincidentally, in the Lonmin boardroom that same morning, Northwest Provincial Police Commissioner Lieutenant General

40 R. Botiveau, 2014, 'Briefing: The politics of Marikana and South Africa's changing labour relations', *African Affairs*, 113(450), 128–137, <http://dx.doi.org/10.1093/afraf/adt073>.

41 N. Davies, 2015, 'Marikana massacre: the untold story of the strike leader who died for workers' rights', *The Guardian*, 19 May, <https://www.theguardian.com/world/2015/may/19/marikana-massacre-untold-story-strike-leader-died-workers-rights>.

42 P. Alexander, 2013, 'Marikana, turning point in South African history', *Review of African Political Economy*, 40(138), 605–619, <https://doi.org/10.1080/03056244.2013.860893>.

43 A. du Preez, 2015, 'The Marikana massacre: Seeing it all', *Safundi*, 16(4), 419–442, <http://dx.doi.org/10.1080/17533171.2015.1116831>.

44 R. Munusamy, 2012, 'Cyril Ramaphosa: The true betrayal', *Daily Maverick*, 27 October, <https://www.dailymaverick.co.za/article/2012-10-27-cyril-ramaphosa-the-true-betrayal/>.

45 Ibid.

46 James Nichol, lawyer for families of deceased miners, interviewed in *Miner Shot Down* ([Documentary], R. Desai (dir.), Uhuru Productions, 2014), at minute 56.

47 G. Nicholson, 2013, 'Marikana Commission: Chronicle of death foretold and planned for by SAPS', *Daily Maverick*, 15 October, <https://www.dailymaverick.co.za/article/2013-10-15-marikana-commission-chronicle-of-death-foretold-and-planned-for-by-saps/#gsc.tab=0>.

48 G. Marinovich, 2016, *Murder at Small Koppie: The Real Story of the Marikana Massacre* (Cape Town: Penguin Random House).

Zukiswa Mbombo had 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 channel eNews shortly after the media briefing, Mbombo said: ‘If they resist, like I said, today is a day that we intend to end the violence.’⁴⁹

On 16 August, the South African Police Service (SAPS) was deployed in large numbers around the koppie. The police ordered the workers to disperse from the koppie. The workers, however, refused to leave without getting an opportunity to first speak to their employer.⁵⁰

Heavily armed police, along with special task force members, encircled the workers with a barbed-wire fence, blocking the miners’ escape route to Nkaneng informal settlement. Upon realising they were trapped, mineworkers attempted to move off from the koppie and head towards Nkaneng. It was inevitable that they would approach the police lines encircling them. Police construed this as ‘a show of force’ to which they retaliated instantaneously with gunfire.⁵¹ With ‘no warning shot’, police started firing at the miners.⁵² ‘With their weapons down’, some fleeing strikers, including several leaders, turned to the side, hoping to escape through a small gap between the wire and a nearby livestock enclosure. However, their path was blocked by armoured police vehicles. The police opened fire, killing 34 mineworkers, leaving at least 78 injured and arresting 250.⁵³ Some of the mineworkers managed to escape to their homes. Seventeen mineworkers were killed at the site of interaction. Police then pursued some of the strikers onto the koppie, where a further 17 were killed (at what was subsequently called Scene Two). This second site was particularly controversial as some miners were allegedly killed ‘execution-style’ without provocation.⁵⁴

1.3 The Farlam Commission of Inquiry

In response to the public outrage and consternation that followed, President Jacob Zuma appointed a commission of inquiry, chaired by a retired judge, Ian Farlam. The Commission (more 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. In its conclusions relating to the responsibility of Lonmin, it found:

- Lonmin Plc 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 also 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

49 L. Ledwaba, 2019, ‘Extract: We are going to kill each other today – the Marikana story’, City Press, 16 August, <https://www.news24.com/citypress/trending/books/extract-we-are-going-to-kill-each-other-today-the-marikana-story-20190816>.

50 P. Alexander, L. Sinwell, T. Lekgowa, M. Botsang and B. Xeswi, 2013, *Marikana: A View from the Mountain and a Case to Answer* (Johannesburg: Jacana).

51 Ibid.

52 Ibid.

53 P. Alexander, 2013; J. Sacks, 2012, ‘Marikana prequel: NUM and the murders that started it all’, Daily Maverick, 12 October, <https://www.dailymaverick.co.za/opinionista/2012-10-12-marikana-prequel-num-and-the-murders-that-started-it-all/>.

54 M. Lindeque, 2014, ‘Marikana miners shot “execution style”’, Eyewitness News, 12 March, <https://ewn.co.za/2014/03/12/Marikana-miners-were-surrendering>; R. Desai (dir.), 2014, *Miners Shot Down* [Documentary], https://www.youtube.com/watch?v=g2GbCoKioEs&tab_channel=UhuruDigital.

come to work despite the fact that it knew that it was not in a position to protect them from attacks by strikers.

- Finally, it found that 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'.⁵⁵

The Farlam Commission determined that it was possible for Lonmin to close the mine to protect its workers but, for business reasons, it opted not to do so.

In relation to the police, the Farlam Commission highlighted poor leadership at the SAPS as the main factor that led to the police opening fire on protesting miners, killing 34 on 16 August 2012. It recommended that:

- The appointments of senior command personnel should be audited to avoid confusion among the rank and file within the SAPS;
- The use of force in public order policing needed to be reviewed; and
- Automatic weapons had no place in public policing.

While the Commission did not recommend any criminal action be taken against Lonmin officials, it did not exonerate them from criminal accountability. It recommended further investigations by the Independent Police Investigative Directorate (IPID) and other investigatory bodies.⁵⁶

55 I.G. Farlam, P.D. Hemraj and B.R. Tokota, 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, at p. 542, <https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>.

56 Ibid.

3. Present context: Development deficits, ongoing conflict and mistrust

The Marikana Massacre and the violence that preceded it took the lives of 44 people and injured dozens of others. Yet, the episode also left a landscape of pervasive violence, social division and distrust in the Marikana community that it is still vivid ten years later. Living conditions are dismal and Marikana residents lack access to basic services and decent housing.

The initiatives led by the company with the goal of improving the social impact of its operations seem not to have made much of an impact. In fact, company (in)action in the years since 2012 may have exacerbated the situation. Lack of delivery on their Social Labour Plan (SLP), failed promises to survivors of the massacre, large-scale retrenchments and tensions between unions have all contributed to exacerbating the conditions in the community. Taken as a whole, the situation of deprivation and exploitation depicted by the stakeholders interviewed holds many parallels with the conditions of oppression that the mining industry exerted during the height of apartheid. In what follows, we provide an overview of common perspectives shared by a number of representative stakeholders.

3.1 Marikana: A community fraught with distrust, gender violence and alcohol abuse

It was evident during field work that many respondents presented with symptoms of trauma following the massacre, including the widows, the children, injured and arrested miners as well as community members of Marikana more broadly.

Since 2012 people are not okay. I think we still need counselling here because people are so violent here. They are so violent. Every weekend people kill each other, you will hear gunshots, people are breaking in the shops. So, life is not right. Since 2012 we haven't had normal life. There is nothing that changed. So, I think also trauma plays a role in this. Psychologically, everyone needs to be taken care of psychologically daily. Psychologically, those people are not coping. Psychologically, they are traumatised. (Grace, female, community activist)

I am saying this because I have seen many of the mineworkers that they were affected with the massacre. They were very emotional. They were [...] they acted as if they are mentally disturbed. Many things happened in these locations because of the affected miners. (Thandi, female, community activist)

It escalated to children, the whole community who witnessed when people were getting shot, and all the chaos. To such an extent that school children are still traumatised today. A child can't sit in class; he says he wants to go to the mine to kill people who killed his father. (Rose, female, lay counsellor)

For the widows, it was hard to cope with the loss of their husbands, who were the main breadwinners. This was evident during the Farlam Commission hearings, as some of the widows fainted when they were asked to give testimony or when pictures of their husbands were shown on the television screen in the room. It was also evident that the memories of the massacre affected their children. For example, one of the widows gave testimony to the Farlam Commission, saying that ‘the painful fact is that you lose a husband and after that you suffer with your kids because you are left with nothing’.

Our spirits are heavy laden, we need to move away from this place. Our children's fathers were killed here and they need to grow up in this place, it is not good. We will never heal emotionally.
(Focus group with widows)

Lack of psychological services and unresolved trauma have been linked to increasing levels of gender-based violence. It was mentioned that the use of alcohol and drugs increased among mineworkers, which has been confirmed by other studies.⁵⁷

Some of the women were affected economically. I don't know how to put it. Because their husbands were not having money. You can see that this person is suffering. And their husbands also was drinking [furiously] [...] I mean drinking too much. And ended up fighting. They ended up fighting. (Thandi, female, community activist)

They tell themselves daily that alcohol will numb their problems. When they get to the drinking spots, they talk about their problems. They say that the mine did not treat them well, they were retrenched without whatever. (Grace, female, community activist)

Males were angered. The anger caused a work made them abusive towards their wives, emotionally and physically. Life changed. (Rose, female, lay counsellor)

They say a man never cries. And that is where the problem literally [lurks] that a man tries to be strong in front of the community, and when he breaks, he breaks on a woman, he ends up fighting with the woman. That thing has affected him psychologically for a long time because they can't talk about their problems. (Rose, female, lay counsellor)

Respondents connected alcohol abuse with increased risk of violence in Marikana, including gender-based violence. Evidence shows that women living with men who drink heavily are five times more likely to be assaulted by their partners than those who live with non-drinking partners.⁵⁸

Their behaviour; others are aggressive, beating their wives, not [...] they are not well as you are looking at him, that this person is not well. But if you said, can you go to a doctor to consult, he will just insult you. So, I think they are still hurt. The people are still hurt. (Thandi, female, community activist)

In sum, respondents asserted that the trauma of the massacre had negatively affected the moral fibre of the

57 J. Pelders and G. Nelson, 2019, ‘Contributors to fatigue of mineworkers in the South African gold and platinum sector’, *Safety and Health at Work*, 10(2), 188–195, <https://doi.org/10.1016/j.shaw.2018.12.002>; K. Peltzer and S. Ramlagan, 2009, ‘Alcohol use trends in South Africa’, *Journal of Social Sciences*, 18(1), 1–12, <https://doi.org/10.1080/09718923.2009.11892661>.

58 F. Boonzaier and C. de la Rey, 2004, ‘Woman abuse: The Construction of gender in women and men's narratives of violence’, *South African Journal of Psychology*, 34(3), 443–463, <https://doi.org/10.1177%2F008124630403400307>; R.L. Peralta, L.A. Tuttle and J.L. Steele, 2010, ‘At the intersection of interpersonal violence, masculinity, and alcohol use: The experiences of heterosexual male perpetrators of intimate partner violence’, *Violence against Women*, 16(4), 387–409, <https://doi.org/10.1177%2F1077801210363539>.

community because men relied on alcohol to cope with life stressors, which in turn caused other forms of violence, especially gender-based violence.

3.2 Poor living conditions in Marikana

The living conditions in Marikana remain a source of deep concern for the community. Poor living conditions, including a lack of running water, no sewerage service, limited or non-existent access to electricity, and a widespread shortage of formal and durable housing were all highlighted as having contributed to the strike in 2012. Despite promises that this situation would be improved following the massacre, many people still live in these conditions. The Farlam Commission highlighted the link between the living conditions in the Marikana area and subsequent violent events, noting that by failing to provide adequately for the people living and working in Marikana, Lonmin had created an environment that promoted unrest, disunity and tension among its workers.⁵⁹

A 2016 report by Amnesty International denounced the fact that in Nkaneng, in the immediate surrounding of Lonmin's Marikana mine where many of its workers live, the situation had still not improved substantially. It was estimated that the population of about 15 000 live in shacks made of metal sheets and bits of wood, with deplorable access to water and dismal sanitation infrastructure.⁶⁰ Five years later, our interviewees also echoed the concerns raised by the Farlam Commission and Amnesty International.

I can't really see anything visible that Lonmin has done for the community of Wonderkop. Because if you can come to Wonderkop there is nothing. It's like we are not the community that has a huge mining company around us. You will see there is nothing. There is nothing! I can't really point anything. (Lindiwe, female, community activist)

Following the massacre, Lonmin filed an updated SLP in which it committed to new goals for providing housing and services to the community. However, the provision of new housing and apartments does not appear to have eliminated the insecure and poorly serviced living conditions of the Marikana community. Following their takeover of Lonmin, Sibanye also filed a new SLP with the Department of Mineral Resources and Energy, which remains to be completed at this point.⁶¹

The effects of these local development projects are varied, and our research has shown that the economic and living conditions within the Marikana area have changed in some ways since 2012. In particular, it can be noted that there are now more people with access to formal housing in the vicinity of the mine. There have also been efforts to improve regional infrastructure and provide new services to the people living within the district.⁶² These efforts have led to some improvements for people living in Marikana; though it should also be noted that there has been a rise in an imbalance of wealth between people employed directly by the mines and those employed indirectly or in industries that support the community, with the latter group more likely to live in informal housing.⁶³

59 Z. Postman and A. Hendricks, 2018, 'Marikana workers live in dire conditions three years after Farlam report', GroundUp, 20 March, <https://www.groundup.org.za/article/marikana/>.

60 Amnesty International, 2016, Smoke and Mirrors: Lonmin's Failure to Address Housing Conditions at Marikana, South Africa, <https://www.amnesty.org/en/documents/afr53/4552/2016/en/>.

61 Sibanye-Stillwaters, n.d., 'Summary of SLP Projects 2020' [Press release], <https://www.sibanyestillwater.com/sustainability/community/>.

62 L. Marais, M. Campbell, S.P. Denoon-Stevens and D. van Rooyen (Eds), 2021, Mining and Community in the South African Platinum Belt: A Decade after Marikana (Hauppauge, NY: Nova Publishers).

63 Ibid.

The vulnerability of those in the informal economy also speaks to a level of inequality in living conditions that may also serve to increase tensions and community insecurities. Despite certain improvements, it is still important to note that people living in the Marikana community still experience serious problems with service delivery.⁶⁴ Many have unstable access to water and electricity. Just under half of the community still lives in informal housing.⁶⁵

Especially Wonderkop, where the koppie is. The streets are very dirty and narrow, and they are not made out of stones. When it is raining, you won't get inside Wonderkop. And there were storm waters that were getting inside our houses. (Thandi, female, community activist)

There haven't been changes since 2012. We are still staying in the shacks we used to stay in, the roads are bad. It gets bad when it rains. When it rained it is difficult to move from Nkaneng to here. There is no difference at all. We do not see any houses, the roads are bad, nothing is happening. Things are the same. (Arrested mineworker, male)

We don't have a local police station. So, if these things happen, we will need the help of the police [...] I have to travel. I have to take a taxi to go to the police station. When you get there, they will tell you that it is at night, '[We don't do] Wonderkop at night, we will come tomorrow morning.' (Lindiwe, female, community activist)

The lack of visible improvement and the continued difficulty are a source of frustration for many residents. They expressed frustration at the slow progress of development in the area and noted how it contributed to feelings of being let down or ignored by Lonmin, Sibanye and the state.

Oh! It was a memorial service when she was addressing and saying; after this, Marikana will be like Canaan. We will never suffer like we are suffering. Because our living conditions are very bad. Even Lonmin, they promised to build people houses, they promised houses and proper roads, but till now there is nothing, there is no change. We are still living in the same condition that we were living in before. (Sonto, female, local politician)

The communities who are around the mining should be developed. But now, what the government did, the members, the political parties, once they get into power, they get [co-opted] into these companies, and then they forget about the SLP. (Moses, male, community activist and local politician)

There is a belief that Sibanye is a government entity, that is why they are not delivering on the promises. So, they do not trust the mine and the government. They think they fail them. (Rose, female, lay counsellor)

⁶⁴ L. Sifile, 2012, 'Marikana remains a hot potato for political parties', Sowetan Live, 1 November, <https://www.sowetanlive.co.za/news/south-africa/2021-11-01-marikana-remains-hot-potato-for-political-parties/>.

⁶⁵ Ibid.

3.3 Shift from Lonmin to Sibanye and retrenchments

The takeover of Lonmin was formally completed by Sibanye on 10 June 2019.⁶⁶ The merger meant that Sibanye, which has assets in South Africa, Zimbabwe and the United States, became the second-biggest miner of platinum group metals (PGM), second only to Norilsk Nickel.⁶⁷ The takeover was perceived by many in the community as a move by Lonmin to elude its responsibilities in Marikana.

The reaction when Sibanye took over from Lonmin, many people [said] Lonmin is running away and leave the mess that they did. So, they didn't trust Sibanye when Sibanye came. (Moses, male, community activist and local politician)

The takeover of Lonmin by Sibanye was a result of the slump in platinum prices in the wake of the 2008 global financial crisis and the consequent multiple bailouts from the South African Public Investment Corporation. In 2019, Sibanye announced that it would retrench about 5 000 mineworkers; however, after negotiations with the unions, this number was reduced to about 1 500 at the end of 2019. This retrenchment process led to heightened tensions during Sibanye's takeover, a deal that AMCU opposed and which it blamed for the layoffs.⁶⁸ AMCU president Joseph Mathunjwa decried the Sibanye announcement that there mineworkers were going to be retrenched. He also questioned the Competition Commission's role in granting permission for the acquisition of Lonmin to proceed. In addition to the retrenchments, the number of contractors was also reduced by 1 709, 1 612 employees had accepted voluntary retrenchment packages, 53 had retired and 259 jobs were cut through natural attrition.⁶⁹

In the interviews, much was said about Sibanye's retrenchments, which resulted in a great deal of resentment and mistrust.

Sibanye promised that they will take over that they will create jobs and jobs. For me it's not – they keep on retrenching the people. How then do you get in a transition with Lonmin Company and then just a month later, you retrench so many people? (Lindiwe, female, community activist)

When Sibanye took over! Lot of retrenchments took place in this place. And then what I have realised is that Sibanye doesn't care, they are here for real profits. They don't care about their communities. Also, I have suspicions that the shareholders of Lonmin they are still the shareholders of Sibanye. So, which means they managed to negotiate. Because if you look at how the things were happening, it's that Lonmin had plans of dealing with [...] of continuing with retrenchments even by then. But because of the anger of the workers, they could not do it. (Moses, male, community activist and local politician)

Overall, workers felt deeply disrespected by Sibanye's retrenching them, especially in the wake of the 2012 massacre. For some workers, the retrenchments gave rise to the belief that Sibanye was no different to Lonmin. In fact, some respondents suggested that Lonmin was better than Sibanye.

66 A. Seccombe, 2016, 'Sibanye is now the proud owner of Lonmin', Business Day, 10 June, <https://www.businesslive.co.za/bd/companies/mining/2019-06-10-sibanye-is-now-the-proud-owner-of-lonmin/>.

67 Ibid.

68 N. Ngatana, 2019, 'Mathunjwa: Sibanye-Stillwater had no intent of improving Marikana miners' lives', Eyewitness News, 1 October, <https://ewn.co.za/2019/10/01/mathunjwa-sibanye-stillwater-had-no-intent-of-improving-marikana-miners-lives>.

69 Staff reporter, 2020, 'Sibanye confirms final Marikana retrenchment figures', Creamer Media's Mining Weekly, 16 January, <https://www.miningweekly.com/article/sibanye-confirms-final-marikana-retrenchment-figures-2020-01-16>.

We are still waiting because in their meeting they always tell us that we are new, but we will try to fix things that Lonmin failed to do. I think now it's been – how many years? Three years now, but there are no changes. Instead, the miners, they are also complaining about this Sibanye. They are saying they feel like Lonmin was better than this Sibanye. Because Sibanye, the way they are doing things is totally not acceptable. They are oppressing people. The mineworker they are being oppressed by this Sibanye. So, we are not satisfied at all. The mineworkers, even the communities. (Sonto, female, community activist and local politician)

The community is saying they do not want Sibanye at all, because it brings about the same pain left by Lonmin and Anglo. So instead of them fixing, they are only making the matter worse. (Grace, female, community activist)

Sibanye came with its own rules. Lonmin took its rules. They say it would have been better if it were still Lonmin. It is oppressing them [referring to the workers]. (Focus group with widows)

Some workers argued that Sibanye was not honest in claiming that retrenchments are due to the company not doing well financially, particularly when considering their financial results in 2019. The Sibanye takeover from Lonmin marked a significant turn-around in the mine's profitability: a profit of over ZAR1 billion was recorded for the last six months of 2019.⁷⁰

It generated a profit because we are in such a different economic environment. The basket price for Marikana when we bought it has gone from R13 000 an ounce to R30 000 an ounce. (Sibanye CEO Neal Froneman⁷¹)

In 2020, the profitability of Marikana platinum mines had further improved.

Marikana was a major contributor to Sibanye's record March quarter adjusted earnings before interest, tax, depreciation and amortisation (EBITDA) of R11bn, compared with the R808m in the same period a year earlier.⁷²

Despite these huge increases in profits, mineworkers and other stakeholders interviewed felt that little had changed in Marikana, including with respect to employment opportunities and service delivery in the area.

That you can't just give handouts, you need to help those communities to be self-reliant and self-sufficient, and you have that responsibility. Because in that area, as you may have heard, unemployment is very high. (Activist priest, male)

They promise to take the children of the villages [around Marikana] to school. But what I see, if the children have passed matric, they never go forward. They are all unemployed. (Thandi, female, community activist)

70 E. Stoddard, 2022, 'Marikana in a starring role as Sibanye-Stillwater swings back to profit', Daily Maverick, 19 February, Error! Hyperlink reference not valid..

71 Ibid.

72 A. Seccombe, 2020, 'Marikana proves to be a standout performer in Sibanye's hands', Business Day, 18 May, <https://www.businesslive.co.za/bd/companies/mining/2020-05-18-marikana-proves-to-be-a-standout-performer-in-sibanyes-hands/>.

Some workers and key stakeholders even expressed nostalgia for Lonmin and regretted the Sibanye takeover, arguing that conditions were worse now than before.

There is nothing Sibanye is doing well. Lonmin used to give learners uniform, they gave people groceries. Sibanye is doing nothing. Even during MANDELA Day Lonmin would take lunch to schools, clinics, gave people t-shirts. Employees of the mine would clean schools and clinics. But [Sibanye-] Stillwater has done nothing. Nothing is happening. (Betty, female, lay counsellor)

Lonmin was sympathetic towards its people. But Sibanye came in, changed things and also retrenched the workers. It took others far away from their families. (Rose, female, lay counsellor)

3.4 Failure to implement Social and Labour Plans

A Mining Charter, first issued in 2004, was most recently updated in 2018 (Version III)⁷³ and spells out regulations for transforming the mining industry.⁷⁴ These cover seven main areas, namely ownership, mine community development, procurement, beneficiation, housing and living conditions, human resource development and employment equity, which were all unresolved key concerns raised by mineworkers during the strike in 2012. Some analysts argue that the disconnect between businesses such as Lonmin and the state – particularly the lack of clear and implementable rules and clarity regarding their respective responsibilities – created the underlying conditions that gave rise to the Marikana Massacre.⁷⁵ One of the overarching problems identified in the interviews was that neither the government nor Lonmin was seen as living up to their statutory or regulatory commitments.

There is a policy called Social Labour Plan. That plan was reserved to assist the communities around the working places. So that the communities who are around the mining should be developed [...] there is nothing that has been [changed]. And then there's a lot of minerals that are being extracted from this land. But their communities are very much poor. (Moses, male, community activist and local politician)

The failure by the state and the mines to provide basic public services to communities around the mine is the key cause of the squalor in Marikana and other settlements in the area, which directly fuelled the grievances of striking mineworkers.⁷⁶

Respondents asserted that Lonmin, and later Sibanye, have not adhered to their SLPs, especially when it comes to the provision of houses for mineworkers. In contrast, the company argued that poor housing was a nationwide problem in South Africa and that it was 'unreasonable' to expect Lonmin to solve the issue on its own.

People are still living in shacks around. There is no development at all. The communities who are around the mining should be developed. But now, what the government did, the members, the

73 Department of Mineral Resources South Africa, 2018, Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, https://www.gov.za/sites/default/files/gcis_document/201809/41934gon1002.pdf.

74 The BEE Charter frames the 'primary objective of the MPRDA is to ensure the attainment of Government's objectives, that is, to redress historical socio-economic inequalities, to ensure broad-based economic empowerment and the meaningful participation of Historically Disadvantaged Persons in the mining and minerals industry (Department of Mineral Resources South Africa, 2018, at p. 5).

75 R. Hamann, 2019, 'Disconnect between business and state contributed to Marikana massacre', Fin24, 15 August, <https://www.news24.com/fin24/opinion/disconnect-between-business-and-state-contributed-to-marikana-massacre-20190815>.

76 Ibid.

political parties, once they get into power, they get [co-opted] into these companies, and then they forget about the SLP. (Moses, male, community activist and local politician)

In 2017, Lonmin dedicated ZAR410 million to the development of 493 housing units, of which 403 have been occupied by the company's employees. The company planned to build an additional 1 240 units.⁷⁷ Questions were still raised in 2021 about the pace at which the mine was addressing the housing problem for mineworkers in Marikana.

When you go to Sibanye, they tell you they've built houses for so many people [workers]. But when you go to the people to enquire, there is no such. They are just doing lip-service, there are no actions. Because if I were to say they were actions, I could have seen it in the previous years that I worked there. There is no honesty. The houses could have been finished long ago. Right now, we should only be doing the yearly commemorations. Obviously that one needs to happen. The houses should have been long built. The houses are so few for them to take ten years to get finished, whereas Sibanye has a lot of money. (Grace, female, community activist)

The failure of the SLP that contributed to the Marikana Massacre also highlighted the need for reform of the legislation and oversight procedures for addressing mining company responsibilities for local communities. Following the exposure of these failures through the Farlam Commission, communities have mobilised with increasing success to push for the release of SLPs, at least to the intended beneficiaries. Recently, the Department of Mineral Resources has conceded the importance of publicly disseminating these documents. In the terms of the 2018 Mining Charter, every mine was required to make its SLP publicly available.⁷⁸ One respondent put this aptly:

I am questioning the nature of Sibanye SLP because DMR [Department of Mineral Resources] has to approve [the fulfilment of] their SLP, because they say we have done this and this and this. How then does it approve when there is nothing that is being done? So that is why I am saying corruption is the only logical sense that I can give. (Grace, female, community activist)

There is a broadly held perception that the company's SLP projects have had hardly any impact on the community. Community members point to numerous promises they were given that have never materialised. Not delivering on these promises has enhanced a strong sense of scepticism, distrust and frustration towards the company.

There is no change at all. It is only the [...] the only thing I see is the empty promises. They always promise. (Sonto, female, community activist and local politician)

I think that [the SLP and other CSR initiatives] is a strategy to make themselves look good. And make claims of what they are doing. But the crust of the matter is: when you are there, can you see all that? (Activist priest, male)

Overall, the view remains that Sibanye is also not meeting its SLP goals despite its commitment to do so. It is therefore important that mining companies regularly update residents about progress made in implementing their SLP initiatives.

⁷⁷ Amnesty International, 2016. The Amnesty International report still considers all these efforts totally insufficient and estimated that approximately 13,500 of its employees were 'in need of formal accommodation'.

⁷⁸ GroundUp, 2019, 'Lonmin case shows how hard it is to hold mines to account', Daily Maverick, 26 April, <https://www.dailymaverick.co.za/article/2019-04-26-lonmin-case-shows-how-hard-it-is-to-hold-mines-to-account/#gsc.tab=0>.

3.5 Trade union relationships and divisions within the community

Social relations among community members in Marikana have also been negatively affected by the massacre. The level of trust is low, with fragmented relationships among and across different sectors of the community. The intense and even violent rivalry between AMCU and NUM is a troubling example of this fragmentation.

There is no peace. So, what you can do is – AMCU people must approach NUM. NUM cannot go there, because if they go there, there would be war [...] There would always be gun shots. We are even used to it. We used to be scared, but now we are used to it. When we hear a gun sound, we just look at what is happening and then just say it's not meant for me, it's meant for someone else. (Group interview with two community members, males)

The rivalry between AMCU and NUM was raised as an issue in interviews with both unions' representatives. Some respondents asserted the problem started when NUM neglected workers' needs and rights. During the 2012 strike, many felt that NUM had refused to support the workers and were siding with management when it came to their initial demand for increased wages. This led many workers to join AMCU to make it the union of the majority at Lonmin. Despite this majority, respondents claimed that Lonmin continued to discriminate against AMCU and its members, contributing to the hostile environment and rivalry between the two unions.

They are unable to achieve anything because they are divided. So, in a nutshell, if Lonmin or Sibanye had to provide or give back to the community, they would walk into a divided community, and they won't be able to assist the community because the community is divided. (Grace, female, community activist)

As one mineworker stated, 'Lonmin discriminated against AMCU-affiliated mineworkers.' Some respondents alleged that Lonmin also sided with NUM during the strike and the events leading up to the massacre. The union rivalry has continued into the present and is allegedly responsible for a significant amount of the violence experienced in the Marikana community.

As a result of this tense relationship negatively affecting social relations among workers and community members, many Marikana residents do not see the possibility of peace prevailing in the community. Some respondents spoke about the fear of expressing their political views or wearing their union or party t-shirts in public.

Political tension also extends to national party affiliation. While originally an ANC-majority area, the effects of the Marikana Massacre led to a large shift in regional politics. Currently, the Economic Freedom Fighters (EFF) is the dominant political party in the area while AMCU is the majority union. However, the ANC managed to win the ward back from the EFF in the 2021 local elections, which for some has been a further source of tension. AMCU representatives alleged that the ANC rigged the elections and expressed feelings of mistrust towards the ANC-led government.

3.6 2022 strike at Sibanye

In March 2022, wage negotiations at Sibanye's Driefontein, Kloof and Beatrix gold mines reached an impasse. Sibanye offered an increase of ZAR800 to workers for the next three years, an increase of approximately 6%. The unions negotiating with Sibanye asked for ZAR1 000 per worker, an increase of approximately 9% over

the next three years.⁷⁹ NUM and AMCU have noted that Sibanye has been enjoying significant profits in recent years as a result of the boom in commodity prices. Unions have highlighted the high incomes and bonuses paid to executives during this time, arguing that it is unjust to allow executives to profit off minerals that they feel belong to the people of South Africa while workers are paid significantly less.⁸⁰

The negotiations preceding the strike took place between Sibanye and the unions active at Sibanye's gold mines. Two smaller unions, the United Association of South Africa (UASA) and Solidarity, accepted the company's offer; however, NUM and AMCU, which represent the largest share of workers at these mines, rejected it. During this time, the principle of 'no work, no pay' was in effect, with the result that workers in the mining sector lost income while the mining company saw reduced profits.⁸¹

In April 2022, NUM and AMCU announced that their members working at Sibanye's PGM mines would be going on strike in solidarity with workers in the gold mining sector,⁸² and would include workers at Marikana. It remains to be seen what the impact of this strike will be on the company and livelihoods of the striking workers. The most notable feature of this strike action has been the cooperation between NUM and AMCU. In contrast to the 2012 strike, NUM and AMCU have been actively supporting each other. The effect of this collaboration on the Marikana community remains to be seen; though in light of the previous antagonism between the two unions, their mutual support is remarkable.

During Workers Day on 1 May 2022, Cyril Ramaphosa was invited as a keynote speaker at a Congress of South African Trade Unions (COSATU) rally held at the Royal Bafokeng Stadium. Before his address, the workers booed him, insisting that he must engage with Sibanye about their ongoing strike. The president was forced to cancel his address, but he was overheard saying before he left, 'You want your R1 000, I understand that [...] We have heard that message and we will be dealing with that matter.'⁸³ Minister of Minerals and Energy Gwede Mantashe also facilitated meetings between unions and Sibanye, but the strike continued unresolved, with the minister making threats to withdraw Sibanye's mining licence due to its failure to address workers' demands. The workers were also angry at the reported ZAR300 million pay-out to Sibanye CEO Neal Froneman, who was quoted in the *Sunday Times* newspaper as saying, 'I deserve every cent of my R300 million.'⁸⁴ His salary added to the ongoing debate on the huge salaries that executives of big corporations continue to earn while working-class employees such as mineworkers get poorer and continue to live in squalor with no access to basic amenities.⁸⁵

In early June 2022, after an almost 90-day strike, the company and striking unions reached a new wage agreement.⁸⁶

79 P. Larkin, 2022, 'Sibanye-Stillwater stands firm on wage deal as labour ratchets up the pressure', Independent Online, 14 April, <https://www.iol.co.za/business-report/companies/sibanye-stillwater-stands-firm-on-wage-deal-as-labour-ratchets-up-the-pressure-579eb166-0b59-4cf0-9886-7e4c6bd910be>.

80 NUM, 2022, 'NUM and AMCU agree on intensifying strike at Sibanye gold' [Press release], <https://num.org.za/News-Reports-Speeches/ArticleID/1166/NUM-and-AMCU-agree-on-intensifying-strike-at-Sibanye-gold>.

81 Larkin, 2022.

82 N. Banya, 2022, 'South African unions plan strike at Sibanye's platinum operations', Reuters, 12 April, <https://www.reuters.com/world/africa/safrican-unions-plan-strike-sibanyes-platinum-operations-2022-04-12/>.

83 J. Gerber, 2022, 'Ramaphosa abandons cosatu rally as workers storm stage', News24, 1 May, <https://www.news24.com/news24/southafrica/news/ramaphosa-abandons-cosatu-rally-as-workers-storm-stage-20220501>.

84 D. Faku, D. Luvhengo and A. Deklerk, 2022, 'I deserve every cent of my R300 million', *Sunday Times*, 15 May, <https://www.timeslive.co.za/sunday-times/news/2022-05-15-i-deserve-every-cent-of-my-r300m-sibanye-stillwater-boss-defends-fat-pay-packet-as-strike-drag-on/>.

85 P. Alexander, 2013; M. Westcott, 2006, 'Executive pay: moral dilemma?' *Management Today*, 22(8), 10–12; A. Desai and A. Desai, 2002, *We are the Poores: Community Struggles in Post-Apartheid South Africa* (New York: NYU Press).

86 E. Njini, 2022, 'South Africa's Sibanye Gold workers plan to end strike as wage deal reached', Bloomberg, 3 June, <https://www.bloomberg.com/news/articles/2022-06-03/sibanye-gold-mine-workers-to-end-strike-as-wage-deal-reached>.

4. Material reparations

Material reparations are commonly associated with the ideal of ‘full restitution’, that is, the restoration of the victim’s status quo.⁸⁷ This may cover:

*any damages of economic value such as physical or mental damages, psychological pain or suffering, opportunity cost, loss of wages and the capacity to earn a living, reasonable medical and other expenses in rehabilitation, damages to goods and trade; including loss of earnings; damages to reputation or dignity and reasonable expert fees.*⁸⁸

Material reparations aim at addressing in tangible terms the consequences of human rights violations. Yet, they can also have an important moral dimension as they may be conceived as token signs of the recognition of victims as rights-holders and equal citizens.⁸⁹ Put differently, they are the tangible form of the recognition owed to victims.⁹⁰

Both the company, first Lonmin and now Sibanye, and the South African state have provided some material reparations to victims of the massacre. The company, while it has not framed or labelled them as ‘reparations’, has offered a broad array of initiatives aimed at redressing the consequences of the massacre among families of the deceased. The state, in response to civil claims filed by the families and the injured and arrested mineworkers, has provided some financial compensation.

Victims and survivors interviewed shared a strong belief in their right to reparations (material and symbolic) that were owed to them because of the unjustified suffering they endured. They were also aware that the government and the company had a legal and moral responsibility to deliver such reparations.

Respondent: Sibanye as a company has an obligation, because they are the ones who killed our husbands. (Focus group interview with widows)

Respondent: We would like them (the company) to pay for their mistakes. Because when you did wrong in South Africa, you have to pay compensation. They have to pay just like the government did. (Focus group with widows)

Interviewer: But who is going to pay? Government or Lonmin? Who must pay?

87 P. de Greiff, 2006, at p. 456.

88 V.R. Rescia, 1999, ‘Reparations in the Inter-American System for the Protection of Human Rights’, *Journal of International and Comparative Law*, 5(3), 583–601, at p. 594.

89 Rubio Greiff 2007

90 GREIFF

Respondent: We want Ramaphosa must pay personally for what he did. Lonmin must also pay, because if responsibility was more responsible on that day, this thing wouldn't have happened. (Injured mineworker, male)

The state and civil reparations processes are ongoing and remain particularly unresolved in terms of the scope of responsibility accepted for the massacre and the commitments this acknowledgement entails for further reparations. The existing reparations measures and the still unfulfilled demands for further reparations remain issues of serious contention.

4.1 Employment for family members

One of the first compensation measures offered by Lonmin was for a family member of each of the deceased mineworkers to work at the mine. This option was taken up by some widows and adult children of slain mineworkers.

*[Lonmin's] CEO Magara addressing issues involving the families of those Lonmin employees who died, said: 'While we can never replace their loved ones, we endured so much emotionally. We have offered employment opportunities to the families and every child of school going age is a beneficiary of the 1608 Education Trust, to fund their entire education. This is in addition to the statutory financial awards from pension and life funds.'*⁹¹

According to interviewed company officials, the majority of the widows are now working at the mine while others have given their allocated position to a relative or child of the deceased. Employing some widows and adult children of slain mineworkers may be considered a material reparation. However, widows expressed different views on whether they experienced their employment as reparative or not. Some felt that there was nothing unique or exceptional about being employed by the mine following the death of their partners because this was standard practice when mineworkers died accidentally.

Of all the things we are expecting from them, there is nothing they gave us. Even the work they gave us, we use our strength. (Focus group with widows)

Other widows repeatedly mentioned that 'there is no reparation in this act of being employed by the mine because we work for these salaries'. A social worker working closely with Marikana widows asserted that they had accepted these jobs out of necessity, 'because they had nothing to put on the table for their children'.

Widows said that it would be better if they were able to stay at home and still get paid. In their view, this would more directly equate to material reparation. Working in the mine served as a constant reminder of the trauma and pain of having lost their husbands. They expressed the wish to go back home and live where they had been staying prior to their husbands' deaths.

Furthermore, some complained about their working conditions. One of the widows stated that she had been offered a job at a lower level than that occupied by her deceased husband. She had to reduce her family expenses since the job did not pay enough to maintain her family at the level her husband's salary had previously provided for.⁹²

91 Lonmin Plc., 2015, 'Release of report into Marikana tragedy' [Press release], https://web.archive.org/web/20151009061930/https://www.lonmin.com/media_centre/2015_Press.aspx.

92 SABC News, 2018, 15 August, Lonmin commemorates Marikana [Video], at 5:16, <https://www.youtube.com/watch?v=aAV08z0TE68>.

In their analysis, Asanda Benya and Judy Seidman are critical of the widows' employment at the mine, which should not be viewed as a remedy but rather as the further exploitation of these families. Some widows asserted that they would not work at the mine if they had any other way to support their families, but they had been desperate for income since their loss.⁹³

As mentioned, some widows felt 'real' material reparations should entail receiving their late husbands' monthly salaries while remaining at home. For many of them, staying at home would allow them to remain in their rural villages where they had additional responsibilities for their families.

They said that they want to stay at home and still earn that R12 500. And if there is any increase, they get an increase. They challenged us and said they want the legal basis for that. So, we were busy trying to find the basis, because they said we need to have the legal reason why our clients deserve to stay at home and get that R12 500. So, we were trying to research, get international law, everything to show them that these clients are entitled, and they deserve this R12 500. (Focus group with widows)

We would be happy to go back home. If we could continue earning our husband's money while living back at home. Even today we haven't gotten a response. (Focus group with widows)

And there are two others who are staying at home, and they are getting paid. They are getting paid because of ill-health. So, my point is what is the difference with us asking to get paid whilst we're staying at home. (Focus group with widows)

Furthermore, the widows asserted that there had been no consultation as to whether they wanted to work or not. Some wanted to remain at home but felt that they had no choice but to come and work as they were otherwise not going to receive any financial support. It was also argued that women were treated as a homogenous group even though some of the killed mineworkers had been married to more than one wife. This created problems when some wives were not identified for employment (or for any other benefits from the mine).

Remember some of these men were traditionally married to many wives, but we have a situation where these processes did not recognise other wives or partners who were staying with these men before dying, which then created conflicts in some families that one partner was recognised. (Attorney 2, female)

Our research confirmed Benya and Seidman's findings that Lonmin and the government only recognised the claims of wives and families who had been registered with mine authorities as beneficiaries. This excluded women in Marikana whom the company called 'town women' and 'second households', forcing a divide between grieving communities and isolating family members who had come to Marikana after the massacre.⁹⁴

93 A. Benya and J. Seidman, (2018), 'There is no change in Marikana: The perspective of women', in M. Grimm, J. Krameritsch and B. Becker (Eds), 2018, *Business as Usual after Marikana: Corporate Power and Human Rights* (Johannesburg: Jacana), at p. 119.

94 Ibid.

4.2 Payment of school fees

In September 2012, Lonmin established the 1608 Memorial Trust Fund, named after the date on which 34 out of the 44 victims were killed. Its objective is the provision of educational support to the beneficiaries of the 44 employees who died during the Marikana tragedy. In August 2020, current Sibanye CEO Neal Froneman claimed that ZAR32 million had already been spent on educating the children and siblings of victims of the massacre.⁹⁵

Again, widows were sceptical about public statements made by mine leadership about their contributions to the families' education.. Widows argued that there was nothing special about boarding schools because some children would in any case have gone to good schools had their husbands not been killed for demanding better wages.⁹⁶ In their view, such public statements presented the mine as doing them a special favour rather than simply meeting its existing responsibilities.

So, they cannot claim they are educating our children. That is what they normally do. Everyone who were injured or died on duty at Lonmin has their child taken to school. So, it is not just our children. It is not just our children. So, it must not be said in a way to imply they are doing it especially for our children. (Focus group with widows)

Finally, the concern was raised that the mine only financially supported their children to complete undergraduate studies. Some of the miners' children had completed their university degrees but remained unemployed, just like many other graduates in South Africa.⁹⁷ After this criticism, the mine introduced a 12-month internship so that children who had completed their university degrees could gain work experience, with the potential of being hired permanently if they demonstrated the necessary skills.

4.3 Housing

A key expectation among widows was that the mine would build them houses as material reparations. Most of the widows originated from rural areas of the Eastern Cape province, living there while their husbands came to work at Lonmin (over 1 000 km from home).

We want them to build us houses because we no longer want to stay here, we want to stay back in the rural areas. My husband cannot be killed in this place, and I continue staying here. Our homes are standing alone locked. Our homes are standing alone. (Focus group with widows)

Every day we pass that koppie in Marikana, and it's sad when we pass there on daily basis. Our spirits are heavy laden; we need to move away from this place. Our children's fathers were killed here, and they need to grow up in this place it is not good. We will never heal emotionally. (Focus group with widows)

95 L. Sidimba, 2020, 'Concern over lack of Marikana prosecutions eight years later', Independent Online, 16 August, <https://www.iol.co.za/sundayindependent/news/concern-over-lack-of-marikana-prosecutions-eight-years-later-b53117c4-85ef-46d8-8d2f-82519af18e97>.

96 Benya and Seidman, 2018.

97 Statistics South Africa, 2021, Quarterly Labour Force Survey (QLFS) – Q3:2021, <http://www.statssa.gov.za/?p=14957#:~:text=The%20official%20unemployment%20rate%20was,2021%20to%2014%2C3%20million.>

The mining company began building houses for the widows mainly near Marikana. Most widows wanted these houses to be built in the rural areas where they lived, and some simply wanted to be able to choose the location that suited them.

Widows felt that they were not sufficiently consulted during this process. Those who had received houses complained they were not consulted on the location they needed to live in. Instead, the mine just chose the locations for them, although mining officials disputed this view.

And then Sibanye came up with the houses. So, I am saying my problem about these houses, they don't ask then where do you want us to build, they are just telling you that we are going to build the houses for you at these areas. And to build the house at Mooinooi, the service is very costly. They are going to pay. I am not sure if they are aware of paying electricity, water. And waste management. It will need lots of money. Unlike if they were building the houses where they are staying at their hometowns. When a person says I no longer want to stay here, I want to go home, then what about that house? And to me, it was better if they would have said; we are going to build you a house, where must we build this house. (Sonto, female, community activist and local politician)

This seeming lack of attention to the specific needs of the community reflects the central importance of consultation and participation in the process of reparations.⁹⁸ While it appears that Sibanye had invested time in consultation and negotiations, this engagement was experienced by many as authoritarian rather than sympathetic and responsive to the families' needs.

They would just talk because they have to. But in terms of action, they would work at their own pace. At a pace which suits them. That is why even now, they came up with this campaign. Probably it suits them. Just for them to benefit. They do things their way. If it was everyone's way there would have been consultations taking place to show that these people want people's input. So, there is no input from people, things happen, and people just have to accept the little that they have. Trust me! (Grace, female, community activist)

Tensions also arose in relation to the different treatment received by various widows. AMCU had pledged to build 34 houses for the widows of those killed on the day of the massacre.⁹⁹ By August of 2019, twenty eight of these houses had been handed over to widows,¹⁰⁰ and the status of AMCU's further housing development plans remains unclear. When Sibanye took on responsibility for providing housing, they insisted on only providing houses to those who had not received a house from AMCU. Some saw this as the company renegeing on its responsibility to provide redress. The way this news was communicated also fuelled resentment.

Sibanye mistreated us as widows. They released us to go and choose houses. When we got to Mooinooi, they said you have houses, you can't get houses. The only people who would get houses are the ones who did not get houses from Mathunjwa [president of AMCU]. Sibanye must then

98 L.J. Laplante, 2013, 'Negotiating reparation rights: The participatory and symbolic quotients', *Buffalo Human Rights Law Review*, 19(1), 217–250, <https://digitalcommons.law.buffalo.edu/bhrlr/vol19/iss1/8>.

99 K. Sekhotho, 2017, 'Marikana trust fund builds 34 houses for victims' families', *Eyewitness News*, 24 June, <https://ewn.co.za/2017/06/24/marikana-trust-fund-builds-34-houses-for-victims-families>.

100 AMCU, 2019, 'Read more about AMCU's solidarity with the families of the deceased mineworkers' [Facebook post], 8 August, <https://www.facebook.com/watch/?v=1201667033368480>.

build houses for everyone. Mathunjwa build houses as his own initiative. He was not compelled. And he did not wrong anyone. He did not wrong anyone. So, Sibanye as a company has an obligation, because they are the ones who killed our husbands. But they turned back on their word. (Focus group with widows)

In response, representatives of the mine asserted that:

We are having a number of widows that we were engaging with in particular, in terms of getting them the houses and dealing with the difficult issues relating to that. There are challenges regarding that process of ensuring that the widows get the houses. (Sibanye official)

Overall, various reparative processes are still unfolding including building of houses for widows; however, it is important that all involved parties (widows, unions and other stakeholders) engage in consultations on the communities' needs and preferences.

4.4 Financial compensation

Following the massacre, civil claims against the state were filed in 2013 by families of the deceased and by arrested and injured mineworkers. Legal representatives of the victims interviewed in this study noted that the compensation process had been dragged out over years and that many victims had not yet received compensation. By June 2022, the state had still not settled all the claims filed on behalf of widows. It was only in 2020 that the state paid the families of the killed mineworkers for their loss of financial support;¹⁰¹ however, damages claims against the state have not yet been settled.

SERI has since included constitutional damages [...] in its assessment of the claim of the deceased mineworkers' relatives.¹⁰²

The state has been accused of negotiating in bad faith. The Solicitor-General was quoted in in 2021 as saying that all Marikana victims had been paid, but this was vehemently rejected by victims' lawyers. The Socio-Economic Rights Institute (SERI) has stated that state inaction was adding to the trauma already experienced by the families of the Marikana victims.

Since 2012, the families and surviving mineworkers have continued to bear the trauma and loss, which has been compounded by the lack of justice and accountability for the events at Marikana [...] To date, only nine police officers have been charged [and] no one has been charged for and prosecuted for the deaths of the mineworkers killed on August 16, 2012.¹⁰³

A lawyer representing injured and arrested mineworkers stated in their interview:

You remember the Solicitor-General [did] a media brief, and that is when he said that he paid them this. He paid our clients. And then we responded and said, our clients didn't receive anything. Even now, you guys you said you want to give our clients R500 000 and we rejected, we said we

101 G. Nicolson, 2022, 'Marikana – a massacre still without any criminal consequences', Daily Maverick, 19 May, <https://www.dailymaverick.co.za/article/2022-05-19-marikana-a-massacre-still-without-any-criminal-consequences/>.

102 L. Sidimba, 2019, 'Seven years and still no justice for Marikana families', Independent Online, 16 August, <https://www.iol.co.za/news/politics/seven-years-and-still-no-justice-for-marikana-families-30855183>.

103 P. Tau, 2021, 'Marikana: Still no justice', City Press, 15 August, <https://www.news24.com/citypress/news/marikana-still-no-justice-20210815>.

can't. Each family needs to be treated differently. They can't all get the same amount. Others, their families are big, they need to get more than the other family that is small! (Attorney, legal representative of arrested and injured mineworkers)

Victims were disappointed that the government had not yet settled their claims for compensation. After the massacre, 250 mineworkers were arrested and only released after days in custody. Their lawyers filed civil claims for unlawful arrest, and some respondents reported that a number of unlawfully arrested mineworkers had been compensated.

It's claims of unlawful arrest as well as claims for the injuries that people suffered on that fateful day. Now in respect of the unlawful arrest there has been some part payment by government towards settling that claim. (Attorney, legal representative of arrested and injured mineworkers)

However, mineworkers who were physically injured during the massacre have reportedly not yet been paid, some of whom had sustained head injuries and others had been permanently disabled.

They must pay money because we were injured. They are the cause of our injuries. I agree with him. We need to get paid because we were injured in a work-related incident. We were injured because we wanted money. The issue is money. We did not wrong anyone, but they wanted to kill us. (Injured mineworker, male)

The last part, which is claim for the injured, the government has not made any offers and has not paid any money. Simply because, once they give us offers, we are supposed to take those offers, go and consult with each individual, and confirm whether or not the offer is fair or not. If it is not fair, we make a counter-offer and government is supposed to amend it and we are supposed to settle. So, the government has not lifted a finger in making sure that there is any offer or settlement in respect of any of the injured persons. (Attorney, legal representative of arrested and injured mineworkers)

The company's approach to injured mineworkers was reported as unclear and erratic. One injured mineworker did confirm receiving partial support from the company, with the company covering his medical bills and continuing to pay his salary. Yet, the general feeling shared by all injured mineworkers interviewed was the sense of being abandoned by the company and the state.

It's difficult because as I am just sitting, I always think I am no longer a useful person, even if I die it's better. Even to my wife. Since I went for an operation, I've never been the same man. (Injured mineworker, male)

Interviewed injured mineworkers also expressed rage that they were still being prosecuted under criminal charges and having to appear in court – when they saw themselves as victims.

What hurts me is that I am being charged, yet I was injured, I have many bullets. I am now answering to a case, yet I am also a victim. I am as dead as he is. There are many things I can no longer do, because of the police. (Focus group with injured mineworkers)

Injured mineworkers asserted that they had not yet received any form of reparation from the company. In contrast to the relatives of the 44 who died during the violence, no houses, no bursaries for their children and no form of acknowledgement whatsoever had been awarded to them. Furthermore, the fact that most of the

reparatory efforts were devoted to the widows and relatives of the 44 killed, while those injured received no form of reparation, was also perceived as an additional source of victimisation. This different treatment fostered a sense of comparative grievance among victims.

Respondent: They [widows and relatives of the 44 killed] get all the nice things whilst we are left behind. I am telling you right now their children are taken to school, but we are not getting any of that. (Focus group with injured mineworkers)

Interviewer: Your children are not getting any assistance from Sibanye or even Lonmin, back then?

Respondent: Not any of us who are victims. We ask ourselves as to what is it we've done. What is it we have done? (Focus group with injured mineworkers)

The company seemed largely oblivious to the needs and demands of the injured mineworkers. This neglect also extended to their absence from symbolic forms of repair, such as at annual commemorative events and on the remembrance wall erected by the company.

At no stage had we received any invitation for a commemoration by Lonmin. Neither have we been invited by Sibanye [...] And I think it will come through as a surprise if at any stage we receive an invitation to come and attend an event that is arranged by Sibanye to commemorate what transpired in Marikana. (Attorney, legal representative of arrested and injured mineworkers)

When questioned about the company's contrasting approaches towards those who were injured versus the families of those who died, no clear explanation was forthcoming, and responsibility for this the failure was shifted to the mineworkers themselves.

Interviewer: Sibanye has not had any engagement with people who were injured, only with the relatives of those who died. Is that correct?

Respondent: That is correct. Even from previously with Lonmin, there has never been any engagements with those who were injured. It's only the ones who were deceased. (Sibanye official)

Interviewer: Okay. And is there any reason for that, or is that a [...] I mean has Lonmin or Sibanye tried to reach out, or what is the reason for that distinction?

Respondent: Honestly, from my side I do not know why. Unless on a speculative side, probably they haven't come through to say; they require assistance [...] So that is why probably there has never been engagements with them. (Sibanye official)

In light of this reported neglect of mineworkers, it is crucial that the needs of all survivors of the massacre are addressed. Furthermore, this neglect appeared to be creating tension between the injured and the widows, who were perceived as receiving all the support.

4.5 Marikana Renewal Programme and other corporate social responsibility initiatives

Announced in 2020 and launched in 2021, the Marikana Renewal Programme is an initiative aimed at addressing the needs of communities living in the Marikana district. Framed as a ‘multi-stakeholder and collaborative’¹⁰⁴ process, the Renewal Programme seeks to resolve ongoing issues faced by the communities living in Marikana. The project also hopes to create a new image of what the Marikana community can be. Sibanye contracted a civil society organisation, Reimagine SA, to run the project. The project, as framed by its leaders, is highly aspirational.

We look at walking in partnership, and investing in one another for the sake of one another, rather than for the sake of: ‘what am I gonna get out of this?’ We’re invested in the South Africa that is reimagined, that is self-confident, inspired and self-sufficient. (Reimagine SA staff member)

The Marikana Renewal Programme was implemented by Sibanye following its acquisition of Lonmin in 2019. Sibanye hoped that by pursuing this project, the mining company would be able to restore a measure of trust between people living in Marikana and the company. To this end, the project describes a three-tiered approach to investment within the community. These tiers are organised around a stated intention to honour the lives of those who died at Marikana, engagement with the survivors and the creation of new economic opportunities and legacies for the people of the region.¹⁰⁵

One key element of the Marikana Renewal Programme is the recognition that many members of the community living in and around Marikana feel abandoned both by the state and the mining company.¹⁰⁶ To address this perception, the programme has sought to build partnerships with a number of stakeholders, including community leaders and residents.

But my point is we’ve met with them [the most important stakeholders] directly, we’ve met with the Community Engagement Forum, we’ve met with the Bapo-Ba-Mogale Traditional and Royal Council. We’ve met with as many of the stakeholders as we can in the last 18 months. (Reimagine SA staff member)

The attempt to reach out to community members was welcomed by respondents as an important shift from their experiences to date. The programme will, however, have to overcome serious trust deficits.

I mean you cannot help a person if you do not know what kind of help they need. They do not ask the widows or the victims what their needs are. They come to offer what they have, they don’t ask them what they want or how they can be helped. (Grace, female, community activist)

Some respondents raised concerns about the lack of community awareness about the renewal initiative.

The campaign just came up out of the blue, no one knows about. I asked the stakeholders Marikana – I even shared it on Facebook [...] So, it was just selected ones who knew. I don’t know how they knew. (Lindiwe, female, community activist)

104 Sibanye-Stillwater, 2021, ‘Launch of the Marikana Renewal Programme’ [Press release], 16 April, <https://www.sibanyestillwater.com/features/2021/marikana-renewal/>.

105 Ibid.

106 Riaan, UMSIZI, 2 May, <https://umsizi.co.za/the-marikana-renewal-programme-hope-from-tragedy/>.

In an attempt to increase awareness and impact, notable public figures promoted the Renewal Programme, including the Anglican Archbishop of Cape Town, Thabo Makgoba, and Reimagine SA co-founder, Dr Mamphela Ramphele. The programme itself highlights the importance of working with faith leaders in the community. However, the involvement of these high profile figures to promote the programme's legitimacy also met resistance and scepticism among stakeholder respondents.

They've just picked up on the Archbishop [...] why would they go to Cape Town when there are church leaders in the area that need to be involved? [...] So, I am very critical myself that [...] look, Lonmin tried, at some stage to use Archbishop Desmond, and it failed. (Activist priest, male)

The question I have is they are now putting this person in front and we don't know him. Where was he when the people were being tortured? (Injured mineworker, male)

A key programme objective is to promote sustainable growth within the community to help inhabitants to heal from the damages of the past and to continue to thrive after the eventual drying-up of the mines that presently provide their primary employment. The Renewal Programme was also viewed as a way of doing things differently and creating a better future for the Marikana community.

We are trying to avoid ghost towns, or ghost mining towns, that we have seen in your Klerksdorp area, and in your Westonaria in Gauteng. You know the legacy of the gold sector. We are trying to avoid repetition of those ghost towns. In Welkom areas as well. So, this is trying to achieve that that even if the mine closes there would be alternative economies for the community to sustain themselves after mining. (Sibanye officials)

However, the Renewal Programme, like many other projects in Marikana, was not without criticism. The project was perceived by some respondents as just another initiative to be added to the long list of failed promises. Hence, it is not surprising that consultants leading the project on behalf of the company noted they had to overcome a deep level of mistrust.

To answer you honestly, the reception has been sceptical, they've heard this a lot in the past. They've heard about people coming in and wanting to make a difference, a lot in the past. (Reimagine SA staff member)

In particular, residents of Marikana expressed their concern at the slow pace of the projects aimed at providing new services and community resources.

One example, for instance was, on this renewal programme of theirs was, claim of vegetable gardens. And I said to them, two years ago, I'd like to see those. And Mr Froneman promised. I just reminded them last week that you still owe me a visit to these projects that you claim you are doing, and you haven't done that. (Activist priest, male)

Yes, they are promising that there is a thing they knew, they call Marikana Renewal, we are still waiting. They say they are coming with the changes, they are going to develop the area, but I cannot say it is going to happen because even Lonmin they were promising. So I cannot say they are going to do it, until they do it like they promised. Because as a community, we are fed up with these empty promises. (Sonto, female, community activist and local politician)

Despite the promise of renewal and the intention to rebuild trust between Sibanye and the community, the Marikana Renewal Programme appears at this stage to be reinscribing a familiar pattern in which the company promises many things but does not ultimately deliver on those promises. This perceived lack of delivery has increased feelings of mistrust between community members and the mining company.

Because even if you can go to the website, the Sibanye website, you will find many things that are posted there that are saying we are doing this, we are doing this! But if you come to the ground: dololo [nothing]! (Lindiwe, female, community activist)

Finally, the consultants leading the Marikana Renewal Programme insisted on the importance of reshaping the narrative about what had happened in Marikana in 2012 and how the community reflected on the meaning of those events.

What's important for us is that the narrative fundamentally shifts [...] I mean the fundamental driver that we have in our team, and the work that we are doing is; we want the narrative to be different, we want to see that this incredibly painful point in our history has been addressed properly, and that people have been given the respect and the honour, and have been engaged sufficiently and properly. (Reimagine SA staff member, male)

The explicit goal of the consulting team, on behalf of Sibanye, to 'shift' the narrative raises immediate questions on how this 'shift' is meant to happen, who will reshape it and how the new narrative will be told. While there is perhaps an urgent need for the narrative to change, the agenda for making such a shift needs to be carefully considered. Who will control this process and to what ends?

The fact that the mining company has for many years sought to frame the narrative through proclaiming its plans for uplifting the community, and celebrating its minor achievements, raises suspicions that this focus on a new Marikana narrative may again be used to deflect focus away from the lack of change on the ground. The process of symbolic reparations, discussed in the next section, also speaks directly to this question of how the story of the massacre is told and recalled through annual memorial events.

5. Symbolic reparations

Symbolic forms of reparation are uniquely positioned to foster reconciliation, allocate accountability and heal the moral ambiguity that victims and survivors may experience. Accordingly, symbolic reparations help victims and their communities to work towards closure and rebuild their lives.¹⁰⁷

The potential of symbolic remedies lies in the fact that they are 'carriers of meaning, and therefore can help victims in particular and society in general to make sense of the painful events of the past'.¹⁰⁸ They are a unique instrument aimed at restoring the pride and dignity of victims and facilitate communal process of remembering and commemorating the pain and victories of the past.¹⁰⁹ Furthermore, by making explicit the acknowledgement of harm and accountability, symbolic reparations can help improve the chances of reconciliation.¹¹⁰

Symbolic forms of repair can adopt a broad array of forms, for example the renaming of public spaces, museums, memorials, public apologies and commemorative events. Yet, what all forms of symbolic repair have in common is their explicit aim to carry meaning and shape narratives.¹¹¹ In the decade that followed the Marikana Massacre, and in response to the profound trauma that the violence inflicted on the local community and South African society at large, prominent manifestations of symbolic reparations have taken place.

All stakeholders interviewed, including representatives from the mining company, recognised the importance of symbolic forms of repair in the case of the Marikana. For victims, it is clear that exclusively material reparations are unsatisfactory, 'because you can't pay the blood of a person by money'. Despite some notable efforts, victims viewed the company as not having done enough to show remorse, empathise with the victims and acknowledge its consequent responsibilities.

In the following section, we analyse the symbolic initiatives led by the company and the state through the perspectives of key stakeholders in the Marikana community. We cluster these inputs around three themes: commemorations, memorialisation and apologies. The company has engaged in these categories in different forms and to different degrees, and with different outcomes.

107 B. Hamber and R. Wilson, 2002, 'Symbolic closure through memory, reparation and revenge in post-conflict societies', *Journal of Human Rights*, 1(1), 35–53, <https://doi.org/10.1080/14754830110111553>.

108 B. Hamber, 2006, 'Narrowing the macro and the micro', in P. de Greiff (Ed.), *The Handbook of Reparations* (Oxford University Press).

109 TRC, 2003, 'Introduction', *Report of the Rehabilitation and Reparation Committee*, 6, 92–180. + UN RULE OF LAW

110 K. Brown, 2013, 'Commemoration as symbolic reparation: New narratives or spaces of conflict?' *Human Rights Review*, 14, 273–289, at p. 275, <https://doi.org/10.1007/s12142-013-0277-z>.

111 *Ibid.*

5.1 Commemorations

Since 2012, annual commemorations have been organised to memorialise the events of the 16 August massacre as well as honour the memory of the mineworkers, security guards and policemen who were killed during this period. The company organised commemorative events for a number of years and approached the trade unions to participate in them. However, the unions always opted to organise their own commemorations.

Over the years, we invite them [the unions] whenever we have commemorations, because from a company perspective we need to commemorate, but they never want to collaborate with us. They still want to have the commemoration separate as their thing. So, you end up having two commemorations. (Sibanye official)

Asked in a news report about the value the company event held for them, the widows did appear to find some comfort in them.

We get comfort, we at least we are aware that somebody is sharing our sentiments [...] we believe that at least they're here and they feel they share our sentiments and that is what they are doing every year.¹¹²

This was confirmed by a number of widowed respondents who agreed that commemoration served as a recognition for the loss of their husbands. However, some victims complained that company representatives no longer attended them, raising serious questions about their commitment.

They do not even go there. They don't go! On the 16th of [...] the commemorations, they don't [...] they are not there. So then how do you say [...] how do you maintain that relationship? The impact. It shows that you still don't care. You don't care. So, you are showing me each and every year that you don't care, and you are not willing to apologise, you don't show remorse. (Community activist, non-binary)

Furthermore, victims claimed that they were not able get permission to attend private commemorative events.

When you need to take days off, they refuse. I needed to take off so I can attend a ceremony at home, they refuse to sign a leave form, they say I need to bring proof. Where would I get proof that there was a ceremony. (Injured mineworker, male)

Many respondents supported the call for the day of 16 August to be declared a public holiday, 'Miners' Day', as a way of remembering the pain and suffering of mineworkers in South Africa. Some respondents felt that honouring the day could help to alleviate the pain of loss among the people of Marikana.

People can't forget what happened but honouring the day through public commemoration would alleviate the pain people are feeling at the moment and it is through public commemoration that victims and survivors of the massacre will feel that government is sharing their grief with them. (Focus group with community members)

112 SABC News, 2018.

During its annual commemoration in 2019, AMCU called for the day to be declared a public holiday. Western Cape Judge President John Hlope, a speaker at the event, echoed this sentiment, which has also received support from opposition political leaders including Julius Malema (EFF) and Mmusi Maimane (former leader of the Democratic Alliance).¹¹³

Did the apartheid government respond to June 16th massacre? How did they respond to the 21 March massacre? How it responds to all other massacres? And unfortunately, the response remains the same. The only difference now is that the victims have a constitution that allows them to continue fighting with minimal risk to their lives, and an environment that gives space and air for their actions. (Attorney 2, female)

Economy comes before life. I mean next week is the commemoration. And we've been saying it must be declared a public holiday. Nobody is listening to that. We've appealed to the ministers and made public statement and asked Lonmin to actually give people a day off so that they can attend the anniversaries each year. That has never happened. (Activist priest, male)

Injured mineworkers mentioned that although the day was not officially recognised as a public holiday, they had decided to treat it as one by not going to work to show respect for the workers killed on that day – despite the company's 'no work, no pay' policy, which injured mineworkers also expressed their unhappiness about.

Every year in August there was a Marikana Massacre commemoration for all those who died. So last year, when the commemoration was supposed to happen, they said they were going to apply the no work no pay policy. So, there were disagreements and then it did not take place. People were scared to attend the commemoration because they would not get paid. (Focus group with injured mineworkers)

The call for the day to be declared a national holiday has become a repeated appeal, voiced by many Marikana workers.¹¹⁴ In some quarters, parallels were drawn between the fatal shootings of 69 anti-apartheid protestors by police at Sharpeville on 21 March 1960 (known today as Human Rights Day), and that the day 34 striking mineworkers were killed at Marikana also deserved to be recognised as a public holiday.¹¹⁵

5.2 Memorialisation

Memorialisation initiatives are also an important source of solace and repair for the victims and the broader Marikana community. The company understood their relevance and, in the spirit of satisfying such demand, it inaugurated the 'Wall of Remembrance' in 2020.

But why is this important? As our employees come to work or pass there, all of a sudden, they can see that Sibanye also acknowledges that something happened there. (Sibanye official)

113 L. Pisanello, 2018, 'Marikana memorial lecture hosted in Sandton', Sandton Chronicle, 16 August, <https://sandtonchronicle.co.za/208524/marikana-memorial-lecture-hosted-in-sandton-2/>.

114 Newzroom Afrika, 2021, Marikana Massacre Victims' Families Call for National Holiday Recognition of the Day [Video], 16 August, <https://www.youtube.com/watch?v=RZW2wbNcYm0>.

115 B. Dixon, 2015, 'A violent legacy: Policing insurrection in South Africa from Sharpeville to Marikana', *The British Journal of Criminology*, 55(6), 1131–1148, <http://www.jstor.org/stable/43819347>.

This monument was placed at one of the entrances to the Marikana mine within the company premises, listing the names of the 44 men who were killed during the conflict. Whereas the company claimed that victims were involved in the process of erecting the memorial, respondents asserted that they had not been consulted and that the ‘tombstone’ (as they refer to the Wall of Remembrance) was imposed by the company.

Respondents: They did erect a tombstone. It's at the gate

Interviewer: And did they talk to you when they erected it?

Respondents: They never spoke to us.

Interviewer: So why did they erect it there?

Respondents: We don't know. It's their will. It has all their names. It's there at Lonmin Professional Development (LPD). They never spoke to us. We complained thereafter that that was not a home for our people, they need to take it to the koppie. (Focus group with widows)

The company admitted that concerns had indeed been conveyed to them, particularly about the location of the Wall of Remembrance.

Engagements were done. Even though maybe they might not have said they wanted it there and then, because we said it is not a tombstone. A tombstone would still take place at the koppie [...] This is not a tombstone. (Sibanye official)

Many of the respondents noted that the right place for a memorial was at the koppie, the small hill next to the mine where the 34 miners were killed in the massacre. They felt it would also serve to appease the ancestors by making sure that those who had been killed could rest in peace.

We need to honour those martyrs who were gunned down while fighting for a decent wage for the workers and it is befitting to turn the place into a memorial site or at least there should be a tombstone so that the spirits of those heroes can find peace, although it won't be easy to appease their spirits because they wives are suffering. (Mineworker, male)

We'd like the company to demolish that monument and install it at an appropriate place, in a way that we prefer as the victims of the massacre. They do not want to do that. (Injured mineworker, male)

The koppie should be turned into a memorial site in honour of those who were murdered there for merely fighting for a decent living wage. (Mineworker 2, male)

In 2017, Lonmin announced their commitment to building Marikana Memorial Park in memory of those who had died during the massacre.¹¹⁶ However, five years later on, the memorial site has not been established. Marikana community members expressed their disappointment at the slow pace at which this memorial was being developed, particularly given the fact that the area where the massacre took place was not protected

116 Lonmin, 2018, ‘Lonmin commemorates Marikana 2012’ [Press Release].

and was being used for grazing cattle. Several respondents demanded that the area be closed-off and treated as sacred land.

That area is now being built around. There are people that are building their shacks around that area. And I take it that it is an area that the mine, if they were really serious about building some form of a memorial, they would first make sure that they are secure, and discussions can go on. So, it leaves one to just wonder as to, but why would a mining company leave this to be erected around like this? (Attorney, legal representative for arrested and injured mineworkers)

We were asking them to do a very symbolic thing; just put a wire around the place to protect it from animals. Because there are cattle, goats, and sheep that go to that site. And people just walk around there as if nothing significant happened there. I mean that should be a really sacred space with a lot of memories and of pain, but struggle – symbolic struggle of the people for their rights. So, it cannot just be a place like any other place. It is a very special place that needs to be dedicated to some meaningful event and contribute towards people's lives. It must be a life-changing experience. You can't just always meet once a year and toyi-toyi and sing the songs and go back and wait for another year to come. It should be a place where people believe it has got powers to bring about change. It's got powers to influence and give them energy to do something extraordinary for the sake of those who sacrificed their lives in that place. (Activist priest, male)

Other respondents questioned the sincerity of the company's commitment to building a memorial park.

I think that is a strategy to make themselves look good. And make claims of what they are doing. But the crux of the matter is; when you are there, can you see all that? (Activist priest, male)

The only thing I see is the empty promises. They always promise. Because I still remember, around 2012, after the massacre, there was a commemoration. Since they promised to build a monument, nothing happened. So there is no [...] they can't do, even simple things; monuments, and to develop the area to say; we are sorry about what happened. I think developing the area and do the monument, it will help. (Sonto, female, community activist and local politician)

It is important to note that memorial sites also have the potential to serve as flashpoints of conflict and division in communities fractured by violence, and this view also emerged in the interviews.

Even right now Sibanye is saying they want to do a cleansing ceremony at the koppie. But they are actually doing it for the ten policemen, yet they claim they want to do it for the 44 people. The 34 is actually left out, but the ten gets everything done for them. We are actually a safety net. They are doing it for the ten security officers and the police. Sibanye is just creating tension amongst us. They are really dividing you! (Focus group with widows)

They say it is 34 people. So, when you erect a museum, it means you have to include the other ten. Would they agree with that? AMCU won't agree. They want to be by themselves. If you create a memory site, it is about everything. So there would be issues that there were other ten people, they need to be acknowledged. They must all be included. (NUM member, male, union member)

Generally, community members agreed that any memorial sites had to be representatives of all voices rather than just of the 34 miners killed on the day of the massacre. The planned memorial site would have to include stories of the ten others killed before 16 August 2012. All interviewees emphasised that the process of creating such a memorial site had to be consultative and inclusive. In the context of the Wall of Remembrance that Sibanye erected, key informants insisted that the construction of a memorial at the koppie would need to be accomplished very differently.

Because they were not consulting. That is my biggest argument. You can't do something without listening to what people actually want. And so if you are doing something because there is pressure for you to do it, it is not very helpful. If you want to do a memorial park, it must be a monument that would have names of these people, their period of work, their age, and then there should be rooms for counselling. (Activist priest, male)

It's a bit of a lot of consultation and consideration of other factors to make sure that whatever that is put in there is sustainable, it can be taken care of, it does not require a lot of technicalities beyond implementation [...] We are refining that to make it a more of a sustainable project that would not be a white elephant in the long run or be difficult to manage going forward. (Sibanye officials)

Another important element of this process would be the involvement of the Bapong Ba Mogale tribal authority that owns the land and whose councillors feel strongly about their role.

If a tombstone or any kind of a memorial structure is erected on the koppie we shall go demolish it because the koppie belongs to Bapong Ba Mogale and no one is allowed to erect any kind of a statue without first consulting the tribal council. (Traditional Council member, male)

However, the chieftaincy and the ownership of the land is contested, creating some confusion about appropriate procedures to be followed. Some respondents saw this confusion as a convenient excuse for the company to delay progress.

The Chief of the Bapong Ba Mogale. So, now there is no inaugurated chief. So I think they are using that situation – they [the mining company] are using that situation in their favour. Because they know, if the community has no leader, any reaction that you do it will be null and void because you have no representative that will represent the community, that'll be saying; no! No! We don't understand this, we don't want this, we are not going to allow this. (Lindiwe, female, community activist)

Respondents noted that the tension about the chieftaincy of Bapong Ba Mogale could negatively impact some of the reparative initiatives. The process of getting approval to use the land for the memorial park could take longer than expected as a result of these tensions. However, it is now reported that the mine has received the permission to use the land for the memorial site and other developmental initiatives.

5.3 Apologies

Most community members and other stakeholders attributed the responsibility for the massacre to two main actors: the government and the company. Accordingly, an apology from both actors was viewed as a key element of redress. Yet, neither party has issued any statement that could be considered an apology.

At various commemorations and other public events, the mining company has expressed its regret, sympathy and remembrance for the victims; however, there has been no explicit acknowledgement of its moral accountability nor apology for its role in the conflict. For example, in 2012, Lonmin Chairman Roger Phillimore said:

*'It is with huge sadness that I join with you to mourn the loss of so many of our colleagues. It is unquestionably the saddest loss in the history of this Company. We grieve for the family, friends and children of those lost. There are no words or phrases we can use to convey our sadness and our deep, deep sympathy to all those who lost loved ones,' he said. 'The recent tragedy we have all suffered will live inside each and every one of us. As we stand here today, our country mourns. The people of South Africa are united in sorrow; the people of this community are joined in loss. It is at times like this that we – each of us – need to reach out and comfort those who are left behind.'*¹¹⁷

While not acknowledging its complicity in the massacre, the company has regularly sought to express empathy for the families of those who died. It has also repeatedly noted the importance of forming a good working relationship with the widows and all the community stakeholders. However, symbolic forms of repair do not hold much potential for demonstrating the start of a new relationship that could convey an intangible and much needed sense of care and recognition for the harm endured by victims and their community. This view was expressed by a community activist when she asserted that:

Start by trying to build a relationship with the victims. Build a cohesion with the victims and say; we are here for you, we will work with you, we are here if you need anything, emotional support, mental support. Anything that can just try and repair the relationship. Say we acknowledged your pain, we know the pain that you went through, and [...] ja, that is how they start. That is just the start. (Lindiwe, female, community activist)

In contrast to the mining company's efforts to reach out with symbolic reparations, the state has been completely silent. This silence was perceived as conveying a complete lack of empathy and remorse that still feeds a sense of frustration and helplessness among victims ten years later.

Many respondents asserted that reconciliation could only happen once the ANC-led government had apologised to the people of Marikana. One participant stated that 'without any apology, there will be no peace and reconciliation in this community', a view shared by many respondents.

At the Farlam Commission, it is said that government has apologised, but they have never been here. They have never come here to apologise to us. (Focus group with community members)

117 Lonmin Plc, 2012, 'Memorial Day' [Press release], 23 August, https://web.archive.org/web/20130909161657/https://www.lonmin.com/downloads/media_centre/news/press/2012/Memorial_day_-_23_08_12_-_FINAL.pdf.

Government is trying to absolve itself of blame and force miners to admit and apologise for crimes they have not committed. (Mineworker, male)

If government was to make amends it has to come back to us, acknowledge its fault and ask for forgiveness. We cannot be the first ones to come to it. We are the victims. (Mineworker 2, male)

For many people in Marikana, it was the ANC-led government in collaboration with Lonmin that killed the miners. Many respondents asserted that reconciliation was inseparable from the full acknowledgement of wrongfulness on the part of the ANC-led government. One person who was singled out by a number of interviewees as owing the people an apology was Cyril Ramaphosa, who was a shareholder of Lonmin and an ANC National Executive Council member in 2012 and currently the State President.

I mean people died ten years ago, but until today, no one from Presidency ever came and make peace – that we know that this is what has happened, but we are asking for forgiveness, we are here to make peace. (Grace, female, community activist)

I think now, Cyril Ramaphosa was not a president at that time. But now he is a president, and I think it is a good platform for him to come down and apologise properly to them. To say what happened in 2012 was wrong, I am so sorry about what happened in 2012. And not to say just by word of mouth I am sorry. (Sonto, female, community activist and local politician)

And it's like they know that an apology would mean that the whitewash of a commission would be thrown to the side. And their acknowledgement and their apology would be put in the history books as; this is the story of the massacre. It is no longer just a tragedy, this is a massacre, and this is what the state has done to recognise that. And they do not want that to happen. They do not want history to remember that [as a massacre on the people of Marikana]. (Attorney 2, female)

He has to apologise to the communities. The last time he was going to do it with Mrs Mandela. She died! And the whole thing stopped. And the next thing was with EFF. And nothing came out of that. If I were Cyril for instance, I would say as a president of this country, I realise my mistake then. He is not just coming and say look; I am sorry for what happened. (Activist priest, male)

It has been argued that when carried out in a way that is meaningful and sensitive to the moral and material needs of survivors and victims, public state apologies can effectively convey recognition of what survivors and victims suffered or lost.¹¹⁸ This means that apologies must be offered without conditions or justifications.

However, other commentators have noted that an apology needs to be accompanied by substantive action in order to communicate a sincere commitment to non-repetition. TransformSA president Adil Nchabeleng, speaking at the AMCU-hosted annual commemoration of the Marikana Massacre in 2020, asserted that the president needed to visit the site of the massacre, claiming the visit should seek to heal the open wounds that still fester after the tragedy as a result of the lack of closure.

The president's visit should not only be symbolic but should be accompanied by a solid action plan of righting the wrongs of what led to the massacre. The president should show people of

118 International Center for Transitional Justice, 2015, More Than Words: Apologies as a Form of Reparation, <https://www.ictj.org/publication/more-than-words-apologies-form-reparation>.

*Marikana a concrete plan on how the community will be developed, to reflect the kind of wealth that gets extracted from the belly of the land of Marikana daily. If we don't demand this justice, then their deaths would have been in vain. We cannot be outraged by the massacre but not be outraged by the inaction across the board in the aftermath of the tragedy.*¹¹⁹

In a similar vein, a union representative emphasised that any expression of contrition by Ramaphosa should be preceded by a tangible form of compensation.

[Ramaphosa] must pay first and then he can come and say whatever he needs to say.

[Ramaphosa] must compensate us and then do whatever he wants to do. But money is never enough. (AMCU representatives)

After assuming the role of State President, Cyril Ramaphosa made a statement in a speech on 7 May 2017, expressing regret about his actions to the Marikana victims, widows and surviving family members.¹²⁰ However, Ramaphosa only referred to the 'language' he had used in emails to fellow Lonmin directors, which he said, 'may have been unfortunate' and 'not appropriate'.¹²¹ His apology was reportedly in response to advice from the late struggle stalwart Winnie Madikizela-Mandela that he made amends and visited Marikana. Such a visit has not taken place, nor does it seem likely. Despite being a former NUM general secretary and skilful negotiator, Ramaphosa has refused to talk to the strikers. He has never been to Marikana. He has not visited the widows. He has never apologised.

119 B. Pheto, 2020, 'Ramaphosa needs to visit Marikana, TransformSA head says', Times Live, 14 August, <https://www.timeslive.co.za/politics/2020-08-14-ramaphosa-needs-to-visit-marikana-transform-sa-head-says/>.

120 P. Alexander, 2017, 'Cyril Ramaphosa's Marikana massacre "apology" is disingenuous and dishonest', The Conversation, <https://theconversation.com/cyril-ramaphosas-marikana-massacre-apology-is-disingenuous-and-dishonest-77485>.

121 Ibid.

6. Seeking truth and serving accountability

Following the massacre at Marikana, the Farlam Commission was instituted to investigate the events and actions that had led to the deaths of 44 people. Upon release of the Commission's report, however, there was a strong feeling that it did not provide conclusive evidence on who should be held accountable for the killings. Some respondents expressed their grievance at being arrested immediately after the massacre and being severely tortured while in police cells, demanding to know why nothing had happened to the police who had killed their colleagues. One mineworker noted that:

I doubt there can ever be justice and fairness because police officers who were involved in the killing of the striking miners have not been arrested. Like some miners who are still facing criminal cases, they must also be charged. (Mineworker, male)

This view was shared by many people interviewed for this study:

No one was held accountable for what happened here in 2012. It is only the workers. So, that is what I am saying I don't see anything, any change about that. There was no [...] it was [...] ya, I am not satisfied, there was nothing that was helping in that commission. Next year is going to be ten years, since Marikana massacre. Ten years. But people are attending cases. Why don't they just drop this case? (Sonto, female, community activist and local politician)

The victims are still being treated as if they are the perpetrators. They are not considered; they are not – do you understand – they are not even [...] it's just so bad! (Lindiwe, female, community activist)

Many victims are still waiting for legal proceedings to take place against the police officers accused of killing striking mineworkers. However, it is important to note that criminal accountability was not only filed against police officers but also against suspects accused of killing two police officers, two Lonmin security officers and a few non-striking mineworkers in the days preceding 16 August 2012.¹²² For example, the relatives of one of the workers killed by striking mineworkers said in 2019:

I believe our departed brother will rest in peace knowing that those who killed him are paying for their evil deeds. We appeal to the state to work hard to help us find closure.¹²³

122 P. Tau, 2019, "What about our loss?" – relatives of those killed in lead-up to Marikana Massacre', City Press, 18 August, <https://www.news24.com/citypress/news/what-about-our-loss-relatives-of-those-killed-in-lead-up-to-marikana-massacre-20190818>.

123 Ibid.

Most respondents perceived that the state had prioritised the cases against mineworkers while moving very slowly on the prosecution of the police. Over a dozen mineworkers are on trial for some of the murders and attempted murders leading up to the massacres. These trials continue to wind their way slowly through the courts and have been further delayed by the COVID lockdowns.¹²⁴

At the time of writing this report, only nine police, including Major General William Mbombo, the Deputy Provincial Commissioner of Police, have been charged for crimes related to the massacre.¹²⁵ The court case is being heard at the Mahikeng High Court, and the widows attend the hearings with a keen interest in seeing accountability served.

There is a criminal case. That is where we weren't to know who issued the instructions? Who killed the workers? That is what we are dealing with in Mafikeng. We really want to know. So, that is why we attend the case in Mafikeng. It is for that reason, to know who issued the instruction to kill. Right now, they implicated Mbombo and the other police officers. (Focus group interview with widows)

However, many respondents questioned why only General Mbombo and few other police officers were charged.

They would say, Mbombo is the one who [must be held] accountable for what was happening. But there was Nathi Mthethwa who was the Minister of Police at that time. There was Zokwana, who also was the part. Even the president himself. But it was just ended like that. (Sonto, female, community activist)

If maybe we see the people who gave instructions to the police to come here and kill us being held liable, like Riah Phiyega or Nathi Mthethwa get arrested, I would be happy. (Injured mineworker, male)

Until today, no one knows who ordered the police to kill those people. And in that case, with the president owning shares in the mines, could he prosecute himself. (Grace, female, community activist)

It was clear that victims felt justice had not prevailed in so far as the truth was not yet known about who killed their family members. The search for the truth continues through the courts.

And when we met with the families, our instructions were 1) find out the truth, 2) get criminal accountability, 3) ensure that we get damages. I think those are the three main ones. And that's [...] the case has been cut in different pieces. So that's true, it's all encompassing, because in the civil claim and even in the criminal prosecutions it has been about getting as much information as possible about the massacre. (Attorney 2, female)

124 Sidimba, 2020.

125 J. Evans, 2019, 'Seven years since Marikana massacre and still no justice, says rights institute', News24, 16 August, <https://www.news24.com/SouthAfrica/News/seven-years-since-marikana-massacre-and-still-no-justice-says-rights-institute-20190815>; Mahlati, 2021.

A strong sentiment was expressed that the state, through the National Prosecuting Authority, is not doing enough to seek the truth. One widow had this to say:

I want to know who killed my husband. My child is also asking me who killed my father. We all want the truth. (Focus group with widows)

This view was echoed by other widows.

Our children are asking us; we need to know. It's now going towards ten years. We are also starting to die. (Focus group with widows)

These women were searching for the truth, for themselves, but also for their children, who were also asking questions about who could have killed their fathers. The women have attended the criminal proceedings against former Provincial Police Commissioner General Mbombo at the Mafikeng High Court. However, they expressed unhappiness that the company expected them to take unpaid leave to attend these proceedings.

Even during court dates, when you are supposed to go to court they would not allow you to be absent from work. In other words, they are discouraging people from going to court. The more you are absent, the little your money becomes. You end up thinking it doesn't help going to court, because my salary becomes little, and going to court does not benefit me. That is what they want to ensure. (Betty, female, lay counsellor)

Their lawyers had to intervene and ask the company to allow them to attend court proceedings while still being paid. The initial refusal of the company was interpreted as insensitive and as the failure to respect their search for the truth about who had killed their husbands. The process of searching for the truth was taking longer than the victims had anticipated and was deeply frustrating for the victims.

The quest for truth, to include making sure that history correctly records what happened. I think the families understood, but it's a very difficult thing to do, is that this is a long road. And for those who [...] the diehards amongst our clients, they kind of see it as; for as long as we keep pushing for truth and we keep pushing for justice, things will come up. So, they think about the pursuit of truth. They see it as a long-term project, but it would not be easily acknowledged. (Attorney 2, female)

6.1 Civil claims against Lonmin and other key stakeholders

The legal representatives of injured and arrested mineworkers and widows are also pursuing ZAR1 billion from the mining company and from Cyril Ramaphosa in his private capacity. The claimants argued that the company was complicit in the actions of the police and bore partial responsibility for the abuses and their consequences. The claims also targeted Cyril Ramaphosa since he had used his political influence to put pressure on the police to take harsher action in the run-up to the massacre. His position as a senior ANC leader had given him the authority to communicate directly with senior police officials and thus influence their actions.

The widows and mineworkers interviewed were in full support of the civil claims. Regarding the claim against Lonmin, one widow said that:

The company is the one which called the police. They must pay. They must be convicted. They must be charged and pay the damage because had they not brought the police, there wouldn't have been any killings. (Focus group with widows)

Ramaphosa's lawyers argued that his communication and emails did not constitute actionable incitement or wrongful conduct. They also suggested that Ramaphosa in his role as the director of Lonmin, and as a BEE investor and shareholder, did not owe the wounded and arrested any duty for legal redress and that 'the alternative claim relying upon these alleged duties does not disclose a cause of action'.¹²⁶

These civil claims have been delayed and undermined by conflicts of interest that have further undermined trust in the government. As a case in point, the judge who was initially designated to preside over the case, disclosed just two days before the first hearing that he owned shares in Sibanye, and subsequently recused himself.

These irregularities raise suspicions of corruption and accusations of inefficiency at the highest levels of the South African government and fuel the rising mistrust in state institutions to act as protectors of the rights of marginalised groups. It remains to be seen whether these procedural irregularities will continue to undermine the key legal instruments for ensuring restorative justice for the survivors and victims of the massacre.

126 R. Hartley, 2017, 'Book Extract: Ramaphosa and the massacre at Marikana', City Press, 26 November, <https://www.news24.com/news24/Books/book-extract-ramaphosa-and-the-massacre-at-marikana-20171126-2>.

7. Challenges, opportunities and recommendations

While numerous efforts have been implemented to deal with the consequences and impact of the Marikana Massacre, the reparations process has clearly been inadequate and done little to rebuild trust and advance justice and healing. Some of the actions of the various stakeholders, and even some initiatives in response to the massacre, appear to have further undermined relationships among victims, the community, the mining company and the state.

In the lead up to the ten-year commemoration of the massacre in 2022, renewed attempts are being pursued to address this deficient legacy. These processes, however, still remain piecemeal, uncoordinated and do not respond adequately to the fundamental moral and legal obligations arising from such a vast and flagrant violation of basic human rights.

The following recommendations thus seek to add to the window of opportunity for a more serious and integrated approach to addressing this legacy. While the focus of this report has been on the initiatives and responsibilities of the mining company, an effective and meaningful reparations process would only be possible through an integrative approach that pushes government to take on its obligations, one that allows victims and affected community stakeholders to play an active role in its design and implementation.

7.1 Acknowledgement of wrongdoing and human rights responsibilities

Lonmin and Sibanye's initiatives for repair have been presented as paternalistic or charitable, arising from the mining company's professed sympathy for the suffering of those affected by the massacre.

If Sibanye genuinely seeks to play a leading role in collaborating with other stakeholders in rebuilding a community, it needs to start by acknowledging a share of the responsibility for what happened in 2012. It needs to acknowledge how its labour practices, its neglect of its SLP obligations and its pressure on the police for escalation all played a role in shaping the conditions for the massacre. It also needs to own up to the material and logistical support it provided the police during and after the massacre. In large part, this would simply be a recognition of the facts established by the Farlam Commission.

Such an acknowledgement can serve as the foundation for a human rights-based approach towards addressing the company's responsibility to respect the rights of the victims and to provide for, or cooperate in, the remediation of the adverse impacts they have either caused or contributed to.¹²⁷ Sibanye's reparations should be acknowledged as such and, further, their programmes should be explicit about the company's responsibility with respect to the victims' human rights.

127 United Nations, 2011, Guiding Principles on Business and Human Rights, at para 22.

7.2 Integrative and inclusive reparations plans

The company's various initiatives to provide support to victims have been a complex, opaque and fragmented process, making numerous promises. The remedial initiatives have also been pursued in isolation or with limited coordination with other actors providing support to victims and their communities.

This process has been characterised by extremely slow delivery, confusion about what has been or will be provided, mistrust, resentment among different victim groups and the failure to mobilise potential external resources.

The company programme thus far has also failed to address victims inclusively. Its focus on the family members of those who died has come at the exclusion of the striking mineworkers who were arrested and injured. The needs of broader community members directly impacted by the massacre have also been neglected, as has resolution of the conflict between the trade unions and other groupings within the Marikana community.

While the Marikana Renewal Programme seeks to address these shortcomings, it still faces serious challenges in bringing all relevant stakeholders on board. A process convened and designed by the mining company, rather than one more neutrally coordinated and inclusively designed, is unlikely to build sufficient trust to achieve substantial inclusion across stakeholder divisions. A more independently led programme, and one more collaboratively framed, would stand a much greater chance of success.

A reparations plan designed without the direct involvement of the state will also ultimately constitute a half measure. The state worked in close collaboration with the company (from leadership communications to local logistics) in committing the massacre. For the company to take reparative measures without direct state involvement presents an ambiguous message about responsibility.

The need to design appropriate reparative measures in a context where many are struggling to meet their basic needs also means that reparations programmes need to be coordinated alongside basic service provision. Providing housing to victims in an environment where roads, electricity and water are not provided would not make sense. The absence of the state from a comprehensive reparations programme is thus nonsensical.

It is also important to note the role of the state in relation to symbolic forms of reparations, such as commemoration events and memorials. The state is the only body that can declare the day of 16 August as a national holiday. The state has significant resources that it can commit to the construction and maintenance of memorial sites, and it has an important symbolic role to play at annual memorial events. The mining company therefore has an obligation to join other stakeholders in urging the state to fulfil its responsibilities in these regards.

7.3 Comprehensive reparations plans

The reparations described in this report cover a range of different forms of assistance, including various material and symbolic, as well as individual and collective, measures.

This diversity of approach is important since reparation needs vary among victims, and each victim may have a range of needs. It is important that all these needs – economic, medical, psychological and social – are recognised and addressed in ways that are appropriate to the individual victims concerned.

A comprehensive plan also requires a clear understanding of the impact of the violations. It is clear that the psycho-social consequences of the massacre have not been fully appreciated and addressed through appropriate services. Reparations need to be guided by a more thorough evaluation of the various impacts

on victims and the community. These needs are likely to be invisible to officials and professionals approaching the situation with preconceived ideas of what victims might require.

Symbolic reparations can also take on a range of forms, with victims expressing a desire for apologies from key actors responsible for the massacre, the day of 16 August declared a national holiday, annual commemoration services, and a physical memorial on the koppie. The broad design and specific details of these processes should represent the stories victims want to have told, who also should be given a clear role in guiding these measures in order for them to serve a genuinely reparative function.

While it is important to provide fair and equal treatment to victims, it is also vital that the individual needs of victims be taken into consideration when developing solutions. Such processes should be developed transparently, with clear procedures for consultation and transparent criteria for receiving different forms of assistance.

Gender considerations should be central in the development of appropriately tailored reparation measures. The violations affected the victims and family members of those who were injured and killed in diverse ways, with gender being a key factor shaping these impacts. The ways in which direct and indirect victims deal with loss and rebuild their lives are also directly framed by gender, as well as by other intersecting factors such as culture, rural or urban location, among others.

In addition to developing reparations that effectively respond to the individual needs of all the direct victims, community reparation initiatives should also respond to the specific consequences of the conflict and the massacre on other community members. The conflicts and the massacre have had a terrible toll on the community, manifesting in alcohol and drug abuse, domestic violence, high rates of crime and suicide, among other effects. The psycho-social dynamics in the community should be viewed in large part as the outcome of the massacre, and collective and community reparations should be undertaken in acknowledgement of this fact.

Rather than as an ordinary developmental and/or corporate social responsibility obligation, community healing and rehabilitation programmes should be designed specifically in relation to the ongoing legacy of the conflict and massacre.

7.4 Participatory approach to reparations

As part of addressing the multiplicity of needs of community members, a reparations process should engage with the various groups and individuals who stand to benefit from them. The required process of collaborative engagement should not treat beneficiaries as passive recipients. In addition to presenting a diversity of needs, victims also have a diversity of ways of being included. This inclusivity could be achieved through direct personal engagement, group representatives, lawyers and through community meetings, among other approaches. Engagement processes thus need to be designed to address the diverse preferences of different victims and other stakeholders.

Gender is also a key consideration in such participatory processes. How women organise themselves, the constraints they face in communicating or travelling, the specific safety concerns they have when engaging in public, and their various work and family obligations, are just some of the factors that should be considered when developing appropriate participatory engagement strategies. A gender blind process would be more likely to result if engagement was more oriented towards men's needs.

7.5 Integrative approach to reparations, truth and justice

Meaningful reparations are closely tied to processes of truth recovery and accountability. Receiving substantial reparations from the mining company will be less meaningful if victims feel that the perpetrators have not been held accountable, or if the truth has not been properly revealed and acknowledged. The meaningfulness of reparations is in part derived from the acknowledgement of wrongful actions and the acceptance of responsibility for them. Reparations programmes that operate in the shadow of unresolved criminal and civil claims, and in the absence of apologies, are diminished by dissonant and partial narratives of the past events. There is thus a great urgency to resolve all civil and criminal proceedings in order to make reparations more meaningful. The mining company has an obligation to resolve the claims against itself and to provide support to those victims seeking justice from the state.

The victims and community members in this study did not draw a clear line between state and company responsibility. The two parties were seen as acting collaboratively during the massacre and are still seen as colluding with each other in avoiding responsibility. In the minds of the victims and the community, the state's failure to finalise criminal and civil cases reflects equally badly on the company. The company should thus speak out to challenge delays in prosecution and urge the state to finalise these matters.

7.6 Service delivery and Social Labour Plans

In addition to the responsibility to provide reparations to victims and the community, the company has committed to developing the communities surrounding the mine. This commitment, captured in the company's Social Labour Plan, is a necessary condition for being granted a mining licence. The SLP, however, is separate from the company's reparative obligations, and while these initiatives may overlap in the content of what they offer, they should not be conflated. In other words, the company has obligations for community reparations irrespective of whether these are contained in the SLP. Nevertheless, building community reparations into an SLP is possibly an option worth exploring, particularly in the absence of the company explicitly acknowledging its reparative obligations.

The SLP is a potentially key document because, in the absence of clear reparations commitments to the community, it does contain various developmental commitments with the potential of addressing the legacy of the massacre. It is, however, a framework that has been deeply discredited due to the mining company's repeated failures to deliver on said commitments as well as the state's failure to hold the company accountable for these failures. The SLP is an approach that is thus met with great scepticism from many in the community.

The SLP does, however, offer a potential avenue for the collaborative engagement of key stakeholders, and for more transparent planning and monitoring procedures. If designed appropriately, the SLP can thus serve as a key mechanism for linking its reparations programmes to a broader community development and service delivery plan.

The SLP is the mechanism through which the company can also clarify its role in relation to the delivery of state services to the community. Companies working in mining-affected communities are often expected to compensate for the failure of state service delivery. Social Labour Plans could serve as vehicles for identifying service delivery gaps, and spell out who is responsible for which service.

However, without transparency, meaningful monitoring and enforced consequences for failures of delivery, SLPs will likely continue to undermine trust.

7.7 Addressing apartheid legacies

As discussed in the background section of this paper, the Marikana Massacre is a symptom of the unresolved legacies of apartheid. Regrettably, the circumstances that gave rise to the massacre are still present in the mining sector. The South African mining sector failed to transform in line with the transition to democracy in 1994 and, thus far, the Marikana Massacre has also failed to trigger the reforms that would ensure such events are not repeated on South African mines.

Companies in the mining sector were directly involved in the design of South Africa's apartheid policies and are infamous for their exploitation of mineworkers during that time. The continued power imbalance, particularly in relation to mining companies' ability to influence government policy, creates conditions that are ripe for further exploitation and possibly for future massacres.

The depth of the workers and communities' grievances against the mining company are perfectly coherent when framed in terms of their collective and racialised experience of exploitation and dehumanisation. This legacy is particularly virulent given the failure of mining companies to either acknowledge their exploitative role during apartheid, or to offer any form of reparations for those abuses since the transition to democracy.¹²⁸

The Sibanye CEO has in fact suggested a mining sector Truth and Reconciliation Commission as a potential vehicle for confronting the unresolved legacy of apartheid in this sector.¹²⁹ It is possible that such a process – uncovering the whole truth of this period in history, acknowledging its abuses and seeking justice for them – could provide a solid foundation for building a more sustainable reparations plan in Marikana, and a more just, peaceful and human rights-compliant mining sector.

A more systematic and sector-wide engagement, such as a mining sector TRC, would also provide the opportunity for mining companies to adopt and operationalise their internationally recognised responsibility to respect human rights. The UN Guiding Principles on Business and Human Rights provide the blue print for businesses to fulfil this responsibility through the adoption of three key measures: a policy commitment to meet the responsibility of businesses to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how businesses address any adverse impact their operations have on human rights; and so-called grievance mechanisms to enable the remediation of any adverse human rights impacts that businesses directly cause, or to which they contribute.¹³⁰

128 Even in the case where South African gold mines settled a massive civil claim of ZAR5 billion for causing the deaths and illness of tens of thousands of mineworkers through exposure to unhealthy work conditions, it refused to acknowledge wrongdoing.

129 A. Seccombe, 2016, 'Mining TRC seen as a first step', Business Day 18 October, <https://www.businesslive.co.za/bd/companies/mining/2016-10-18-mining-trc-seen-as-a-first-step/>.

130 United Nations, 2011, Guiding Principles on Business and Human Rights.

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