

The sound of gunfire

The police shootings at Marikana Scene 2,
16 August 2012

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The views in this report, and any errors, are those of the author and not those of OSF-SA or the ISS.

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Acronyms and abbreviations

CALS	Centre for Applied Legal Studies
FHA	Forward holding area
NIU	National Intervention Unit (South African Police Service)
NUM	National Union of Mineworkers
ORS	Operational Response Services (SAPS)
POP	Public Order Police (SAPS)
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
STF	Special Task Force (SAPS)
SWS	Shot while surrendering
TRT	Tactical Response Team (SAPS)

In quoting verbatim from written statements, the use of the double forward slash (//) indicates a new paragraph. Alternatively, where written statements have numbered paragraphs the numbering is used.

Abbreviations of titles of rank (in order of rank):	
Gen.	General
Lt Gen.	Lieutenant General
Maj. Gen.	Major General
Brig.	Brigadier
Lt	Lieutenant
Capt.	Captain
WO	Warrant Officer
Sgt	Sergeant
Cst	Constable

Terminology

The Marikana massacre refers to the killing of 34 men by members of the South African Police Service (SAPS) at the Lonmin Marikana mine on the afternoon of Thursday 16 August 2012. The shootings took place at two distinct locations, roughly 500m apart, with a period of 15 minutes passing between the first shooting and the beginning of the second series of shootings. All but one of those killed were miners or other Lonmin personnel engaged in a strike over wages.¹

Scene 1: the first shootings took place next to a small cattle kraal (enclosure) and this location is referred to as Scene 1.

Scene 2: the second set of shootings took place in an area composed of large boulders, parts of which were surrounded by fairly thick bush. In the report of the Marikana Commission this area is referred to both as Koppie (small hill) 3 and as Scene 2.² In one case it is also referred to as the small koppie,³ a term also used by others.⁴ In the initial media statement released by the SAPS, the area is referred to as 'high bushy ground'. In this report the area is referred to as Scene 2 though some of the other names for the area are also used, particularly when other sources are being quoted.

The term **operation** refers to the SAPS activities in Marikana in response to the miners' strike and associated violence from 9 August to 16 August 2012. The Marikana **intervention** (also called the 'tactical intervention') refers to what the SAPS call the 'tactical phase' of the operation, launched on the afternoon of 16 August. The intervention was one aspect of the overall SAPS Marikana operation. During the intervention, the police intended to 'disperse, disarm and arrest' strikers gathered on a koppie at Marikana. This is when the Marikana massacre, in which 34 individuals were killed by the police, took place.

Glossary of terms

Bakkie	(in this report) police van
Canter	large police vehicle used for transporting groups of arrested people
Casspir	armoured personnel carrier manufactured in South Africa
intelezi	medicinal substance believed to have magical protective powers (also 'muti')
K9	SAPS units that are deployed with police dogs
knobkierie/ knobkerrie	short stick with a knob on the end, used as a weapon
koppie	small hill
kraal	(in this report) cattle enclosure
muti	traditional medicinal substance (also 'intelezi')
panga	machete
Nyala	armoured personnel carrier manufactured in South Africa
sangoma	traditional healer
sjambok	stiff but supple whip
R5	assault rifle (R1 is an earlier variant)
SSG	a type of 'buckshot' shotgun pellet

Chapter 1: Introduction

- 1) This report focuses on a part of the Marikana massacre, an incident on Thursday 16 August 2012 in which 34 men, most of them striking mineworkers, were killed by members of the South African Police Service (SAPS). The killings on that day took place at two different locations, about 500m apart, now often referred to as (crime) Scene 1 and Scene 2. At each location, 17 people were fatally injured by gunfire from members of the SAPS.
- 2) This report focuses on describing and understanding the events at Scene 2. It relies on information made available in the public domain as a result of the Marikana Commission process. The events at Scene 1 will also be discussed, but only to establish the circumstances/context in which the events at Scene 2 took place.
- 3) No integrated narrative account of the events at Scene 2 has appeared in the public domain. The report aims to deepen understanding of the events at Scene 2 and to contribute towards developing an explanation for the killings that took place there.

Initial public reports on Scene 2

- 4) Immediately after the Marikana massacre, it was not apparent that the 34 deaths had occurred at two separate locations. As discussed below (See Chapter 5, especially paragraphs 96–99), the first SAPS report sent to President Jacob Zuma the night after the massacre differentiated between the first shooting and what it called the ‘2nd incident’, providing separate death tolls for the two. However, at a press conference the following day the SAPS national commissioner blurred the distinction between the two scenes, giving only one death toll (the sum of the death tolls at both scenes).⁵

The first public reports that the massacre had in fact taken place at more than one location emerged as a result of visits to the location in the days immediately afterwards by independent observers. For instance, the observations of a small team of academics and researchers from the University of Johannesburg, who visited Marikana on Monday 20 August, were published in an article the following day, which said that after the first shooting:

terrified strikers scattered in all directions, with a large number heading for cover by a koppie about 300m in the opposite direction from the wire. This ‘killing koppie’ is where the largest number of strikers died. No cameras recorded this slaughter. But evidence remained on Monday, four days after the massacre. There are remnants of pools of blood. Police markers show where corpses were removed. We found markers labelled with letters up to ‘J’.⁶

The following week, an article by photojournalist Greg Marinovich had a major impact, drawing attention to the fact that many of those killed at Marikana had not been killed in the first incident, which was captured on television footage, but at a second location, referred to by Marinovich as ‘the small koppie’.⁷

Scene 2 in the report of the Marikana Commission of Inquiry

- 5) The Marikana massacre, and events at the Lonmin Marikana mine over the week before the massacre, were the focus of a protracted Commission of Inquiry, the report of which was released by the government on 25 June 2015.⁸

- 6) Matters to do with the events at Scene 1 are still debated, but the Marikana Commission of Inquiry did make some firm finding about the events. Though the Commission could not reach any conclusions on whether or not the police had been attacked at Scene 1, it found that the police who had opened fire on the strikers 'had reasonable grounds for believing they were under attack in circumstances which justified them in defending themselves and their colleagues.'⁹ In other words, the Commission felt that the evidence was not conclusive about whether or not there had been attack. But the Commission accepted that the some members of the group of SAPS members who had been faced with a group of armed strikers running towards them, might reasonably have shot at the strikers because they believed that they were being attacked.
- 7) The Commission report makes no significant findings about what actually happened at Scene 2. Though roughly 50 pages of the report are dedicated to Scene 2, they largely detail part of the evidence and argument presented to the Commission, especially by the main SAPS commanders at Scene 2.
- 8) The main conclusions that the Commission reaches with regard to Scene 2 are that the SAPS 'provided no details of what happened with regard to the deaths of most of the deceased at Scene 2' and, 'where it does provide evidence pertaining to the deaths of some of the deceased, their versions do not bear scrutiny when weighed up against the objective evidence.'¹⁰
- 9) The Commission goes on to state that:

The lack of clarity around the death of the 17 deceased persons at Scene 2, places the Commission in the difficult position of not being able to make findings as to the circumstances surrounding the death of each deceased. To accept or reject any version, with any degree of certainty, requires further interrogation of many factors.¹¹
- 10) The principal finding of the Commission with respect to Scene 2 is therefore that SAPS accounts of all of the deaths do not stand up to scrutiny when compared to the objective evidence. Beyond this the Commission highlights the complexity of the evidence in relation to Scene 2. But it does not reach any conclusions about what actually happened.
- 11) The Commission advocates that a 'full investigation' should be carried out by an investigative team that includes independent ballistic and other experts, under the direction of the North West Director of Public Prosecutions (a senior official of the National Prosecuting Authority), 'with a view to ascertaining criminal liability on the part of all members of the SAPS who were involved in the events at Scene 2.'¹² The Commission advocates that, as part of this investigation, 'the ballistics evidence, the medical evidence and the eye witness accounts' should be 'interrogated alongside a reconstruction of the scene involving independent specialists.'¹³
- 12) It is clear that the report of the Commission does not provide anything close to a full account of this part of the massacre. In addition, the investigation that the Commission proposed on questions of criminal liability is essentially concerned with issues of individual guilt. It may not necessarily provide an overall account of the events at Scene 2, including engaging with questions about the relationship between separate events at different parts of the small koppie and whether, or how, these different killings formed part of a single dynamic event. This report aims to contribute to understanding the events at the small koppie from this perspective.

Sources of information

- 13) Sources of information consulted in compiling this report include:
 - a) The report of the Marikana Commission;¹⁴
 - b) The report of the Claassen Board of Inquiry;¹⁵
 - c) The heads of argument presented to the Commission by various role players and parties, notably:
 - i) The evidence leaders;¹⁶
 - ii) The legal representatives of the South African Human Rights Commission (SAHC);

- iii) The legal representatives of the families of the deceased strikers ('the Families');¹⁷
 - iv) The legal representatives of the SAPS; and
 - v) The legal representatives of the injured and arrested miners;
- d) Between 180 and 200 statements taken by the Independent Police Investigative Directorate (IPID) from strikers who were injured and/or arrested at Scene 2. These were all taken in the five days after the massacre. At least one statement from a striker, taken after this period, has also been analysed;
 - e) Over 99 statements made by at least 50 SAPS members, including 31 of the 57 SAPS members identified as shooters at Scene 2 and 19 other SAPS members who, according to SAPS records, were present at Scene 2;
 - f) Excerpts of the transcripts from Commission hearings relating to the evidence of some of those involved at Scene 2;¹⁸
 - g) Video recordings taken during the events at Scene 2;¹⁹
 - h) Photographs taken during the events at Scene 2 by SAPS personnel in two SAPS helicopters;²⁰
 - i) Medico-legal and ballistic evidence presented in the report of the independent forensic and ballistic experts;²¹
 - j) Miscellaneous other exhibits presented to the Commission, including, but not limited to:
 - i) Exhibit L – the SAPS opening presentation, presented before the Commission in early November 2012;²²
 - ii) Exhibit FFF8 – a report compiled by the SAPS on firearm discharges by SAPS members at Marikana;²³
 - iii) Exhibit ZZZZ3 – an exhibit dealing with statements by SAPS members;²⁴ and
 - iv) Exhibits MMM26,²⁵ MMM31,²⁶ MMM45,²⁷ and MMM47.²⁸
 - k) Analyses of vehicle movement produced by the Centre for Applied Legal Studies (CALSS);²⁹
 - l) An Excel spreadsheet compiled by the evidence leaders providing a description of images provided in video and photographic evidence, as well as a transcription of radio transmissions, against a standardised timeline;³⁰
 - m) Sections of the statements of independent expert witnesses who appeared before the Commission regarding the events at Scene 2; and
 - n) Other portrayals or analyses of the events at Scene 2 provided in books, press and journal articles and television programmes.³¹

Limitations

- 14) The engagement with material relating to the events at Scene 2 has therefore been extensive, but it cannot be said to be completely comprehensive. Among other things, this is because the statements of 27 of the SAPS shooters, and some of the other SAPS members who were present at Scene 2, have not been fully analysed. Furthermore, the work for this report has not involved analysis of the full Commission transcripts relating to the testimony of individuals who were involved at Scene 2.

However, key aspects of the evidence from transcripts are frequently quoted and analysed in some of the heads of argument that were referred to in the course of this research. This report does not discuss in details information on the use of a water cannon. Using photographic and video evidence on the use of water cannons, it is possible to provide a more detailed construction of the sequence of events at Scene 2. Given time constraints, it was not possible to integrate this aspect of the research into the report.

Chapter 2: The prelude to Scene 2

- 1) This report is about the events at Scene 2 and will not provide a detailed account of the events that preceded it. In this chapter, however, the focus is on key aspects of the events on 16 August and over the preceding days, which this report argues are directly relevant to understanding the events at Scene 2.

The violent character of the strike and belligerent demeanour of the strikers

- 2) There was without doubt a violent and belligerent dimension to the actions of some of the strikers:
 - a) Intimidation by people involved in the strike was reported on 10 August, the first day of the strike, but this did not distinguish the strike from many others in South Africa.
 - b) However, starting with a clash on Sunday 12 August, in which strikers killed two Lonmin security guards, some of the strikers are known to have killed six people and injured at least four others. Strikers are also reasonably believed to be responsible for one other killing.³² These killings occurred over the three-day period up to 14 August and included:
 - i) The two Lonmin security guards killed on 12 August;
 - ii) Two non-striking Lonmin employees over the night of Sunday 12 and early hours of the following morning;
 - iii) Two SAPS members killed in a clash on the afternoon of Monday 13 August; three strikers were also killed in the clash and its aftermath; and
 - iv) A striker who was accused of being a spy on the afternoon of Tuesday 14 August.
- 3) Prosecutions have been instituted against 18 of the strikers allegedly linked to some or all of these acts of violence.³³ The number of accused may not be representative of the total number who were involved in the killings over 12–14 August. Nevertheless, it highlights the point that the violent incidents referred to above cannot reasonably be held to have been the responsibility of the entire body of strikers, who are said to have numbered around 3 000.
- 4) An analysis of the Commission report has argued that one of the key questions is ‘whether the violent aspect of the strike was consistent?’ Or in other words, ‘did the core group demonstrate a single stable orientation towards the use of violence or were there shifts in their orientation towards violence?’³⁴ Arguably, a weakness of the report is that it characterises the strikers as having a fixed and stable orientation towards violence.

Though the evidence is not conclusive on these questions, it is compatible with the conclusion, ‘that there was a major shift in the perceptions of members of the core group about what they were up against’ after an incident on the morning of Saturday 11 August. After strikers had marched on the offices of the National Union of Mineworkers (NUM), union members opened fire on them and two of the strikers were hospitalised as a result. However, evidence indicates that many of the strikers believed that the two had been killed in the shooting.³⁵

- 5) The strikers were clearly distressed after their confrontation with the NUM on the Saturday morning, partly because they believed that two of their colleagues had been killed. One response was that some strikers

began to arm themselves more heavily.³⁶ The other was that the strike leaders decided that they would hire a sangoma (traditional healer) to assist them.

According to a member of Lonmin security who infiltrated the group of strikers, later on that Saturday afternoon, some of the strikers participated in rituals in which intelezi or muti was administered to them.³⁷ Some of the strikers were also observed having muti administered to them on Sunday 12,³⁸ Tuesday 14 and Wednesday 15 August.³⁹

The clash between the strikers and the SAPS – Monday 13 August

- 6) The clash between the strikers and the NUM on 11 August may therefore have been critical in shaping the strikers' understanding of the strike. Thereafter, they may have started to believe that they would need to be willing to face the possibility of death for the strike to succeed. It is reasonable to believe that the clash between the strikers and police on 13 August was equally significant in terms of its impact on police perceptions of the strikers.

As indicated, two police officers and three strikers were killed in the clash and in its immediate aftermath. It has subsequently been established that police actions may have precipitated the clash. But it is likely that this is not how members of the SAPS at Marikana understood the event. According to Lt Col. Scott, the SAPS chief planner at Marikana, his understanding was that:

this group of strikers had taken their level of willingness to achieve their goals to levels beyond what the police had previously experienced in labour and service delivery unrest. This had moved from destruction of property and harming of non-striking employees, to standing against the authority of state vested in the police, by attacking and murdering police officials when they tried to enforce the law.⁴⁰

Significance of strikers' use of muti

- 7) A contested issue is whether any of the strikers believed that the muti provided them with special protection. During post mortems 'traditional marks' indicating possible participation in muti rituals with the sangoma were identified on the bodies of eight of the 17 strikers who were killed at Scene 2:
- a) Mr Makhosandile Mkhonjwa (Victim N)
 - b) Mr Janeveke Raphael Liau (Victim E)
 - c) Mr Thabiso Mosebetsane (Victim G)
 - d) Mr Mafolisi Mabiya (Victim H)
 - e) Mr Fezile David Saphendu (Victim J)
 - f) Mr Mpumzeni Ngxande (Victim K)
 - g) Mr Stelega Meric Gadlela (Victim L)
 - h) Mr Thobile Mpumza (Victim C).
- 8) It seems clear that police were strongly aware of the use of muti by some of the strikers. Many police might have believed the strikers would not act rationally because of the muti and might therefore attack despite superior weaponry of the police. This could have enhanced police officers' fear of the strikers and their sense of uncertainty about what could be expected from them.⁴¹ Some police officers may have believed in the effectiveness of the muti.⁴²
- 9) Other than in this regard the analysis contained in this report does not support the conclusion that the use of muti played a significant role in the events at Scene 2 (though the issue is briefly alluded to in relation to the death of Mr Mpumza – see paragraph 277).

Events at Marikana on 16 August before Scene 2

- 10) At its highest point the total number of strikers gathered on Koppies 1 and 2 is estimated to have been around 3 000. Evidence suggests that by the time the SAPS launched the intervention on the afternoon of 16 August the number had declined to roughly 1,600 as some participants had left the gathering.⁴³
- 11) A core, lead or 'militant' group numbering about 300 was clearly distinguishable from the majority of strikers. It was typically positioned towards the front of the gathering of strikers on the east side of Koppies 1 and 2. Members of this group, primarily, had participated in the muti rituals and the strike leaders were part of the group. According to the SAPS, members of this group mainly were armed, rather than the strikers in general.⁴⁴ The SAPS figures for the total number of weapons recovered during the operation include 196 knobkieries (short clubs), 83 spears or assegais, 32 iron rods, 42 pangas (machetes), five knives, four axes, one sjambok (long whip) and five firearms,⁴⁵ suggesting that in the region of 300–400 strikers were armed.
- 12) Belligerent behaviour by strikers on 16 August included:
 - a) Belligerent talk and warlike posturing of various kinds – Mr Noki, the strike leader, and other strikers made statements that were confrontational and included explicit or implied threats to kill police.⁴⁶ But not all statements made by prominent strikers were consistently the same. Another striker, Mr Ntsenyeho, made a speech that may be seen as defiant rather than belligerent, saying that the strikers 'would rather die' than be forced to leave the koppie.⁴⁷
 - b) After the launch of the police intervention, when the SAPS started to roll out barbed wire a group of strikers attacked one of the police vehicles, Nyala 11, which was positioned at the north-eastern corner of the small kraal. In the words of one of the occupants of Nyala 11: 'The protestors attacked our Nyala and attempted to damage its tyres and the windscreen using spears, pangas and knobkieries.'⁴⁸ As discussed below, the Commission report accepts that the general intention among the strikers was not to attack the police. However, this event shows that some strikers were willing to continue to engage in belligerent behaviour. It may be that they were reacting in frustration to what they understood as SAPS attempts to block them from moving towards Nkaneng.⁴⁹
 - c) The attack on the Nyala may have led to the firing of stun grenades and CS teargas at the strikers. As noted below, this was fired from behind the leading group of strikers.
- 13) In terms of its salience to the events at Scene 2, a critical question about the events at Scene 1 that remains unresolved is whether or not the strikers were attacking the SAPS when they were shot. Despite the above, there is no conclusive evidence that the strikers intended to attack the police at the time of the shooting at Scene 1. The Commission report and the heads of argument of the evidence leaders do not reach a conclusion on this question, emphasising the ambiguity of the evidence.
- 14) On this issue, the key point that the evidence leaders make is that, 'the question of the intentions of the strikers in the group that was ultimately shot at by the TRT [Tactical Response Team] cannot be answered in an undifferentiated fashion.'⁵⁰ They point out, for instance, that Mr Ntsenyeho, who 'appears to have played some leadership role in the strike',⁵¹ and was with the leading group of strikers which the TRT fired at, was unarmed.⁵² There is no convincing evidence that anyone in the group intended to attack the police. At most, it might be possible to say that some of the group intended to, but certainly not that this was the intention of the group as a whole.⁵³
- 15) While the evidence is not one-sided, it seems reasonable to conclude that the strikers were not attacking the police at the time of the shooting. The strongest evidence for this is the integrated video material produced on behalf of the SAHRC.⁵⁴ This shows that the teargas and stun grenades were fired from behind the lead group of strikers and appears to support the conclusion that this contributed to pushing the strikers towards the police line. The presence of unarmed strikers such as Mr Ntsenyeho in this group is incompatible with the idea that they were intending to attack the police.

- 16) An incontrovertible aspect of the evidence, however, is that one of the strikers shot at the police with a pistol roughly 10 seconds before the TRT members opened fire on the strikers.⁵⁵ The striker was shooting at Public Order Police (POP) members, who were shooting rubber bullets at the strikers from one side, through a gap between two police vehicles.⁵⁶ (Related to this, the shooting by this striker would not have been visible to more than a few strikers; it appears likely that some or all of those to whom it was visible were killed at Scene 1).

This is the only firm evidence that any strikers fired at SAPS members during the events of that afternoon at Scene 1. It seems reasonable to conclude that the striker was reacting to the rubber rounds being fired at the strikers and his motivation may therefore be understood as defensive. Nevertheless, this, as well as the other evidence of belligerent behaviour by the strikers, at the very least makes it necessary to acknowledge that the evidence about the intentions of the strikers is not one-sided.

- 17) An additional question that is highlighted by the evidence leaders is why the strikers chose to move towards the area where the police were positioned. The area where police were positioned overlapped with a path leading into the Nkaneng settlement. This path had been used throughout the day by strikers who were moving between the gathering on Koppie 1 and 2 and the settlement. Given the slow pace at which the police rolled out the barbed wire, it is likely to have appeared to the strikers that they would have time to get to the path before the barbed wire barrier was erected. There was a fence that created a barrier preventing direct entry into the settlement. But the evidence leaders point out that there was an alternative route into the settlement. They would also have been able to get into Nkaneng by simply heading north of the Koppie 1 and Koppie 2 areas where they had gathered. This would not have involved moving towards the area where police vehicles and personnel were positioned. On this point the evidence leaders state that:

Whilst the strikers could have reached Nkaneng without crossing any SAPS lines, the route that they followed was one which had been taken by individual strikers to and from the koppie right through the 16th and had been allowed by SAPS even as late as 10 minutes before the shootings. It also offered their leaders a way of saving face whilst effectively retreating.⁵⁷

This implies that if they had taken the other route, the strikers would have seemed to be fleeing from the police. At the time they started heading towards the area where the path was and where the SAPS officers were positioned, this may have seemed to be the most accessible route back into Nkaneng.

Relevance of events preceding the police actions at Scene 2

- 18) It is therefore not possible to say there is categorical evidence either that none of the strikers wished to attack the police or that some intended to. So far as this report is concerned, the question is whether this ambiguity has any consequences in relation to the analysis of Scene 2. The critical issue that this revolves around is the credibility of the SAPS's contention that, in a number of instances, strikers attacked SAPS members at Scene 2. If the evidence about Scene 1 is taken to show that a group of strikers were present who intended to attack the SAPS, this might support the assertion that the strikers embarked on a number of attacks against SAPS members at Scene 2. Overall, this would then show a consistent pattern of behaviour by the strikers.
- 19) This report shows that other than in the case of Mr Mpumza, the last striker to be fatally shot at Scene 2, there is no credible evidence that strikers at Scene 2 attacked SAPS members. It also shows there is strong evidence that many of those who died were killed in circumstances where they were clearly not attacking the police. The report therefore tries to account for the shootings by the SAPS in relation to the absence of evidence of any pattern of attacks against the police.
- 20) The information or evidence analysed in this report supports the conclusion that there was not a series of attacks by strikers on the police at Scene 2. Even if the evidence showed that the strikers as a group had wanted to attack the police at Scene 1, this would not show that the strikers had done so at Scene 2. (The case of Mr Mpumza will be dealt with in so far as it appears to be an exception to this pattern.)

- 21) In this report the relevance of the events that preceded what happened at Scene 2 should therefore be understood primarily in relation to the following:
- a) Many of the strikers were armed and this in itself meant that the police saw them as potentially dangerous and were afraid to engage them at close quarters.
 - b) As indicated, the evidence presented before the Commission indicated that police actions had led to the confrontation on 13 August. Nevertheless, when the SAPS members fired stun grenades and teargas at them, the strikers retaliated in a highly aggressive and warlike manner, killing two police officers and seriously injuring another. Whatever the nuances of the event that emerged during the Commission's hearings, how police at Marikana would have understood it is that they had been attacked by the strikers, who had killed two of them, and that the strikers' willingness to do so was related to the use of muti. This is illustrated by the words of Lt Col. Scott, who indicates that the incident came to define how the police understood the strikers. Lt Col. Scott says that:

'with the killing of police officials, it was my view that the strikers had crossed a barrier where they would, with greater ease, take the decision to confront the police again should the police be required to resolve the situation tactically.⁵⁸
 - c) The significance of this incident is likely to have been reinforced on the 16. The evidence suggests that many of the police who advanced on Scene 2 believed that the strikers had attacked the police at Scene 1.
 - i) This would partly have been because this information was communicated over the police radio.⁵⁹ Both Maj. Gen. Naidoo, who approached Scene 2 from the south side with members from Forward Holding Area 1 (FHA1), and Capt. Kidd, who was in charge of the group from Forward Holding Area 2 (FHA2) approaching Scene 2 from the west side, said they heard on the radio that the police had been attacked by strikers.⁶⁰
 - ii) The National Intervention Unit (NIU) line was 80–100 metres behind the TRT⁶¹ when the shooting at Scene 1 took place. Being stationed in this position they are likely to have seen the strikers running towards the TRT line.⁶² As indicated, the Commission accepted that members of the TRT at the small kraal may reasonably have believed that the strikers were attacking them. In the same way, NIU members who were positioned behind the TRT might also have believed that the TRT had been attacked.
 - d) By the time events at the Scene 2 unfolded, it therefore appears likely that some police believed not only that strikers had attacked and killed two of their colleagues on 13 August, but that, consistent with this behaviour, the strikers had again attacked them at Scene 1.
 - e) In addition, the use of muti by the strikers may have exacerbated uncertainty about what was to be expected from them. There is likely to have been a sense of apprehensiveness that, because of the muti, the strikers could not be expected to act in a rational way and might pursue belligerent conduct against the police, despite their inferior weapons.
- 22) Against this backdrop, it would appear that the general view many police held was to regard the strikers as collectively responsible for this violence and to see them as antagonistic towards the police. This would have translated into uncertainty, apprehensiveness and fear at the risk of being attacked again if they engaged the strikers. Related to this, it is likely that the police held generalised feelings of antagonism and vindictiveness towards the strikers. The absence of any command and control at Scene 2 would have provided room for these emotions to be given free rein (though some individuals would have been more susceptible than others). In the concluding analysis, it will be argued that these emotions had a significant impact on police conduct at Scene 2.

Chapter 3: Introductory notes about the events at Scene 2

Those killed by the police at Scene 2

23) Those killed at Scene 2, their area of origin and age are indicated in Table 1.

Table 1: Victims at Scene 2 – name, area of origin and age

	Origin	Age ⁶³
1. Mr Makhosandile Mkhonjwa (Victim N);	Eastern Cape	29 ⁶⁴
2. Mr Anele Mdizeni (Victim A);	Eastern Cape	29 ⁶⁵
3. Mr Thabiso Johannes Thelejane (Victim B).	Eastern Cape	56 ⁶⁶
4. Mr Julius Tokoti Mancotywa (Victim D),	Eastern Cape	61 ⁶⁷
5. Mr Janeveke Raphael Liau (Victim E),	Lesotho	44 (47) ⁶⁸
6. Mr Thabiso Mosebetsane (Victim G),	Eastern Cape	49 ⁶⁹
7. Mr Mafolisi Mabiya (Victim H),	Eastern Cape	28 ⁷⁰
8. Mr Ntandazo Nokamba (Victim I),	Eastern Cape	36
9. Mr Fezile David Saphendu (Victim J),	Eastern Cape	23 ⁷¹
10. Mr Mpumzeni Ngxande (Victim K),	Eastern Cape	38 ⁷²
11. Mr Stelega Meric Gadlela (Victim L);	Swaziland	50
12. Mr Henry Mvuyisi Pato (Victim M);	Eastern Cape	34
13. Mr Nkosiyabo Xalabile (Victim O); and	Eastern Cape	30
14. Mr Telang Vitalis Mohai ⁷³ (died in hospital);	Lesotho	36 ⁷⁴
15. Mr Thobile Mpumza (Victim C).	Eastern Cape	26
16. Mr Sagalala (died in police vehicle) and	North West	60 ⁷⁵
17. Mr Ntsoele (died in hospital). ⁷⁶	Lesotho	40 ⁷⁷

24) Twelve of the victims were from the Eastern Cape, one from North West, one from Swaziland and three from Lesotho. Five were in the 20–29 age group; five in the 30–39 age group; three in the 40–49 age group; two in the 50–59 age group; and two in their early 60s.⁷⁸

Comparing Scene 1 and Scene 2

25) In one key respect – the number of people killed at each location – the details regarding Scene 1 and Scene 2 are exactly the same (see Table 2). There are other similarities. For instance, at both scenes high-velocity gunshot wounds caused virtually all of the deaths. Other similar features include: the number of rounds of live ammunition during the fatal barrage (305 at Scene 1; 295 at Scene 2); and number of known police shooters (48 at Scene 1; 57 at Scene 2).

26) But there are also obvious points of contrast:

- a) Similar types of less-lethal weapons were used at both locations (teargas was not used at Scene 2), but the number of rubber rounds used at Scene 1 (477) was dramatically higher than that at Scene 2 (30).
- b) Considering that some of the police shooters (those who used 12-gauge shot guns and SSG shotgun pellets)⁷⁹ have not been identified, it is still apparent that the shooters at Scene 1 were predominantly from one SAPS unit, the TRT.⁸⁰ All of the TRT shooters at Scene 1 were gathered in a single line and discharged their weapons within a very specific period, estimated at 12 seconds.⁸¹ However, at Scene 2 the shooters came from a number of different police units. The NIU contributed the largest number of shooters (24) and gunshots, but 11 POP members, 11 from the K9 (dog) unit and 11 (other) TRT members also used live ammunition. Rather than being gathered in a single line, police from these units approached the small koppie in groups, from different directions.
- c) While the main shooting at Scene 1 lasted about 12 seconds, the killings at Scene 2 extended over roughly 11 minutes. Calls for members to 'cease fire' took a number of seconds to take effect, but brought the shooting at Scene 1 to a relatively abrupt end.⁸² As will be discussed, there appear to have been a number of calls to 'cease fire' at Scene 2, but it took longer than a few seconds before the shooting there ended.

27) The fatal shooting with live ammunition at Scene 1 therefore involved a slightly smaller number of shooters and took place within a single concentrated time period that was far shorter than the shooting at Scene 2. Nevertheless, the SAPS members at Scene 1 used a slightly greater number of live rounds than those at Scene 2 (305 compared to 295) and the number of fatalities was the same.

Table 2: Scene 1 and Scene 2 comparison

	Scene 1	Scene 2
Location	Southeast of small kraal	Various locations at Koppie 3 ('small koppie')
Number killed	17	17
Cause of death	Fatal gunshot wounds: R5 injuries in 15 cases; combination of handgun and R5 injuries in 1 case; ⁸³ SSG pellets in 1 case ⁸⁴	Fatal gunshot wounds: R5 injuries in 15 cases; 2 from handgun injuries ⁸⁵
Number wounded⁸⁶	See paragraph 62	
Number of shots (live ammunition) fired by police	More than 332: during the fatal barrage of gunfire, there were more than 305, including 247 R5 rounds, 1 R1 round, 57 9mm rounds and an unknown number of SSG rounds. Four of the deceased were hit by SSG pellets, though only 1 of the deaths was attributed exclusively to SSG injuries ⁸⁷	295: 198 R5 rounds and 97 9mm rounds. SSG shotgun rounds were apparently also used, though none of the deceased had shotgun injuries (one of the strikers arrested indicated he was shot with shotgun pellets, apparently during his flight to Scene 2) ⁸⁸
% of known live ammunition shots from assault rifles (R5 or R1)	79% (81% during fatal barrage of gunfire) – 15 of the deceased had R5 injuries ⁸⁹	67% – 16 of the deceased had R5 injuries
Number of police shooters using live ammunition	48: 47 TRT members and 1 POP; and 1–2 other unidentified SAPS members firing SSG shotgun ammunition during fatal barrage of gunfire. ⁹⁰ This was preceded by shooting of live and less lethal weapons by POP members	57: 24 NIU members, 11 K9, 11 TRT, 11 POP

	Scene 1	Scene 2
Less-lethal weapons used	477 rubber rounds; 4 CS (teargas) grenades; 3 stun grenades; 2 water cannons ⁹¹	30 rubber rounds; 4 stun grenades; 2 water cannons
Shooting started at	Fatal barrage starts at 15:53:50	About 15 minutes later – just before 16:09
Shooting duration	12 seconds (final fatal barrage)	11 minutes (approx.)

Spatial orientation and physical features of the small koppie area

28) Photojournalist and author Greg Marinovich describes Scene 2 as ‘a jumble of granite’ and ‘the weathered remains of a prehistoric hill’.⁹² Depending on how the perimeter is defined, the area may be seen as very roughly circular and about 200m in diameter. In a fairly central position is a very large rock formation lying north to south. In this report this formation is referred to as ‘the high rocks’.⁹³ The presence of this rock formation explains why some people identify the area as a koppie and why the area was referred to as Koppie 3 (also ‘the small koppie’) at the Commission. The area is covered by grass, with thick bushes and small trees in some areas. However, a major part of it, notably to the west of the south end of the rock formation, is characterised by a scattered assortment of large boulders. At the time of the massacre, thick bushes and small trees covered this area and parts of the area to the east of the large rock formation.

a) A useful source of reference for anyone reading this report is a document with the file name ‘2.

Annexures A–G (Google maps)’. These are a set of images that constitute Annexures A–G to the report of the independent forensic and ballistic experts.⁹⁴

i) Annexures B, D, E and F are all photographic images of the area taken from different angles from either satellites or helicopters (C and F include an arrow providing orientation towards north). Annexure C is a sketch, which slightly distorts the relationship between some of the geographic features of the area. (See page 25 and 92–94).

ii) More detail on features of parts of the area in which the deceased were killed are also visible in a ‘photo album’ annexed to the report of the independent forensic and ballistic experts. This includes photographs of many of the deceased in the locations in which they were killed.

29) On the west side of the area is a roughly rectangular grass-covered depression in the earth, formed by a small dam, which has been dry for some time. Mr Mkhonjwa, the first person to be fatally shot at Scene 2, was killed on a grass-covered slope forming the east bank of this dam, on the western edge of the small koppie. (The area is visible in Annexure B and G to the report of the independent forensic and ballistic experts.)⁹⁵

30) Much further to the west is the Karee shaft, and surrounding hostel and informal settlement, in addition to two or three other informal settlements.

31) Roughly 300m to the east of Scene 2 is a much larger rock formation (known as Koppie 1 at the Commission). Immediately next to Koppie 1, on its north side, lies another very small formation of rocks (Koppie 2). The eastern side of these two koppies was where strikers were gathered until the launch of the police intervention on 16 August. (See Annexure A to the report of the independent forensic and ballistic experts.)

32) Roughly 100m to the east of Koppie 1 and Koppie 2 lay three kraals, one of them (‘the small kraal’) much smaller than the other two. Most police vehicles and personnel were positioned in the area to the south of the kraals when the events described here began. The kraals lay on the south-eastern perimeter of Nkaneng, one of the informal settlements in the area where many of the strikers lived.

Overall view of the area at the Lonmin Marikana mine where the police shootings on 16 August 2012 took place



This aerial photograph was taken on Wednesday, 15 August 2012, from a SAPS helicopter. The picture is taken from the northeast. The three cattle kraals at the bottom of the picture are located on the south west side of the Nkaneng informal settlement (A). The small kraal (B), where the first part of the massacre (Scene 1) took place, is the topmost of the three kraals. Koppie 1 (C) and the much smaller Koppie 2 (D), where the strikers were gathered, are in the middle of the picture. The area where the vehicles are scattered, around the south side of the small kraal, is where many of the police units were located when the intervention was launched. The police started rolling out a barbed wire barrier between the police and the strikers on the koppie. The police plan was for the police units to move out from behind the barrier and drive the strikers off Koppies 1 and 2, towards the western part of the area (E) that lies on the right hand side of this picture, and to disarm any who resisted. The Scene 2 events discussed in this report took place at Koppie 3 (F). In this picture this is to the right of Koppie 1 and 2. (Source: Marikana Commission of Inquiry.)

Build-up to the events at Scene 2, 16 August, 15:40–16:07

- 33) Around 1 600 strikers were gathered on the east side of Koppie 1 and Koppie 2. At 15:40 a SAPS Nyala roughly 100m to the south of the small kraal started rolling out a barbed-wire cordon. This was intended to establish a barrier between the police's 'safe area' and the strikers. Some strikers started dispersing from the koppie area at this point, individually and in small groups.
- 34) However, the leadership group and many other strikers remained on the koppie and only started moving off after some minutes. When they did, with a large group of strikers, they headed towards the south side of the small kraal. Some interpretations are that this was to get to the path leading into Nkaneng.⁹⁶ However, the police Nyalas accelerated the roll-out of the barbed wire barrier and the strikers were prevented from moving around the south side of the kraal. The strikers ended up moving around the north side of the kraal and down a passageway along the east side formed by armoured police vehicles. The first shooting incident took place at the south-east corner of the small kraal, the police killing 17 strikers and injuring many others.

- 35) The build-up to the shootings at Scene 2 involved three groups of police approaching Scene 2 from different directions. One of these groups was the group from a location which had been designated as Forward Holding Area 2. They had been positioned roughly 750m to the south-west of Scene 2.⁹⁷ The group comprised 55 TRT, 29 POP and 6 K9 members.⁹⁸ At FHA2 these members were under the command of Capt. Kidd of the Johannesburg TRT. After hearing the news of the shooting incident at the small kraal, the FHA2 group approached Koppie 3. They were stretched out in a long line and this group itself gradually broke into three separate groups so that there was no overall command of them.
- 36) Following the fatal shootings at Scene 1, strikers started fleeing towards the west. Some were trying to escape towards the informal settlements and the hostel to the west of Koppie 3. According to Capt. Kidd's evidence to the Commission, while the FHA2 group were moving in the direction of the koppie:
- hundreds of strikers were approaching the line from the direction of Koppie 1. They were allowed to pass after laying down the dangerous weapons in their possession. The weapons that they put down were a variety of spears, axes and sticks. None of the strikers refused to lay down his weapons when instructed to do so.⁹⁹
- 37) During the period when they were fleeing to the west, a number of strikers set fire to patches of grass in an apparent attempt to impede the advance of the police.¹⁰⁰ The police later argued that this showed the movement to Scene 2 was a pre-planned 'retreat'.¹⁰¹ However, though it is clear that many patches of veld were set alight, there is no other evidence to support this argument. An alternative explanation may be that one of the strikers set the veld alight and others 'copied' this.
- 38) The strikers did not all go to Scene 2 in one group:
- a) Some were already at Scene 2 at the time the barbed wire was being rolled out at Scene 1. They can be observed on video footage watching the movement of the strikers towards the small kraal from a distance.¹⁰² It is possible that some of this group remained at Scene 2.
 - b) After the Scene 1 shooting, roughly 200–300 strikers gathered behind Koppie 2 (as mentioned, this is immediately adjacent to the north side of Koppie 1) in a large haphazard group stretching towards Koppie 3, with individuals from this group intermittently moving over to Koppie 3. After the shooting, the police vehicles moved out from the area near the small kraal and formed up in a line facing this group. Just after 16:04:18 the SAPS North West water cannon started to spray bursts of water at strikers in the line behind Koppie 2 in order to disperse them. As strikers dispersed from this line many moved towards Scene 2.¹⁰³
 - c) In their statements, some of the injured and arrested strikers indicated that they had tried to flee towards the west. However, apparently out of fear of the approaching line of police, they went to take shelter in Scene 2 instead.¹⁰⁴ This may have been out of fear of the police or to avoid arrest. While some police said that strikers were allowed to pass once they had been disarmed,¹⁰⁵ others said they arrested strikers as they approached Scene 2.¹⁰⁶
- 39) After dispersing the strikers gathered behind Koppie 2, the two SAPS water cannons approached the Scene 2 (Koppie 3) area, with the North West water cannon moving along the north side of the area and the Johannesburg water cannon moving onto the south side. A SAPS Nyala armoured vehicle accompanied each of the water cannons. A Special Task Force (STF) vehicle was also already positioned on the south side of the koppie at an early stage.
- 40) The first SAPS members to reach Scene 2 on foot were some of the group from FHA2 under Capt. Kidd.¹⁰⁷ As a result of the line breaking up, they arrived in different groups. Capt. Kidd's group arrived on the north-west corner of the dry dam just before 16:07:30.¹⁰⁸ As they arrived, a second group was also approaching from a more southerly direction, but was still about 100m away. They probably arrived about a minute later, near an outcrop of rocks on the south side of the dry dam. Some of the POP members in the second group appear to have been responsible for shooting Mr Mkhonjwa, the first person to be fatally shot at Scene 2. As will be indicated (see paragraphs 148–151), this shooting took place before 16:09:00 and must have

taken place almost immediately after the group's arrival. Other TRT members from this group were involved in subsequent shootings on the south and north-west sides of Scene 2.

- 41) Maj. Gen. Naidoo said he was deployed at FHA1 from Tuesday 14 August 2012 and was in command of members of the STF, NIU, POP Reserve Forces, K9 Unit, the Mounted Unit, detectives, crime scene investigators, medical emergency personnel from Rescue 911 and fire fighters. The SAPS personnel from this group approached Scene 2 by vehicle. At roughly the same time as the end of the stand-off at Koppie 2 (16:05:07) they were on a road a few hundred metres to the south of Scene 2.¹⁰⁹ At 16:06:10, four vehicles drove off the road in order to approach more closely to Scene 2 (a fifth K9 vehicle joined this group about two minutes later). From this group, some of the K9 members were heavily primarily involved in the shooting that was to follow and are likely to have been responsible for some of the deaths in the killing zone (see below). Major Naidoo would also be involved in the shootings.
- 42) According to Col. Modiba, he had a total of 97 NIU members under his command. He ordered 19 of them under Capt. Cwinyane to sweep Koppie 1 while he proceeded towards Scene 2 with 77 others.¹¹⁰ The approach and positioning of the NIU line can be seen in photographs taken from the SAPS helicopters. This is summarised by the evidence leaders as follows:
 - a) By the time the first SAPS vehicles approached Koppie 3 at 16:06:32, the NIU line had formed up in front of Koppie 2. This is the scene reproduced in Slide 230 of Exhibit L.
 - b) The NIU line had not moved from this position by 16:08:30. By this stage the four K9 bakkies (police vans) with Maj. Gen. Naidoo had reached the position where they would park to the south and south-east of Scene 2. (As indicated a fifth K9 bakkie would arrive two minutes later.)
 - c) The forward advance of the NIU line continued and it had reached the eastern side of Koppie 3 by 16:10:33.¹¹¹

Command and control

- 43) The shootings at Scene 2 were not carried out under any centralised command and control of the police. The reasons for this absence of command and control will not be discussed in this report, though key points on the subject are noted below.
- 44) Maj. Gen. Mpembe was – formally, at least – the overall commander, whose role should have been to exercise oversight of the operation from the Joint Operations Centre (located at some of the Lonmin offices some distance from where the strikers were gathered and the operation was taking place). According to the Commission report: ‘It is clear from the evidence that the overall commander Major General Mpembe had absolutely no command and control of Scene 2.’¹¹²
- 45) The most senior commander at Scene 2 was Maj. Gen. Naidoo.¹¹³ The Commission report states that:

The Evidence Leaders criticised Major General Naidoo for having participated in a chaotic free for all which cost [17]¹¹⁴ people their lives without exercising any command and control and without taking any steps to stop the shooting and isolate the problems. We agree with these criticisms.¹¹⁵
- 46) Brig. Adriaan Calitz was supposedly the operational commander responsible for direct command of the police units in the field under the direction of the overall commander. In his evidence before the Commission, he not only said that he had no knowledge of the shooting at Scene 1, but that he had no knowledge of the shooting at Scene 2. This was despite the fact that his SAPS Nyala (Papa 1) was positioned only 150m north of the koppie and that he occasionally got out of the vehicle while the shootings were in progress.¹¹⁶ The Commission did not accept Brig. Calitz’ assertions that he had not been aware of the Scene 1 and Scene 2 shootings.¹¹⁷
- 47) Although he said that he had no knowledge of the shootings at Scene 2, it is not true that he did not play a role in the events there. His ability to exercise the role of operational commander was supposed to be facilitated by Lt Col. Vermaak in the Robinson helicopter as his ‘eyes in the sky’. On the basis of information

provided by Lt Col. Vermaak, Brig. Calitz issued a number of instructions over the radio. These were sometimes repeated by Lt Col. Vermaak, who also sometimes independently issued directions of his own.

In this regard, the report of the Commission says:

Once Brigadier Calitz was aware, as he obviously was from the radio traffic, that there were police units in the area, it was incumbent upon him throughout the operation to check with each unit where it was, or if unable to do so, to ask Lt Col. Vermaak and Brig. Fritz on the radio, to report on where the various units were and what they were doing.¹¹⁸

48) Despite the occasional commands from Brig. Calitz, in effect no one was actively establishing what was going on and coordinating the police response. The heads of argument of the SAHRC state:

It is not in dispute that in the aftermath of Scene 1, and during the incidents at Scene 2, leadership was absent or lacking. There was no-one coordinating the actions of the various units at Scene 2, and no communication from the various commanders who approached Koppie 3 without instruction and contrary to the plan.¹¹⁹

49) The Commission also criticised Lt Col. Vermaak's role: 'Lieutenant Colonel Vermaak was in the best placed position to see who was converging on Koppie 3, but makes no mention of any of the units moving towards Koppie 2 on the radio.'¹²⁰

50) Whether any of the strikers fired at police will be discussed later in this report. However, it appears clear that a contributing factor to how events at Scene 2 unfolded was that police units approached from three different sides. The different groups were not aware that other groups of police were on the other side of the koppie. As a result, some police appear to have believed that gunfire coming towards them from the direction of Scene 2 was because strikers were shooting at them. The Commission notes, for instance:

there are statements of several members of SAPS saying that they were unaware of the presence of other units on the other side of Koppie 3 and that the gunfire that they heard and thought had come from the protestors might in fact have come from other SAPS members.¹²¹

Evidence of dishonesty by the SAPS

51) As the evidence leaders point out, the issue of dishonesty at the Commission hearings was not one-sided. For instance, they state that the evidence given on behalf of strikers who had been injured and arrested was 'highly unsatisfactory'; and that several witnesses: 'denied that they had been present when the critical events had taken place, disputed the indisputable, gave an improbable account of their own role, and were evasive.'¹²² This was also a problem reflected in some of the strikers' statements. For instance, nine statements said that the strikers were unarmed or had sticks but no spears. (These statements were excluded from the statements discussed in Chapter 6 – see paragraph 231.)

52) Nevertheless, the issue of dishonesty among members of the SAPS is of greater concern, as they are state officials who are authorised to enforce the law and are supposed to be accountable for their conduct. There was a consistent pattern of dishonesty and evasiveness involving many SAPS witnesses to the Commission. In relation to Scene 2 specifically, Maj. Gen. Naidoo and Brig. Calitz, the two most senior SAPS members directly involved in the events at Scene 2, provided apparently unreliable evidence to the Commission.

a) Maj. Gen. Naidoo admitted in his oral evidence that he had been involved in shooting from the top of the high rocks. However, he only made this admission after ballistic evidence showed that a cartridge case linked to his firearm was found on top of the rocks. In his written statement, provided before the ballistic evidence had been submitted, he did not mention that he had fired his weapon from the top of the high rocks.¹²³

b) As indicated above, the Commission did not accept Brig. Calitz's evidence that he was not aware of the shootings at Scene 2. The Commission also did not accept other evidence from Brig. Calitz.

c) The evidence leaders also argue that the evidence Capt. Kidd provided was unreliable on certain key points.¹²⁴

53) One aspect of the evidence of police dishonesty that is particularly pertinent to Scene 2 is that weapons were planted on six of the victims (Victims O, M, I, J, K and N) after the shootings.¹²⁵ During a subsequent investigation into this, the police stated that the weapons had initially been removed out of concern that strikers might still present a danger to them. Whether this is true or not cannot be ascertained, but it definitely does not justify the actions of SAPS members who then placed weapons next to the bodies of some of the strikers after they had allegedly been removed.

54) Not all statements by SAPS members were dishonest. Some SAPS members provided apparently truthful evidence. Nevertheless, as will be shown below, even some of the statements regarded as credible accounts of the events at Scene 2 were provided by members who initially submitted statements that made no acknowledgement they had been present at Scene 2. Even when they themselves were not implicated in the shootings, it appears that SAPS members were willing to submit untrue statements to avoid acknowledging that they had witnessed shootings by colleagues. It is not however simply that SAPS members were themselves far from truthful. As will be discussed in Chapter 5, the evidence indicates that SAPS members adapted their accounts in order to fit in with the version of events that the SAPS wanted to present. It is difficult to avoid the conclusion that they were encouraged to do so by more senior SAPS members who were involved in putting together the account of events that the SAPS presented to the Commission.

Chapter 4: The shootings at Scene 2

Grouping of those fatally wounded at Scene 2

55) As indicated, 17 people were killed at Koppie 3. For the purpose of discussing the circumstances in which they were killed, this report will distinguish between four ‘shooting episodes’ that occurred at Koppie 3. Those fatally injured by gunfire in each of these episodes are identified in Table 3 as well as the graphic below (page 24).

Table 3: Fatalities at Scene 2 and shooting episodes in which 15 of them were shot

Shooting 1 (on west side between 16:08:42 and 16:09:00)
1. Mr Makhosandile Mkhonjwa (Victim N);
Shooting 2 (on east and south sides of high rocks, most likely between 16:10:33 and 16:14:27):
2. Mr Anele Mdizeni (Victim A);
3. Mr Thabiso Johannes Thelejane (Victim B).
Shooting 3 (‘the killing zone’ – all likely have been fatally injured before 16:17:29)¹²⁶
4. Mr Julius Tokoti Mancotywa (Victim D),
5. Mr Janeveke Raphael Liau (Victim E),
6. Mr Thabiso Mosebetsane (Victim G),
7. Mr Mafolisi Mabiya (Victim H),
8. Mr Ntandazo Nokamba (Victim I),
9. Mr Fezile David Saphendu (Victim J),
10. Mr Mpumzeni Ngxande (Victim K),
11. Mr Stelega Meric Gadlela (Victim L);
12. Mr Henry Mvuyisi Pato (Victim M);
13. Mr Nkosiyabo Xalabile (Victim O); and
14. Mr Telang Vitalis Mohai ¹²⁷ (died in hospital);
Shooting 4 (at 16:19:47 on west side, a little north of where Victim N was shot)
15. Mr Thobile Mpumza (Victim C).
Specific location of shooting not identified
16. Mr Sagalala (died in police vehicle)
17. Mr Ntsoele (died in hospital) ¹²⁸

Locations at which the bodies of 14 of the victims at Scene 2 were found



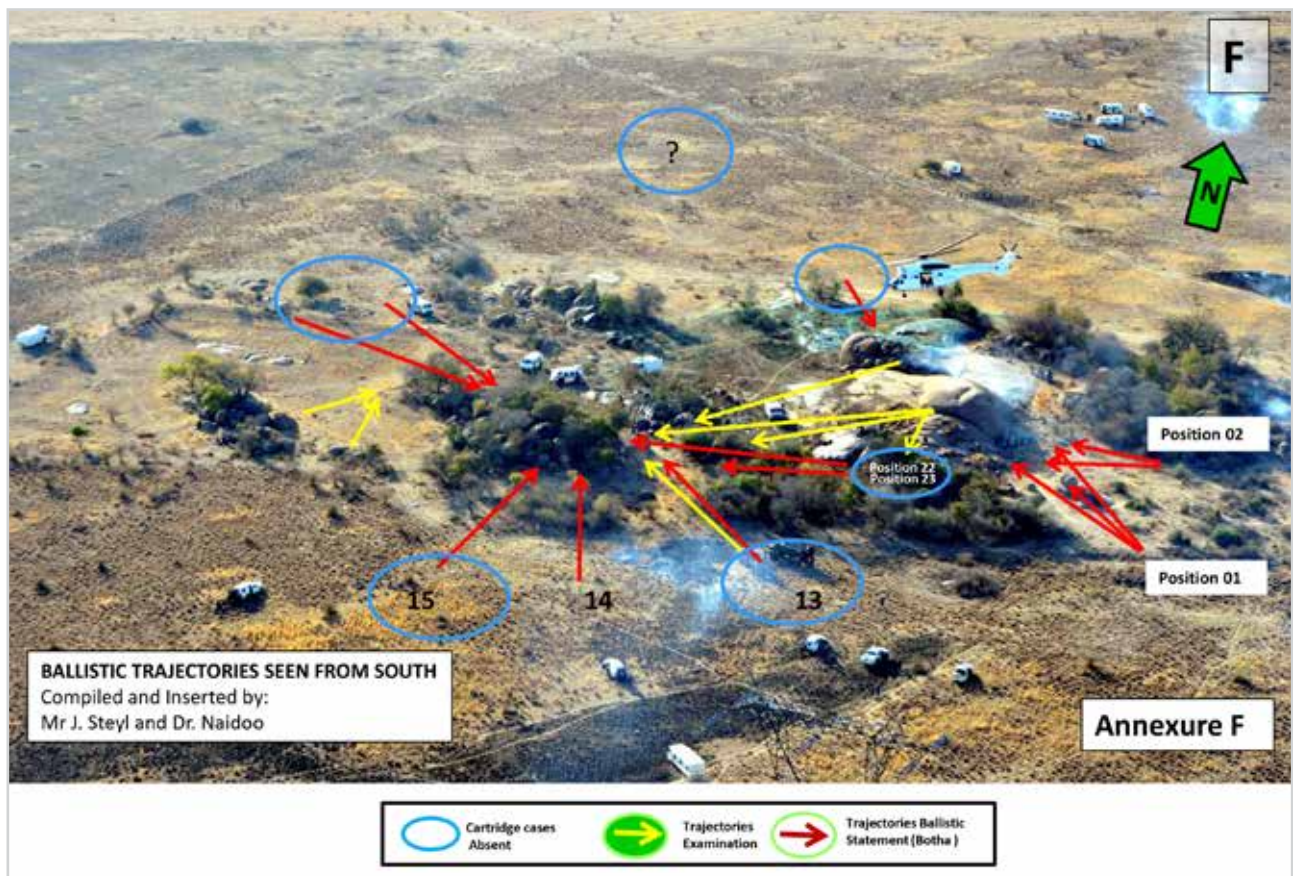
Aerial view of the Scene 2 area. The lettering shows the locations at which the bodies of 14 of the deceased were found. Photographs taken before he was taken to hospital also showed Mr Mohai lying on the ground injured between where the bodies of Victim E (Mr Liau) and Victim K (Mr Ngxande) were lying. Mr Mohai died later in hospital. It is not known at what location in the Scene 2 area Mr Sagalala and Mr Ntsoele were shot. (Image: Marikana Commission of Inquiry adapted for this report.)

- 56) In so far as the deaths at Scene 2 have been analysed, there have been different approaches to grouping the deceased:
- In the heads of argument of the Families, the killings of Mr Xalabile (Victim O) and Mr Pato (Victim M) are analysed separately from those in the killing zone (Shooting 3).¹²⁹
 - In the heads of argument of the SAHRC, the killing of Mr Xalabile is analysed separately while that of Mr Pato is included with others in the killing zone.¹³⁰ The evidence leaders also include Mr Pato in their list of killing zone fatalities.
 - The SAPS followed a dramatically different approach in their opening presentation to the Commission (Exhibit L), differentiating between 11 alleged shooting incidents.¹³¹ However, the approach at least has some commonalities with the approach followed by others, particularly in distinguishing the killing of Mr Mkhonjwa (Shooting 1, Victim N) and Mr Mpumza (Shooting 4, Victim C) as distinct incidents. Exhibit L will be discussed in more detail in the following chapter of this report.
- 57) The differentiation is based on where the bodies were located. In particular, Mr Xalabile's body was found roughly 30m west of the area where the other killing zone bodies were found. His body was found near

the south-west side of the high rocks; the bodies of Victims A and B were found on the east side. Unlike the other deceased in the killing zone, in their various submissions before the Commission the SAPS put a relatively large degree of effort into generating an explanation for Mr Xalabile's death (see paragraphs 154–162). However, as indicated in Table 4, below, the independent forensic and ballistic experts concluded that Mr Xalabile (Victim O) was likely to have been killed, along with some of the other victims in the killing zone, by shooters firing from on top of the high rocks. In terms of the report of the independent experts, it therefore does not make sense to identify Victim O in a separate category of victims from others in the killing zone.

58) In addition to the position on the top of the high rock (not numbered in the independent forensic and ballistic report) and positions on the south side of Scene 2 (positions 13, 14 and 15), the experts also identified another location from which they concluded that shots might have been fired into the killing zone. These were positions adjacent to the high rocks on their south-east side (positions 22 and 23).¹³² The experts were however a bit hesitant about whether these could be identified as firing positions as no cartridge cases were found in these positions. Their report nevertheless suggests that Victims K, L and M may have been shot from these positions (see Table 4). (The shooting positions referred to are labelled in Annexure E and F – see below and page 94 – to the report of the independent forensic and ballistic experts.¹³³)

Positions from which police fired at strikers as identified by ballistic experts



The arrows show the conclusions of the SAPS ballistic expert (Lt Col Botha) and independent ballistic and forensic expert (SR Naidoo and J Steyl) regarding positions from which shots were fired and the direction of fire. The main shooting positions that appear to be significant include: (1) From the east side of the high rocks (positions 1 and 2). These are the positions from which Mr Mdizeni and Mr Thelejane (Victims A and B) are believed to have been shot; (2) From positions on the south side of Scene 2 (positions 13, 14 and 15); (3) Adjacent to the high rocks on their south-east side (positions 22 and 23). (4) From the top of the high rocks (not numbered in the independent forensic and ballistic report) (5) From the rocks and trees on the south west side in a north easterly direction (not numbered). This is the position from which Mr Mkhonjwa (Victim N) was shot. Circles indicate positions where cartridges were not found despite the fact that the ballistic evidence appeared to indicate that shot had been fired from these positions. (Source: SR Naidoo and J Steyl, Integrated report.)

Table 4: Assessment by independent forensic and ballistic experts of source of gunfire for victims close to and in the killing zone, as reflected in their final report of May 2014¹³⁴

	Experts' comments (note that positions 13, 14 and 15 are on the south side of Scene 2. Positions 22 and 23 are adjacent to the south-east corner of the high rocks)	Most likely source of gunfire
Mr Julius Mancotywa (Victim D)	Shooting appears to be from atop the high rock face of the large central boulder, but firing could also have been from positions 13, 14 and 15, through the opening between boulders.	Top of the high rocks
Mr Janeveke Liau (Victim E)	The closest and most accessible 9mm handgun cartridge to this body is one found atop the central boulder and this may be the firing position; the handgun bullet removed from the clothing at autopsy is unlinked to a firearm in the SAPS ballistics report.	Top of the high rocks
Mr Thabiso Mosebetsane (Victim G)	Trajectories appear to arise from the high rock face of the central large boulder, as well as from the clearing at the south as the possible firing positions – impact marks on rock adjacent to the southern area suggest the latter to be the more likely firing position, from firing direction 15 seen on Annexure E; while these trajectories are from opposing directions, the position of the body could easily suggest rotation of the body to either firing direction, which could have happened as he fell after both headshots, which probably were received in quick succession from one of these firing directions.	Southern area (15)
Mr Mafolisi Mabiya (Victim H)	As for Victim G, trajectories appear to arise from the high rock face of the central large boulder, as well as from the clearing at the south, as the possible firing positions – impact marks on rock adjacent to the southern area suggest this to be the more likely firing position, from firing direction 15 seen on Annexure E.	Southern area (15)
Mr Ntandazo Nokamba (Victim I)	The deceased sustained a single high-velocity R5 bullet wound to the chest from left to right side and was most likely in a bending position/motion to receive this shot passing upwards through his body; trajectories from the high rocks as well as from positions 13 and 14 could be the firing positions (see Annexures E and F).	Either high rocks or southern area (13/14)
Mr Fezile Saphendu (Victim J)	The deceased J, and I above, were close together when shot; the trajectories from positions 13 and 14, as well as from the high rocks could be the firing positions (see Annexures E and F).	Either high rocks or southern area (13/14)
Mr Mpumzeni Ngxande (Victim K)	The deceased sustained a high-velocity gunshot across the front of his chest, from left to right, injuring his heart; pock-marks were observed on the rock above where he was lying and possibilities include that he was fired at from the top of the high rocks, as well as from positions 22 and 23. The wound through the chest was a high-velocity bullet fragment or shrapnel, similar to the wound on his left upper thigh (a large and atypical wound); they are consistent with unstable projectiles, possibly from positions 22 and 23.	Top of or adjacent to high rocks

Mr Stelega Gadlela (Victim L)	The deceased sustained a high-velocity gunshot wound of the chest from the right lower back to the front and passing upwards – the direction through the body indicates that the deceased was likely bending away from the shooter; the direction of fire is consistent with Botha’s report as position 23, but firing positions 13 and 14 cannot be excluded.	Adjacent to high rocks or southern area (either 23 or 13,14)
Mr Henry Pato (Victim M)	The deceased sustained a high-velocity wound to the neck from back to front; impact marks on the rock marked, as well as the bullet trajectories seen through vegetation (tree branches) at the scene indicate firing from positions 22 and 23. However, there are no cartridge cases in that vicinity that are consistent with those trajectories. Therefore, firing positions that originate from the higher rock positions could also be consistent with the wounding and are supported by cartridge cases found atop the rocks (T, U and V).	Most likely adjacent to high rocks (taking into account absence of cartridge cases) though evidence also consistent with firing from top of high rocks
Mr Nkosiyabo Xalabile (Victim O)	The deceased sustained a high-velocity gunshot wound from the left side of the neck downwards towards the right chest; his body was found at the southern edge of the large central bolder. The position of the deceased when shot is aligned with either one of two possibilities: not facing the shooter and in a lower position (shot from higher point) or facing the shooter but in a flexed forward-bending position; he also received another high-velocity gunshot to the left thigh from rear to front – the trajectory suggests firing originating from atop the large central boulder.	Top of the high rocks

Types of gunshot wounds sustained by the deceased

- 59) The bullet wounds sustained by the 17 people killed at Scene 1 follow a similar pattern. According to the independent experts’ forensic and ballistic report, they followed a similar pattern, being ‘largely... directed at the bodies of the deceased in all cases’.¹³⁵ On the other hand, at Scene 2 the gunfire was apparently ‘directed differently to different individuals, without a pattern observed amongst the Scene 1 deceased’.¹³⁶
- 60) It has been pointed out that at least four of the people killed at Scene 2 had bullet wounds in the head or neck.¹³⁷ However, rather than providing evidence of a specific pattern, these victims themselves are evidence of the highly varied positioning of the gunshot wounds of the deceased:
- Mr Thelejane (Victim B) had a bullet entry wound in the back of his head, one in the left side of his head and one in the right buttock; pathologists indicate that he was likely to have been killed running away from where the police units were positioned.¹³⁸
 - Mr Mosebetsane (Victim G) had bullet entry wounds under his right eye and top lip. He was killed by at least one and possibly two R5 gunshot wounds to his head, which were shot from a distance.¹³⁹
 - Mr Mabiya (Victim H) was killed by an R5 gunshot to the back of his head, which means that he was not facing the person who shot him.¹⁴⁰
 - Mr Xalabile (Victim O) was shot in the left side of the bottom of his neck and had a bullet entry wound in the left thigh.¹⁴¹
 - Mr Pato had an entry wound in the ‘upper back’ (on the right side between the shoulders at the base of the neck) and in the palm of his left hand.¹⁴²

61) The pathologists say that, while Mr Xalabile was shot at relatively close range,¹⁴³ Mr Mosebetsane and Mr Mabiya were shot from a distance; this appears to be the evidence in relation to most other deceased victims.

Number of people non-fatally injured

62) There are no consistent figures on the total number of people injured at Marikana. Where they exist, they generally do not differentiate between Scene 1 and Scene 2. In the initial SAPS presentation to the Commission (Exhibit L) and in their heads of argument the SAPS provided a figure of 13 injured at Scene 1 and 15 at Scene 2.¹⁴⁴ However, the combined total of 28 is just over half of the 55 people who were hospitalised with bullet wounds, according to the IPID report.¹⁴⁵ In its initial statement released on 17 August 2012, the SAPS provided a figure of 78 wounded.¹⁴⁶

According to the SAHRC heads of argument, more than 30 people were injured at Scene 2.¹⁴⁷ They state:

In addition to those killed, many more were wounded, with some suffering devastating and permanent disablement. It is not possible to give accurate figures for the numbers who were shot by police but survived. The medical records of the injured and arrested suggest around 50, but the number may be higher than that. The fact that the Marikana Commission of Inquiry ('the Commission') has not engaged closely in the circumstances of the shootings of the survivors does not lessen their significance.¹⁴⁸

Units and police officers involved in the shooting at Koppie 3

63) The SAPS indicates that 60 SAPS members were involved in the shootings at Scene 2, of whom 57 fired live ammunition. As will be discussed, many questions about these shootings remain unanswered, including about the locations from which members discharged their firearms. However, it appears reasonably possible to identify some of the shooters involved in the shootings, as shown in Table 5. (It is not possible to identify the shooters of Mr Sagalala and Mr Ntsoele, both of whom died in hospital, because the location at which they were shot is unknown.)

Table 5: SAPS units linked to fatalities at Scene 2

Shooting 1: Mr Mkhonjwa (Victim N)	Likely to have been killed by members of POP units who approached Scene 2 with the group from FHA2
Shooting 2: Mr Mdizeni (Victim A) and Mr Thelejane (Victim B)	Likely to have been killed by members of the NIU who were part of the line that advanced from the east side
Shooting 3: the 11 victims in the 'killing zone'	Shooters responsible for the deaths in the killing zone are likely to have included some of the shooters from the following groups: <ul style="list-style-type: none"> • Members of the NIU who were part of the NIU line; in particular, a group of five NIU members went up to the top of the high rocks in the middle of Scene 2 and are likely to have fired at the strikers from this position – Maj. Gen. Naidoo also discharged his firearm from this position • Members of the K9 unit who approached Scene 2 from the south side • Six members of the TRT who had been stationed at FHA2 under Capt. Kidd; while other members of this group remained on the west side these TRT members moved along the south side of Scene 2 and discharged their firearms from positions close to where the K9 members were situated
Shooting 4: Mr Mpumza (Victim C)	The shooters known to have been involved in this incident were three members of TRT from the group from FHA2; there may have been a fourth shooter who has never been identified

64) FFF8 is one of the exhibits submitted by the SAPS. It is said to provide data on all weapons discharges by SAPS members at Scene 1 and Scene 2. Table 6 shows the ammunition used by the various units at Scene 2.

Table 6: Ammunition reported to have been used by SAPS units at Scene 2¹⁴⁹

	Live ammunition			Less lethal ammunition		
	9mm	R5/R1	SSG	Shotgun (rubber)	CS	Stun
Shooters ¹⁵⁰	4 x NIU 2 x TRT 9 x POP 7 x K9	20 x NIU 9 x TRT 2 x POP 4 x K9	unknown	3 x POP	0	2 x K9
Discharges	98	198	unknown	30		4

65) According to the report of the independent forensic and ballistic experts, shotguns were fired from four positions.¹⁵¹ These four positions are all on the north and west sides, including one position outside the south-west perimeter, from where the 9mm shots that killed Mr Mkhonjwa are also believed to have been fired.¹⁵² In effect, therefore, the relatively limited number of rubber rounds that were fired were all fired from the north and west sides. In terms of the ballistic evidence, the known locations from which R5s were fired were virtually all on the south and west sides, and from on top of the high rocks in the centre of Scene 2.

The main identifiable position from which 9mm pistols were fired was the south-west, though individual 9mm cartridge cases were also found on top of the high rocks and on the south side. One cartridge linked to Sgt Molangoanyane, a 9mm shooter recorded to have fired 12 shots, was found on the south side. The evidence is that, as at Scene 1, SSG ammunition was also used by the SAPS at Scene 2, as cartridge cases for SSG ammunition were found, though it is not clear which positions they were found in.¹⁵³

66) Table 7 shows the number of shooters and shots fired by each unit. According to Exhibit FFF8, 57 shooters fired 295 shots, giving an average of 5.2 shots per shooter. The largest number of shooters and shots fired came from the NIU, accounting for nearly 40% of shots fired. There were 11 shooters from each of the TRT, K9 and POP units; these three units contributed roughly 20% each (60% between them) to the total number of live shots fired. However, the K9 unit members actually had the highest average number of shots per shooter of all units. Three of the five shooters to fire 12 or more live rounds were K9 unit members (the other two were from the NIU and POP).

67) A surprising aspect of the firearm discharge evidence is that POP units used more live ammunition at Scene 2 than did the TRT. As Table 9 shows, this is partly related to the relatively large number of shooters from POP units firing eight or more shots.

Table 7: Shooters and live ammunition shots fired at Scene 2

	Shooters	Shots	Average shots per shooter	% of all shots fired
NIU	24	115	4.8	39
TRT	11	55	5	19
K9	11	67	6.1	22
POP	11	58	5.3	20
Total	57	295	5.2	100

68) Table 8 looks at R5 shooting exclusively. As indicated in Table 2, R5s accounted for 15 of the 17 fatalities at Scene 2. A high proportion of NIU (20 out of 24) and TRT (9 out of 11) members used R5s. Related to this a high proportion of the shots fired by members of these units were R5 shots (90% of NIU shots and 80%

of TRT shots). Only four of the 11 K9 shooters (36%) used R5s, but on average these shooters fired nearly 10 shots each, a much higher average number of R5 shots per shooter than the R5 shooters in any other unit. Although these four K9 shooters made up only 11% of the total number of R5 shooters (four out of 35), according to Exhibit FFF8, they accounted for 20% of R5 shots fired.

Table 8: R5 shootings by SAPS units at Scene 2

	R5 shooters	R5 shots	Average shots per shooter	% of R5 shots fired	% of total shots fired by this unit	% of total shooters
NIU	20	103	5.2	52	90	83
TRT	9	44	4.9	22	80	82
K9 ¹⁵⁴	4	39	9.75	20	58	36
POP	2	12	6	6	21	18
Total	35	198	5.6	100	67	61

69) As reflected in Table 9, seven shooters discharged 8–11 shots and five discharged 12 or more shots. These 12 shooters who discharged eight or more shots accounted for 21% of shooters and discharged 144/295 (49%) of the shots fired at Scene 2. Of these shooters, three were from the NIU, two from TRT units, three from K9 units and four from POP units. However, though more POP members (4) than K9 members (3) fired eight or more shots, the three K9 unit members in fact fired more shots overall (47 shots) than the four POP members (38 shots).

Table 9: Number of shots fired by members of each unit at Scene 2¹⁵⁵

	NIU	TRT	K9	POP	Total
1–3 shots	12	3	6	5	26
4–7 shots	9	6	2	2	19
8–11 shots	2	2	0	3	7
12 or more shots	1	0	3	1	5
Total	24	11	11	11	57
% firing 8 or more shots	13	18	27	36	21
% firing 12 or more shots	4	0	27	9	9

Firearm cartridge cases found

70) According to the evidence leaders, 121 ‘spent cartridges’ were found at Scene 2.¹⁵⁶ According to the report of the independent forensic and ballistic experts, a total of 112 ‘ballistic exhibits’ were found at Scene 2, including ‘17 (9mm) handgun cartridge cases, 28 shotgun cartridge cases, and 67 (5.56mm) rifle cartridge cases.’¹⁵⁷ This figure appears to omit handgun cartridge cases AA28 and AA29 (see below).

71) Annexure C to the report of the independent forensic and ballistic experts, which is based on the sketch plan of Capt. Mohlaki of the SAPS Local Criminal Record Centre, appears to refer to the following:

- a) At least 24 cartridge casings for shotguns.¹⁵⁸ It may be assumed that these are mostly casings for rubber bullet cartridges, though as noted in Table 2 SSG cartridge casings were also found at Scene 2 and it is possible that one of these locations was the one at which the SSG casings were found.¹⁵⁹
- b) Some 84 cartridges for live ammunition, which were linked to firearms submitted by police for ballistic testing.¹⁶⁰
- c) Two 9mm cartridges (labelled AA28 and AA29) were found that could not be linked to a firearm submitted for ballistic testing.¹⁶¹ However, the evidence leaders indicate that these were fired from a type of pistol used by the SAPS (Beretta PX Storm). It is possible that they were fired from a Beretta submitted

for ballistic testing after being used on 16 August 2012, but which could not be tested due to a firing pin defect.¹⁶² These cartridges were found in a location near rocks outside the south-west perimeter of Scene 2, where casings for rubber rounds (AA25–27) were also found. This location is close to where cartridge cases (labelled AA13–24) were found for the POP members who are linked to Shooting 1 (the shooting incident during which Mr Mkhonjwa was killed). Photographs taken from the Robinson helicopter during the events at Scene 2 show SAPS members in both of these locations. There are no allegations that this was a location from which strikers fired at the SAPS.¹⁶³

d) The sketch plan also refers to an unfired rifle bullet (BB1).¹⁶⁴

e) It appears that at least three other fired bullets or bullet fragments were found: BB36, CC1 and M5. BB36 appears to have been found among the BB21–41 group of cartridge cases for R5s fired by members of the NIU on the east side. CC1 was a minimally damaged R5 bullet found near the body of Mr Nokamba (Victim I).¹⁶⁵ M5 was a bullet fragment found near the body of Mr Xalabile (Victim O). According to Lt Col. Pieterse’s affidavit, none could be positively linked to a firearm.¹⁶⁶

72) According to the report of the independent forensic and ballistic experts,¹⁶⁷ the firearms used at the scene, identified by ballistic matching to clusters of cartridge cases found, were:

a) ‘Fifteen (15) R5 rifles: six (6) from the south-eastern point firing towards the north-east, and seven (7) from the eastern side firing towards the west, both immediately outside the actual koppie. Three rifles from the group of the eastern side also appear to have been fired from on top of the largest central boulder of the Koppie and firing towards the south-eastern direction, together with two other R5 rifles and a handgun’;

b) ‘One (1) position from which a sub-machine gun was used: from the eastern position immediately outside the Koppie’;¹⁶⁸ and

c) ‘At least five (5) handguns with separate identified serial numbers were used.’ In addition, as indicated above a sixth handgun linked to cartridge cases AA28 and 29 appears also to have been used.¹⁶⁹

73) As discussed below, the ballistic evidence found at Scene 2 accounts for only a relatively small proportion of the firearms and ammunition that SAPS members used at Scene 2, according to Exhibit FFF8. Among other things, this means that cartridge casings were located for only:

a) 15 R5 rifles and one sub-machine gun of the 35 R5 rifles (46%) the SAPS reported having used at Scene 2; and

b) Six of the 21 9mm handguns (29%) reportedly used at Scene 2.

74) Table 10 is compiled by comparing the data in Annexure C of the independent forensic and ballistic experts¹⁷⁰ combined with that in the SAPS Firearm Discharge Report (FFF8)

Table 10: Cartridge cases found and related data on shooters

	Firearm discharges for which cartridge cases were found				Shooters from whose guns cartridges were found			
	Found	Not found	Total	% cartridges found	Found	Not found	Total	% shooters for who some cartridges found
NIU	56	59	115	49	10	14	24	42
TRT	13	42	55	24	6	5	11	55
K9¹⁷¹	2	65	67	3	2	9	11	18
POP	13	45	58	22	3	8	11	27
Total	84	211	295	28	21	36	57	37

75) The report of the independent forensic and ballistic experts identifies five (or possibly six) locations from which it appears that 'based upon impact marks on rocks, trajectories through shrubbery, and deceased injuries' cartridge cases should have been expected to be found, but none were reported.¹⁷² These include locations on the south, south-east and north-west sides. It is a matter of speculation whether this reflected the limitations of the crime scene examination that was conducted or whether cartridge cases may have been removed from the scene. It is also of course possible that firearms were fired from other locations that were not identified by the ballistics experts.

Data on location of firearm discharges by members of the four units

76) Table 11, 12, 13 and 14 are based on a comparison of the data in Annexure C of the report of the independent forensic and ballistic experts (Exhibit ZZZ5)¹⁷³ with that in the SAPS firearm discharge report (Exhibit FFF8).

Table 11: Weapons, rounds fired and location of found cartridges for NIU shooters

Initial	Name	Weapon	Shots fired	Cartridges found	Position found
S	Ngwaleni	R5	25	23/25 ¹⁷⁴	East side and top of high rocks
GT	Mokhele	R5	9	9/9 ¹⁷⁵	East side and top of high rocks
S	Mandla	R5	8	6/8	East side only
ME	Sefanyetso	R5	7	7/7	East side and top of high rocks
VR	Ndlela	R5	6	4/6	Top of high rocks
MW	Silevana	R5	6		
SI	Ngonyama	R5	5	2/5	East side only
KT	Modiba	9mm	5		
Z	Ngqandu	R5	5		
MV	Nkebe	R5	4	2/4	East side only
JM	Mthimkhulu	R5	4		
IJ	Plaatjie	R5	4		
S	Dubeni	R5	3	1/3	Top of high rocks
M	Halam	9mm	3		
HL	Hembert	R5	3		
JM	Phohleli	R5	3		
L	Yeko	R5	3		
K	Nyatela	R5 ¹⁷⁶	2	1/2	East side only
B	Poswa	R5	2	1/2	East side only
JS	Chauke	R5	2		
TP	Mkhwanazi	9mm	2		
SW	Thafeni	9mm	2		
MP	Mothibedi	R5	1		
L	Nduku	R5	1		

77) Regarding NIU shooters:

- a) The highest percentage (49%) of cartridge cases were found for NIU shooters. However, as Table 11 shows, at least one cartridge case was found for only 10 of the 24 NIU shooters (42%).
- b) The 56 cartridge cases found include virtually all the cartridges for the four NIU shooters with the greatest number of shots fired. These four shooters account for 49 of the 115 NIU shots fired and 45 of the 56 NIU cartridge cases found (23/25 for Cst Ngwaleni, 9/9 for Cst Mokhele, 6/8 for Cst Mandla and 7/7 for Cst Sefanyetso).
- c) The cartridge cases found that were attributed to the 10 NIU shooters indicate that five fired only from the east side, three fired both from the east side and the top of the high rocks, and two fired from the top of the high rocks only. Some of the shooters on top of the high rocks are visible in photographs taken from the Squirrel helicopter.¹⁷⁷
- d) Despite the relatively high proportion of NIU cartridge cases found, the ballistic evidence does not indicate where 14 out of 24 (58%) of the NIU shooters fired from.

78) Regarding K9 shooters:

- a) The opposite end of the spectrum is represented by the K9 unit (see Table 12). Compared to other units, a very small percentage of cartridge cases fired by the unit (3% or 2/67) were found.
- b) Only one cartridge case was found for the main three K9 shooters. No cartridge cases appear to have been linked to Cst Mutsi or WO Visser, the K9 shooters who discharged the largest number of shots (18 and 17 respectively). Cst Mutsi and WO Visser account for all but four of the 39 R5 rounds fired by K9 members.¹⁷⁸
- c) Sgt Molangoanyane, who fired the next highest number of rounds, discharged 12 shots with a 9mm, but only one cartridge was found.
- d) The only other cartridge found that was linked to the K9 unit was from one of two shots that Maj. Gen. Naidoo fired. However, while Naidoo's shooting is reported in Exhibit FFF8 as one of the K9 shootings, he was not in fact a member of the K9 unit. In effect, this means that one of the 66 cartridge cases for rounds actually fired by K9 members was found.
- e) However, this may not only be the only information about the positions from which the K9 shooters discharged their firearms.
 - i) One of the personnel on the Squirrel helicopter took a series of photographs covering the period 16:13:28–16:13:44 that show a SAPS member next to one of the K9 vehicles on the south side, apparently shooting into the killing zone area.¹⁷⁹ In his additional statement, which is signed but not dated, Cst Mutsi said: 'shots were fired towards our direction and I couldn't take cover as it was just an open space then I shot rounds to the direction were the shots were coming from with an R5 rifle on kneeling position.'¹⁸⁰ The man in the photograph is in a kneeling position and it therefore appears possible that this is Cst Mutsi. The man appears to hold this shooting position in a sustained manner consistent with the fact that Cst Mutsi fired 18 shots. As indicated below (paragraph 288) he also refers to TRT members who were in a position near to where he was located. This is apparently a reference to the TRT members whose cartridge cases were found on the south side of the koppie (see below), which would appear to support the contention that the shooter in the photograph is Cst Mutsi.
 - ii) Similarly, in photographs taken from the Robinson helicopter over the 18-second period between 16:16:43 and 16:17:01 one of the SAPS shooters can be seen lying down in a shooting position in the grass behind a bush just north of the westernmost vehicle on the south side of the small koppie.¹⁸¹ In his statements WO Visser describes shooting into Scene 2 after taking cover on the ground in the grass.¹⁸² It appears likely that these photographs show the position from which WO Visser discharged his firearm.

Table 12: Weapons, rounds fired and location of cartridges found for K9 shooters and Maj. Gen. Naidoo

	Name	Weapon	Rounds	Notes
DT	Mutsi	R5	18	
PJ	Visser	R5	17	
TD	Molangoanyane	9mm	12	One cartridge found on south side of Scene 2
LM	Breedt	9mm	5	Also used 2 stun grenades
JT	Dintwe	9mm	4	
AJ	Brazer	R5	3	
OA	Kwele	9mm	3	
G	Naidoo	9mm	2	Not a K9 unit member, but listed in Exhibit FFF8; one cartridge found on top of high rocks
D	Mentesh	9mm	1	
HW	Myburgh	R5	1	
SG	Vana	9mm	1	
CF	Moorcroft		0	No live ammunition, but used 2 stun grenades

79) Regarding TRT shooters:

- a) Table 13 gives an overview of reported firearm use by TRT members. In relation to the TRT, only 13/55 (24%) of cartridge cases fired were found.
- b) While most (if not all) of the TRT shooters approached Scene 2 from the west with the FHA2 group, there is no ballistic evidence regarding TRT shootings on the west side. All of the cartridge cases that were found from members of this group were from six shooters who appear to have proceeded in a group from the west to the south side and fired into Scene 2 from positions similar to those from which the K9 shooters, referred to above, were shooting. Although only 13 cartridges from this group were found, they fired 27 shots in all. The cartridge cases of theirs that were found were all close to the sole 9mm cartridge from Sgt Molangoanyane, the only one of the K9 shooters for whom a cartridge case was found (as noted, though he is included in Table 12, Major General Naidoo was not in fact a K9 unit member).
- c) Furthermore, three of the TRT shooters for whom no cartridge cases were found reported in their statements that all of rounds that they used were fired in Shooting 4 (Mr Mpumza, Victim C). Cst Sebatyane reported that he fired 9 rounds during this incident, Cst Mabe reported that he fired 4¹⁸³ and Cst Buthelezi that he fired 2.¹⁸⁴
- d) As a result, there is some indication of where nine of the TRT shooters, who discharged 42/55 shots fired by TRT members, discharged their firearms from. These nine shooters include two of the three TRT shooters who fired the most shots (9/9 for Cst Sebatyane, 2/7 for Cst Mlombo), but excludes Cst Mokgetla who fired eight shots with his R5 for which no cartridge cases were found.

Table 13: Weapons, rounds fired and location of cartridges found for TRT shooters

	Name	Weapon	Rounds	Notes
EM	Sebatyane	9mm	9	Shot at Victim C (north-west side)
ET	Mokgetla ¹⁸⁵	R5	8	
TL	Mlombo	R5	7	2/7 found on south side
S	Mabasa	R5	6	1/6 found on south side
NS	Somo	R5	5	2/5 found on south side
JJ	Swarts	R5	5	

G	Mashishi	R5	4	4/4 found on south side
ER	Mabe	R5	4	Shot at Victim C (north-west side)
LJ	Thoka	R5	3	3/3 found on south side
GS	Motloheloa	R5	2	1/2 found on south side
ZA	Buthelezi	9mm	2	Shot at Victim C (north-west side)

80) Regarding POP shooters:

- a) Table 14 gives an overview of the data on POP shooters. Of 13 cartridges found that were attributed to them, 11 were for the main POP shooter WO Batsi (for whom 11/12 9mm cartridge cases were found). WO Batsi was one of four shooters who admitted to shooting during Shooting 1, in which Mr Mkhonjwa was killed and another striker, Mr Gadavu, was injured. One cartridge was also found from one of the other POP shooters, Cst Letswalo, who admitted shooting during this incident. These 12 cartridges were all found in a position on the south-west side of Scene 2 (cartridge cases in positions AA13–24). Two more POP members – Cst Pelaelo (8 shots) and Sgt Mahlatsi (6 shots) – also admitted shooting during this incident but none of their cartridge cases were found. In addition, as discussed below (paragraph 105) the statement by WO Makhubela (8 shots with a 9mm), also appears to indicate that he discharged his firearm during the same incident.
- b) Another shooting position was close to the position at which WO Batsi and Cst Letswalo's cartridge cases were found. This was the position referred to above (paragraph 71) where the two 9mm cartridge cases (AA28 and AA29) were found. There is little doubt that SAPS members also fired from this position.
- c) The only other POP shooter for whom a cartridge case was found was WO Mvunge (1/2). He discharged his weapon on the north-west side of Scene 2 in a position near to which three rubber rounds were also discharged.
- d) This evidence appears to mean that we know where at least six of the 11 POP shooters discharged some of their shots from.
- e) No cartridge cases were found for the other main POP shooters, Capt. Makukule (10 shots with an R5). In terms of the analysis conducted here, Capt. Makukule and Cst Mokgetla of the TRT (8 R5 rounds) are the only shooters to have fired seven or more rounds for whom there is no indication where they may have fired from.

Table 14: Weapons, rounds fired and location of cartridges found for POP shooters

	Name	Weapon	Rounds	Notes
IT	Batsi	9mm	12	11/12 found; admits to shooting during the incident on west side in which Mr Mkhonjwa was killed and Mr Gadavu injured
N	Makukule	R5	10	
MB	Pelaelo	9mm	8	Admits to shooting during the above incident on the west side
KP	Makhubela	9mm	8	Statement indicates that he is likely to have discharged his firearm during above incident on west side
NL	Mahlatsi	9mm	6	Admits to shooting during the above incident on the west side
AF	Letswalo	9mm	4	1/4 found; admits to shooting during the above incident on the west side
MM	Thaba	9mm	3	
SFA	Mvunge	9mm	2	1/2 found (AA12) next to baton rounds on north of west side
PB	Tshabangu	R5	2	
P	Baloyi	9mm	2	
MRP	Moloi	9mm	1	

81) As indicated in Table 10, cartridge cases were found for 21 shooters. Based on the location at which these were found it is possible to identify the location of (some or all) shootings by these 21 shooters. However, the above discussion indicates that if the information about cartridge cases is linked to SAPS members' statements, in addition to photographic and video evidence in some cases, there is possibly information on the location at which a further eight shooters – three who were involved in the shooting of Mr Mkhonjwa on the west side, three in the shooting of Mr Mpumza on the north side and two K9 shooters – discharged their firearms.

This means that we may have information on the approximate locations from which 29 out of 57 (51%) of shooters fired their weapons. If this is correct, it would mean that we know the location from which shooters who fired a total of 202/295 shots (68%) fired at least some of these shots. It also means that we have information on the location from which some of the main shooters fired many of their shots, including 12 of the 14 shooters (four NIU members, three K9 members, two of the three TRT members and three of the four POP members) who fired seven or more shots.

82) One implication is that we have no concrete indication where 28 of the 57 shooters (14 NIU, 7 K9, 2 TRT and 5 POP) fired their weapons from. As indicated above, these include two (1 POP and 1 TRT) who fired seven or more shots. They also include eight individuals (5 NIU, 2 K9 and 1 TRT) who fired 4–6 shots each. As indicated in Table 15, however, beyond these 29 shooters, altogether cartridge cases were not found for 210 of the 295 the firearm discharges (71%). As already mentioned, this issue is particularly pertinent in relation to the K9 unit, with only one cartridge case out of 66 shots fired by K9 members – and one of the two fired by Maj. Gen. Naidoo – submitted for ballistic testing.

83) It is a matter of speculation why no cartridge cases for these 29 shooters were found. Possible reasons for this may include:

- a) That the search area was not searched very intensively, perhaps partly due to the large area involved and the number of personnel available.
- b) That firearms were discharged outside the area that was eventually searched. In relation to this possibility, a few strikers reported they were fired at by SAPS members who were approaching from the west side while the strikers were trying to flee in that direction.¹⁸⁶
- c) That shooters or their colleagues removed cartridge cases from the scene, perhaps to limit the possibility that evidence might be found that could incriminate them. The possibility that SAPS members tampered with the crime scene is consistent with the evidence that weapons were planted on the bodies of six of the deceased.

Table 15: Firearm discharges for which cartridge cases were not found

	Total	Not found	% cartridges not found
NIU	115	58	50
TRT	55	42	76
K9	67	65	97
POP	58	45	78
Total	295	210	71

84) A further issue that emerges from this analysis is the difficulty of subjecting the actions of all of the shooters to scrutiny. It is at best possible to identify the location at or near which 28 of the 57 shooters fired some of their shots from. Given the number of shots they fired, there may be greater motivation to subject shooters such as Capt. Makukule of POP (10 shots with an R5), and Cst Mokgetla of the TRT (8 R5 rounds) to scrutiny, though the location they fired from is unknown. But this is far from straightforward. As will be discussed, the statements many of the shooters provided are opaque and many provided several statements that are often inconsistent in one or more respects.

85) Given that no firearms can be positively linked to any of the bullets or bullet fragments found in or near the bodies of the deceased,¹⁸⁷ as a consequence it may be difficult to subject the actions of a significant number of the Scene 2 shooters to any kind of scrutiny. Nevertheless, it may be worthwhile to submit all statements by SAPS shooters to greater scrutiny than has been achieved in this report (see Chapter 5).

Did strikers fire any shots at police at Scene 2?

86) According to a large number of police statements, the strikers shot at them.¹⁸⁸ However, many of them do not indicate that they in fact saw any strikers with firearms in their hands. In so far as they do, these assertions are often inconsistent with the objective evidence or other statements by the same individuals.

a) For instance, Maj. Gen. Naidoo said that he saw a striker with a 'long barrelled firearm',¹⁸⁹ but apart from those used by police no R5s were found at Scene 2. As stated in the heads of argument of the SAHRC, 'by the time Maj. Gen. Naidoo allegedly saw the rifle, the Koppie was already surrounded and all the strikers within the Koppie at that time were subsequently disarmed and arrested.'¹⁹⁰

b) There are inconsistencies between different statements given by several SAPS members about whether they actually saw anyone firing at them or not.¹⁹¹

87) Despite these inconsistencies, considering the number of SAPS members who made these allegations, one would expect a large number of cartridge cases to have been found from firearms used by strikers. No such cartridge cases were found. Three Norinco pistols were confiscated from arrested miners at Scene 2. One of these had a full magazine; one had one bullet missing from its magazine (this one was the only unlicensed firearm); and the third had 6/8 bullets missing. On its own, this evidence points to the possibility that strikers may have fired up to seven bullets at the police from two pistols.

88) The Commission report argues that, apart from the three firearms (one with a full magazine) taken from the arrested strikers: 'There does exist a possibility that there might have been further firearms in the possession of the strikers on the koppie that were either hidden on the koppie and not recovered or concealed on the persons of the strikers when they left the area.'¹⁹²

Considering that all strikers in the area who were not dead were taken to hospital or arrested and that a crime scene examination was carried out, it is not very likely that there were other firearms that were not found. However, the critical question is not about how many firearms were in the possession of strikers, but whether any strikers fired shots at the police.

89) At least 86 cartridge cases from live ammunition were found in the vicinity of Scene 2.¹⁹³ Of these, 84 were linked to firearms submitted by police for ballistic testing. As indicated above (paragraph 71), there is no doubt that the two others (AA28 and AA29) were also linked to 9mm pistols fired by SAPS members. Therefore, all of the 86 cartridge cases were linked to weapons used by SAPS members.¹⁹⁴

90) No cartridge cases were found that were linked to the three Norinco pistols found among the bodies or confiscated from strikers arrested at Scene 2.

91) The cartridge cases found represent 86/295 (29%) of firearm discharges reported by the SAPS. The SAHRC points out that police rounds at Scene 2 were fired from all parts of the veld surrounding Koppie 3, as well as within Koppie 3 itself. Accordingly, the police cartridges were spread over a very wide area, much of which was not the main area of focus for crime scene investigators. In contrast, any rounds fired by strikers would have been discharged within the koppie, near the locations where bodies were found and therefore in the heart of the focus area for the crime scene investigation. The SAHRC submits that it is far more likely that cartridges from rounds fired by strikers would have been found by the crime scene investigators. This submission is supported by the much higher ratio of rounds to cartridges at Scene 1, where all SAPS rounds were fired within a close search area and 72% of cartridges were found.¹⁹⁵

92) The implication is that, if there had been any gunfire by the strikers, on the balance of probabilities more than 28% of cartridge cases for shots fired by strikers would have been found. Implicitly, if three or four

shots had been fired by the strikers, it may reasonably have been expected that at least one cartridge case would have been found.

93) There is then no concrete evidence that any of the strikers fired at the police at Scene 2. On this issue, the Commission report states that though 'just under a third' of the cartridges

'for the two hundred and ninety five shots fired by the members of the South African Police Services at Scene 2 were recovered, no cartridge cases for any shots fired by strikers or anybody else was found. This is an indication that only a few shots could have been fired by the strikers.'¹⁹⁶

Based on the firearms that were found, up to seven shots could have been fired. Based on the probabilities of at least 29% of cartridges cases used having been found, it may be said that if any were fired, it was no more than two or three.

In conclusion, the statements of strikers who were present at Scene 2 make no reference to any strikers shooting at the police. As is shown in Chapter 6¹⁸⁷ there are a number of reasons for respecting the final sample of 124 statements used as a reliable account of events at Scene 2.

The final sample of statements analysed in Chapter 6 may therefore be taken as a reliable description of the events at Scene 2. There is not a single reference in any of the 124 statements to strikers brandishing firearms or shooting at or attacking the police at Scene 2. Considering that these statements were taken at six different locations (four police stations and two hospitals) in the five-day period immediately after the massacre, it is probable that some among them would have mentioned that strikers had been firing at the police if this had indeed occurred.

Chapter 5: SAPS accounts of the events at Scene 2

Introduction

- 94) As indicated the Marikana Commission stated that the SAPS ‘provided no details of what happened with regard to the deaths of most of the deceased at Scene 2’ and that ‘where it does provide evidence pertaining to the deaths of some of the deceased, their versions do not, bear scrutiny when weighed up against the objective evidence.’¹⁹⁸
- 95) This chapter of the report examines police accounts of the events at Scene 2. As will become apparent, a multiplicity of accounts of the events at Scene 2 were provided by the SAPS. Police accounts of the events at Scene 2 include the following:
- a) Two different accounts that were distributed from the office of SAPS National Commissioner Riah Phiyega within the first 24 hours after the massacre.
 - b) The formal account provided by the SAPS – comprising about 28 slides of a 284-slide Microsoft PowerPoint presentation, which was classified as Exhibit L by the Commission and has subsequently come to be referred to by this name.¹⁹⁹ Two SAPS members presented this to the Commission starting on 6 November. (The transcripts of the Commission also include the narrative account that was given by the SAPS members who presented Exhibit L.)²⁰⁰
 - c) The written opening statement of the legal team representing the SAPS – presented to the Commission on the third day of the Commission’s proceedings, 22 October 2012.²⁰¹
 - d) The account of events provided in the heads of argument of the legal representatives of the SAPS – submitted to the Commission at the conclusion of the Commission’s proceedings. Referring to this document, the Commission says that ‘The South African Police Service postulated various scenarios surrounding the deaths of the deceased’, but that the Commission ‘is not convinced that these scenarios are correct.’²⁰²
 - e) Accounts of the events at Scene 2 in the statements of SAPS members – some of these were provided to the IPID in the week after the massacre, but many others were submitted at a later point within the SAPS. (It is also difficult to verify the dates on which many statements were compiled.)
 - f) The accounts provided by the three SAPS commanders who were present at the small koppie: Maj. Gen. Naidoo, Col. Modiba and Capt. Kidd – in addition to submitting statements, each of them gave testimony and faced cross-examination before the Commission about the events at Scene 2. Col. McIntosh, who was in Nyala 1 and witnessed the death of Mr Mpumza (Victim C), also submitted a statement and gave testimony.

The first two accounts provided from the office of Commissioner Phiyega

- 96) At the time of the massacre, President Zuma and the minister of international relations were attending a summit in Mozambique. The first official SAPS account of the events at Scene 2 was contained in a report that was sent to the minister for the attention of the president ‘in the early hours’ of Friday 17 August.²⁰³ The report was apparently compiled by the operational commanders and was not amended by Commissioner Phiyega before she forwarded it to the minister.²⁰⁴

a) Referring to the events at what would come to be known as Scene 1, the statement said:

When the Police started deploying the barbed wire fencing, a militant group from the protesters armed with weapons, pangas, spears, axes and firearms, hastily flanked the vehicles deploying the wire. They were met by members from the Police who tried to repost the advance with stun grenades. The attempt was unsuccessful and the Police members had to employ force to protect themselves from the charging group. This resulted in the death of 16 protesters with 13 wounded at that scene.²⁰⁵

b) The statement went on to provide an account of the events at Scene 2 – what the statement referred to as ‘the second incident’:

The dispersion action had commenced at this time and the protesters were driven from their stronghold to a high bushy ground in the close vicinity. The Police members encircled the area and attempted to force the protesters out by means of water cannons, rubber bullets and stun grenades. The Police advance [sic] to arrest the armed protesters resulting in Police officers having to again employ force to defend themselves at close quarters. This resulted in 13 more protester deaths with 15 more wounded at the second incident.²⁰⁶

97) Another version of the events at Scene 2 emerged in the media statement released by Commissioner Phiyega on the morning of 17 September. This version contained amendments made on the instructions of the commissioner:²⁰⁷

a) The description of the events at Scene 1 was the same as that provided in the first statement, except that the paragraph now referred to ‘the protesters’ instead of a ‘militant group from the protesters’ and the final sentence dealing with the number of dead and wounded was not included.

b) The passage dealing with Scene 2 went on to state that:

The dispersion action had commenced at this time and the armed protesters were driven from their stronghold to a high bushy ground in the close vicinity. The Police members encircled the area and attempted to force the protesters out by means of water cannons, rubber bullets and stun grenades. The militant group stormed towards the Police firing shots and wielding dangerous weapons. Police retreated systematically and were forced to utilize maximum force to defend themselves.²⁰⁸

98) The first version, submitted to the President, therefore states that:

the Police members encircled the area and attempted to force the protesters out by means of water cannons, rubber bullets and stun grenades. The Police advance[d] to arrest the armed protesters resulting in Police officers having to again employ force to defend themselves at close quarters.

In the media statement the latter sentence was replaced with two sentences to the effect that: ‘The militant group stormed towards the Police firing shots and wielding dangerous weapons. Police retreated systematically and were forced to utilize maximum force to defend themselves.’²⁰⁹

99) It is not an exaggeration to say that the second statement is dramatically different from the statement sent to the president in relation to Scene 2.

a) In the statement sent to President Zuma no overt act of aggression by the strikers is described, though it is implied by the assertion that the police had to ‘again use force to defend themselves at close quarters’. Essentially, it seems to imply that the police ‘attempted to force the protesters out’ of the area and that when ‘advancing to arrest’ them there was armed resistance of some form. The media (second) statement is altogether different. In this statement, the description of the strikers’ actions evokes a scenario in which the strikers were acting collectively and cohesively, as warriors storming towards the police while ‘firing shots and wielding dangerous weapons’.

- b) There are other significant differences between the two statements.²¹⁰ Notably, the first account refers to the events at Scene 2 as the ‘2nd incident’ and the statement provides separate death tolls for the events at the two locations (only recording a combined total of 29 deaths). But in the media statement, the distinction between the two incidents becomes blurred and only a single death toll is provided, though it reflects the total number of 34 deaths.
- c) The Claassen Board of Inquiry concluded that the effect of these changes was to create the impression ‘that the police was continuously on the defensive while retreating’ and that: ‘The only inference to be drawn from these changes is that [Commissioner Phiyega] deliberately attempted to deceive the public and the media as to the reckless manner in which the police, especially at Scene 2, killed the strikers.’²¹¹

The briefing by Brig. Calitz

- 100) On Saturday 18 August, Brig. Calitz, who had been the operational commander on 16 August, gave a briefing to SAPS members who were still at Marikana. The briefing can clearly also be seen as a not very subtle way of instructing SAPS members on the framework that they should follow in their accounts of the incident.
 - a) Calitz said in his briefing that the SAPS had done ‘nothing wrong’. The operation had been carried out according to plan; that the SAPS had tried to use minimum force but had been unsuccessful in this; but they had only used lethal force when they had been attacked by the strikers.²¹²
 - b) During his briefing, Brig. Calitz appears not to have made explicit reference to the events at the small koppie. Though the speech did not deal directly with the events at Scene 2, it is likely to have influenced how many SAPS members’ portrayed the events at Scene 2, both with regard to the assertion that they had used minimum force and the assertion that they had only used lethal force after being attacked. As will be seen (paragraph 218) a feature of a number of the shooters statements is the assertion that they only fired warning shots such as shot in the air or on the ground.

Did the media statement serve as a script for SAPS accounts of the events at Scene 2?

- 101) Both the Commission and the Claassen Board of Inquiry criticised Commissioner Phiyega for revising the account the SAPS commanders gave her and issuing this as a media statement, on the basis that this was intended to mislead the public.²¹³
- 102) The Commission also criticised Commissioner Phiyega and Minister of Police Nathi Mthetwa for speeches they gave to SAPS members on the Friday immediately after the massacre. The Commission says that these speeches, as well as the briefing given by Brig. Calitz, were ‘likely to have [had] the effect of a closing of the ranks and discouraging SAPS members who knew of mistakes made from disclosing the truth to the Commission.’²¹⁴
- 103) The nature of the events at Scene 2 were not specifically alluded to by Commissioner Phiyega or Minister Mthetwa in their speeches on 17 August or by Brig. Calitz in his briefing on 18 August. The media statement would have been the sole official account of the events at Scene 2 available to SAPS members and is likely to have been widely read by them.
- 104) As indicated, the key sentences from the media statement which purports to explain the deaths at Scene 2 state that when the police ‘encircled the area’ some of the strikers ‘stormed towards the Police firing shots and wielding dangerous weapons’ and that the police ‘retreated systematically and were forced to utilize maximum force to defend themselves.’²¹⁵ At face value the media statement appears to describe an apparently cohesive group of strikers, acting with a common purpose, ‘storming’ towards SAPS members who had ‘encircled’ the koppie.

The statement therefore implies that strikers who had gathered inside the ‘high bushy ground’ attacked the SAPS members on the outside; and that the clashes between strikers and SAPS members had taken place on the outer periphery of the area. In their initial statements, many SAPS shooters described shooting at strikers who were attacking them while they were approaching Scene 2 area in a manner that is similar to that portrayed in the SAPS media statement.

105) For instance, the statement of WO Makhubela (POP) is partly typed, with extensive annotations by hand and dated 17 August. It states that:

When we were at our part we observed miners charging at us. One of them shot towards my direction and I hide behind a rock. He was shooting at us and I decided to defend myself. I then decided to shoot but the miners continued to charge at me. They ultimately fell in the ground and I run away towards the Nyala.²¹⁶

a) Partly because of the reference to the Nyala,²¹⁷ the statement appears to be based on the events on the west side of Scene 2 in which Mr Mkhonjwa was shot (Victim N, Shooting 1). There is evidence that a group of strikers did run out of the small koppie area on the west side, possibly as a result of being fired on by the water cannon. In addition, a Nyala moved across the west side of the small koppie area at the time of the shooting incident on that side.²¹⁸

b) While the media statement refers to the 'The militant group... firing shots and wielding dangerous weapons' while 'storming' towards the police, other police statements consulted relating to the events on the west side do not describe strikers shooting at police.²¹⁹

106) Another statement possibly based on the 'script' provided by Commissioner Phiyega's statement is that of WO Breedt, one of the members of the K9 unit, who appears to have submitted an initial statement on 23 August. His statement, translated from Afrikaans, indicates that before the police opened fire:

We moved on foot to the second koppie, after which the striking mineworkers stormed at us with dangerous weapons and also shot at us with firearms. We had no cover and there was also no attention paid when we fired rubber bullets at them.²²⁰

a) WO Breedt was one of the K9 members who approached Scene 2 from the south side. It may be noted that of the cartridge cases for rubber bullets, none were found on this side of the koppie.

107) Another K9 member, WO Visser, also used language that might have borrowed directly from the media statement in his statement written in Afrikaans. The statement says that, 'about 10 metres to 12 metres from the koppie a big group of mineworkers who were armed with traditional weapons began to storm at us'.²²¹

a) In common with the media statement, which describes the strikers 'storming' towards the police, both the statements of WO Breedt²²² and Visser²²³ use the word 'storm' in their statements written in Afrikaans (see below).

108) The statement of Cst Mutsi (K9) submitted to the IPID on the 24 August states that:

I was posted on the second scene at the side of the power station and on our arrival we found the water cannon spraying water at the crowd. The crowd came to our side having spears, pangas, axes and firearms. //When they approach to our side we screamed to them as we were trying to warn them to put down their weapons and they did not listen and we then moved back as they were coming to us and at that time one could see that the crowd was very angry and they will not retreat and then I observe that one of them started shooting to our direction they were 30m away when I lifted up my R5 rifle and started shooting on self defense.²²⁴

a) It may be noted that Cst Mutsi's additional statement (quoted below) is inconsistent with this statement in several respects. In particular it says that he started shooting at the strikers after they started shooting at the police from the bush and not while they were charging at the police. While his first statement clearly says that he could see a striker shooting at him, in the second statement the details of who he is shooting at and why he is shooting are completely different. Cst Mutsi's additional statement also appears to contradict the account provided by the TRT members (see below), who describe the strikers charging at them on the south side.²²⁵

- 109) The statements of Col Modiba (see paragraph 121b) and the six TRT members whose statements are quoted below (paragraphs 167–168) are other examples of early statements that make allegations of this kind.
- 110) There is little reason to regard the statements quoted above as a credible account of the events these SAPS members experienced. As indicated, there appear to be few, if any, other statements from police who were on the west side with WO Makhubela, who also described strikers shooting at them. In relation to the allegations by the members of the K9 unit, for instance, there is no evidence of strikers being shot on the south side of Scene 2 where they allege these attacks took place.
- Strikers who may have been killed by K9 members were all killed in the killing zone, inside Scene 2. In addition, four helicopters were in the air above Scene 2 during the shootings. One of them was flying at a great height and one was present more consistently than others, but none of personnel in any of these helicopters saw any such attacks taking place. In so far as there were shootings on the south side, they were inside the area, where strikers were apparently taking shelter from police gunfire and the jets of water from the water cannons.
- 111) Why then do so many statements by SAPS members appear to provide an account of events similar to that provided in the SAPS media statement? The one clear possibility is that many SAPS members used the account given in the media statement as a script²²⁶ or template for the accounts they provided in their own initial statements. The vast majority of SAPS statements were written after 17 August. However, a handful, such as that of WO Makhubela, may have been written on 17 August; but even those are likely to have been finalised after the release of the SAPS media statement that morning.
- 112) It therefore appears probable that the content of many of the SAPS statements prepared in the first month or so after the massacre was strongly influenced by the media statement. It would also appear that the limitations of the SAPS media statement as a template for the accounts of SAPS members may only have started to be recognised by the SAPS at a later point. In October, there seems to have been a shift in the type of account provided. It would appear that the SAPS members responsible for developing the SAPS account of the events at Scene 2 began to recognise they needed to explain why many of the strikers had been shot not on the external perimeter of Scene 2 but inside the area. In particular, a crime scene report that became available early in October 2012²²⁷ showed that cartridge cases for some SAPS members had been found on top of the high rocks. It would appear that it is primarily after this point that statements begin to emerge describing shootings inside Scene 2.
- 113) Although the national commissioner changed the version provided in the initial report that SAPS commanders submitted to her, the report submitted by the commanders was not an accurate representation of what had happened. For instance, the initial statement indicates that the SAPS ‘encircled’ the area of ‘high bushy ground’ implying that this was deliberately done. It is now common cause²²⁸ that only the NIU was supposed to have approached the small koppie area; the other two groups (from FHA1 and FHA2) did so on their own initiative; and many police members who were present were not aware that there were police units on the other sides of the koppie.

Further development of the official SAPS version at the Potchefstroom Roots meeting

- 114) During the period from 17 August onwards, the SAPS leadership appears to have colluded in trying to ensure that the SAPS was absolved of any blame for Marikana. This report will not describe how senior SAPS members were allegedly involved in concealing evidence from the Commission and numerous other efforts to mislead the Commission.²²⁹ However, key events in this process include the misleading media statement the Commissioner Phiyega released on 17 August and the Potchefstroom Roots meeting.
- a) As already noted above (paragraph 51), it was not only police who presented misleading evidence to the Commission. For instance, the evidence leaders state that the evidence introduced on behalf of the people injured and arrested was ‘highly unsatisfactory.’²³⁰

- 115) Eleven days after the Marikana massacre, on 27 August, roughly 40 of the senior police involved in the Marikana operation, and others, gathered in Potchefstroom for an event that has come to be referred to as the 'Roots' meeting. According to the invitation, the meeting, which was scheduled to run from Monday 27 August to Saturday 8 September,²³¹ was supposed to be for 'debriefing and preparation for the Commission'.²³²
- 116) However, evidence indicates that the meeting was not used for 'debriefing'. Instead the Roots meeting appears to have been the start of a process by which the SAPS manufactured an account of the events at Marikana, which was intended to justify all of the actions of SAPS members at Marikana.
- 117) The evidence leaders say that the Roots meeting involved the creation of a 'police narrative'. 'Certain evidence was constructed, and other evidence was concealed, to support that version.'²³³ 'The evidence suggests that an exculpatory version on all of the critical incidents was decided on at Roots.'²³⁴
- 118) In its heads of argument, the SAHRC argues: 'In blunt terms, the purpose of the Roots meeting was to identify and prepare [the SAPS] case, and to ensure it was consistent'.²³⁵ According to the SAHRC, SAPS members colluded in preparing a 'materially misleading' version of the events at Marikana including at Scene 2.²³⁶
- 119) The Commission states that it agrees with various criticisms 'levied against the SAPS' in relation to Roots,²³⁷ including the SAHRC's submission that 'the SAPS did in fact use Roots as an opportunity to collude in that various aspects of the case of the South African Police Services are materially false'.²³⁸
- 120) It must be emphasised that the SAPS account of the events at Scene 2 was not agreed on at the Roots meeting itself. Limited progress was made at Roots itself in generating what would emerge as the SAPS account of Scene 2. The formal SAPS account of these events took time to emerge.
- 121) The SAHRC notes that a significant number of SAPS leaders, including the senior leaders of the Marikana operation, only prepared their statements after the Roots meeting was 'substantially complete and a clear police case had been prepared by consensus'.²³⁹ However, this may only have applied to one of the three SAPS members in command positions at Scene 2.
- a) Maj. Gen. Naidoo was among the group who only submitted their first statements after the Roots conference. The Commission highlights various 'anomalies' in Maj. Gen. Naidoo's evidence, including contradictions between his account of the shooting incident he was involved in and the statements of several SAPS members. It finds that his oral evidence contradicts his statement; and that he only belatedly submitted his own firearm for ballistic investigation.²⁴⁰ In common with a number of other SAPS shooters, in his statements Maj. Gen. Naidoo said he had only fired while approaching Koppie 3. His admission that he had fired from on top of the high rocks was only provided later in his oral evidence before the Commission, after the ballistic evidence had emerged showing that a cartridge from his weapon had been found there.²⁴¹
- b) Col. Modiba submitted a statement to the IPID on 23 August, shortly before the Roots meeting.²⁴² The description of events in the statement resembles that of the SAPS media statement:
- [After Scene 1] I immediately directed the members of the National Intervention Units to move to the mountains (Scene 2) to have them swept. Upon approaching at the mountains there were warriors that came from hiding behind the rocks armed with pangas, assegai, knopkierries (sic), axes, and spears at a distance of about 12 metres, charging at us, I therefore shouted at them by saying STOP, STOP while firing warning shots from my pistol [number provided] into the ground, at that time there were shots fired from the group towards our teams. Some of the members discharged their firearms with an effort to defend themselves.²⁴³
- i) Though Col. Modiba's statement alleges that he and the SAPS members with him were charged by a group of 'warriors' and that shots were 'fired from the group', under cross-examination he modified this, saying that 'while he definitely heard the firing of live ammunition, it was not clearly coming from any particular striker'.²⁴⁴ Although Col. Modiba was on the same side of the small koppie from which

it appears NIU members shot and killed two strikers, he could not provide the Commission with any information that would help account for their deaths.²⁴⁵

- c) Capt. Kidd may also have submitted a statement before the Roots meeting. In his statement of 14 November, for instance, he says that he made his first statement on 17 August. However, the statement in its typed form was only prepared for signature in September.²⁴⁶ The handwritten version, which presumably predates this, was only saved as a PDF on 5 November.²⁴⁷

In the process of carrying out research for this report, it was not possible to locate a statement by Capt. Kidd that is actually dated 17 August. However, as indicated below (see paragraphs 121-128 and 145), Capt. Kidd's account of the killing of Mr Mkhonjwa was incorporated into the narrative that started being developed about Scene 2 at an early stage at the Roots meeting.²⁴⁸ From that point onwards the SAPS continued to rely on Captain Kidd's account of the killing of Mr Mkhonjwa, despite the fact that it was inconsistent with the statements provided by SAPS members who appear to have been directly involved in the shooting (the available evidence is that Capt. Kidd himself did not discharge his firearm at Scene 2). The SAPS legal representatives also consistently relied on Capt. Kidd's account of the killing of Mr Mkhonjwa (Victim N, Shooting 1) as the definitive account of this shooting.

- 122) Those who were instructed to attend the Roots meeting included seven SAPS members who had been participants in the events at Scene 2: Lt Col. Modiba, NIU Durban; Lt Col. Gaffley, STF, Durban; Lt Col. Nkebe, NIU Mthatha; Capt. Ryland, TRT Honeydew; Capt. Kidd, TRT Johannesburg; Lt Ndlela, NIU Durban; WO Dicks, POP Johannesburg and operator of the SAPS Johannesburg water cannon.

The SAPS presentation to the Commission (Exhibit L)

- 123) The SAPS account of the events at Scene 2 only emerged in a preliminary form at the Roots meeting. The formal SAPS account of Scene 2 was only finalised later, possibly only in early November 2012.

- 124) Exhibit L was the account of events at Marikana that the SAPS finally decided to present to the Commission. The development of Exhibit L can be seen in documents that were discovered during the Commission process.²⁴⁹ Initial drafts include:

- a) An 88-page draft of the presentation that had already been developed by 1 September, soon after the start of the Roots meeting. This gives a version of the events at Scene 2 and photographs, mainly taken after the shooting and after weapons had been planted on victims.²⁵⁰ This version already has many of the key elements of Capt. Kidd's account of the shooting of Mr Mkhonjwa that would appear in his statement prepared for signature in September 2012,²⁵¹ which was carried forward in slightly modified form in his consolidated statement.²⁵²
- b) Another presentation, last saved on 10 September, shortly after the Roots meeting, is 169 pages long. This contains a slightly expanded and modified version of the alleged events at Scene 2.²⁵³
- c) Further modifications were made to the presentation over September and October. However, none of the drafts provides most of the details of the SAPS account of events at Scene 2 that appeared when the presentation was provided to the Commission on 6 November.

- 125) Elements of the narrative of the version last saved on 2 October 2012²⁵⁴ include:

- a) That the reaction team of TRT members and others at FHA2 'held their position on the western side of the informal settlement', while the follow-up line from the east side arrived at Koppie 3 and deployed in two groups, with a water cannon and Nyala's on each side;²⁵⁵
- b) The account of the killing of Victim N that is also reflected in Capt. Kidd's statement;²⁵⁶
- c) The SAPS account of the killing of Victim C – which, according to this document, happened simultaneously with the Victim N incident;²⁵⁷
- d) A slide based on the statement of Lt Col. Gaffley, including the point that: 'Shots were fired from an undetermined direction and Lt Col. Gaffley determined that to sweep and clear at that time would be dangerous for the STF members as gun fire was heard all around the perimeters of the "koppie"',²⁵⁸

- e) NIU members split up into three groups and: ‘Groups of protestors emerged from behind the rocks, charging at two of the three groups of NIU members whilst brandishing their dangerous weapons. When the attack commenced the attackers were approximately 15 metres²⁵⁹ away from the advancing NIU members. In order to defend their own lives and the lives of their colleagues the advancing police members shot at their attackers as a last resort.’; and²⁶⁰
- f) ‘Shots were fired from the protestors in “Koppie 3” at the advancing K9 members’ approaching on foot. ‘Two persons acting in concert, one with a firearm, were seen shooting at the police members. Police members returned fire, discharging several shots, until the attack ceased.’²⁶¹
- 126) After this the narrative was removed from the presentation. Versions last saved on 15,²⁶² 18²⁶³ and 23²⁶⁴ October only have photographs and no narrative accounting for the events at Scene 2.
- a) A concluding section in the version last saved on 23 October includes the statement that the small koppie ‘was approached from all directions by various police teams, various attacks were launched at the police and again protesters were shot at in self-defense’.²⁶⁵
- b) The last of the versions of the presentation to provide a narrative account, that of 2 October, therefore only explicitly refers to the deaths of two of the strikers, Mr Mkhonjwa (Victim N) and Mr Mpumza (Victim C).
- 127) It appears that some of the people involved in development of Exhibit L were tasked with creating a narrative that would account for more of the shootings that took place at the small koppie. When it was finally presented to the Commission on 6 November by two members of the SAPS, the presentation asserted that the shootings by SAPS members at Scene 2 took place during the course of 11 ‘shooting incidents’.²⁶⁶
- a) These incidents were said to include eight in which armed strikers charged at the SAPS (Incidents 1 and 3 on the south side; Incidents 2 and 4 on the west side; Incident 6 on the east side, Incidents 8 and 10 inside the small koppie area; Incident 11 on the north side).
- b) The other four incidents are said to have involved:
- i) Incident 5: shooting at a striker who was firing a pistol at SAPS members (south side).
 - ii) Incident 7: shooting at an armed striker ‘making his way through the bushes’.
 - iii) Incident 9: SAPS members shooting at a striker ‘when they see a firearm’.
- 128) A consistent feature of the formal narratives the SAPS presented from this point onwards is that they all contain alleged accounts of the circumstances in which Mr Mkhonjwa (Victim N), Mr Mdizeni and Mr Thelejane (Victims A and B) and Mr Mpumza (Victim C) were killed. In terms of the framework used in this report (see Table 3), these are Shootings 1, 2 and 4, which are separate from the deaths of those in the killing zone (Shooting 3). In Exhibit L:
- a) The alleged circumstances in which Mr Mkhonjwa was killed is Incident 2. This is a summary of Capt. Kidd’s account of the circumstances in which he was killed, stating that ‘FHA 2 members fire at 2 charging armed protesters on the western side of Koppie 3 killing one and wounding the other.’²⁶⁷
- b) The alleged circumstances in which Mr Mdizeni and Mr Thelejane were killed are described in Incident 6, which states that: ‘NIU members on their approach fire at charging protesters on the eastern side of Koppie 3 killing 2 protesters.’²⁶⁸ A bit later in the presentation there are two pages devoted to the events on eastern side that makes no reference to the fact that anyone had been killed.²⁶⁹
- c) The alleged circumstances in which Mr Mpumza was killed are described in Incident 11. The initial account²⁷⁰ provided of the shooting of Mr Mpumza is that:
- NIU members on the north eastern side of the koppie on open ground have a protester charge at them from the bushes as their colleagues on the inside are arresting protesters in the same bushes. The NIU members fire warning shots at the armed protester who changes direction turning towards the FHA 2 members to the west where he was fatally wounded when he attempted to stab a member with his spear.²⁷¹

129) Exhibit L therefore explicitly refers to four deaths and does not address why no explanation was provided for 13 of the 17 deaths. As is discussed below (paragraph 152–3) the SAPS could at no stage provide a coherent basis for its assertions about Incident 6 or account for the deaths of Mr Mdizeni and Mr Thelejane. At best, therefore, the SAPS could only account for two of the deaths at Scene 2, those of Mr Mkhonjwa and Mr Mpumza. The evidence leaders argued that:

The fact that SAPS was unable to justify killing 15 of the 17 Scene 2 victims, must have been clear to the SAPS leadership from an early stage after 16 August. At the very least, it was clear by the time that the Roots workshop had run its course. Despite this, the SAPS presentation contains no frank admissions of the inability of the SAPS to justify the deaths that it caused at Scene 2. On the contrary, the presentation proceeds on the basis that the SAPS acted perfectly reasonably at Scene 2. This cannot have been an oversight in the production of Exhibit L. Instead, it appears to have been the product of a deliberate attempt to hide the degree to which the SAPS was unable to account for its lethal actions at Scene 2.²⁷²

130) Both the opening statement of the SAPS (as discussed below, presented on 22 October 2012) and the SAPS heads of argument (presented in November 2014) also put forward alleged accounts of the death of Mr Xalabile (Victim O). As indicated above (Tables 3 and 4 and paragraphs 56–58), in this report Mr Xalabile's death is included as one of those in the killing zone.

In Exhibit L there are no incidents other than Incidents 2, 6 and 11 in which the SAPS indicates that anyone was killed. Nevertheless, some of the alleged accounts of the circumstances of Mr Xalabile's death provided in these other documents appear to align with Incident 8 in Exhibit L. This states that: 'NIU line with Maj. Gen. Naidoo sweeps through the bushes on the south side of Koppie 3 and fire shots at charging armed protesters in the bushes.'²⁷³

131) By the time the Commission got underway in October 2012, the official police version had therefore changed from what appears to be a cohesive group of warriors 'storming' towards the SAPS to a more multifaceted battle being waged in Scene 2, with police being attacked at various points by different groups of 'protestors'. In the 2 October draft of Exhibit L, no reference is made to any shooting incidents involving police situated inside the small koppie area. One of the new features of Exhibit L, when it was finalised, was that it described two alleged shooting incidents that involved police positioned inside Scene 2. One was Incident 8.

132) During the research for this report there were no SAPS statements that were identified that were written before the middle of October and in which SAPS members indicated that they had fired at strikers from inside the small koppie area. The three police officers whose statements were said to provide the basis for Incident 8 were Maj. Gen. Naidoo, Lt Ndlela of NIU Umtata and Cst Sefanyetso of NIU Pretoria.²⁷⁴

a) Maj. Gen. Naidoo's statement is in fact dated 7 November, though an unsigned draft was saved as a PDF on 18 October. This, and subsequent versions of his statement, in fact allege that he was being fired at by strikers rather than that there were any strikers charging at him.²⁷⁵

b) Lt Ndlela provided a statement to IPID in August 2012 (there is also a preliminary draft of this statement) and then another statement in October. His IPID statement refers only to shootings outside the small koppie area. Even in his statement initialled on 16 October, which is significantly different from his first statement, his location is not clearly inside the small koppie. In so far as the location of the shootings is identified, this is through phrases such as, 'While tactically sweeping from Eastern Side towards Southern direction' and 'When carrying on approaching'. (His statements are compared in detail below).

c) Cst Sefanyetso has an undated statement, last saved on 6 November 2012, in which he alleges that he and other NIU members were charged at after they 'moved in the koppie to the Southern Side'.²⁷⁶

d) Of the other NIU members whose cartridges were found on top of the high rocks, the only one that explicitly refers to shooting from this location is Cst Dubeni of the NIU Mthatha, in a statement signed

on 31 October. Cartridges from Cst Mokhele's rifle were also found on top of the high rock. He has an undated statement, submitted to the IPID at some point before 11 October, in which he refers to an alleged incident when he shot at a lone striker who was charging at him and his colleagues. The location of this incident is not made clear in this or his later statement, also submitted on 31 October.

- 133) Police positioned inside Scene 2 were allegedly involved in Incident 10: 'The K9 members approach and enter the bushes on the south western side of Koppie 3 and shoot at armed protesters who attempt to attack them when moving between the large rocks.' A statement by Sgt Molangoanyane is supposed to provide the basis for the allegations about Incident 10. All of Sgt Molangoanyane's statements are, however, undated and the PDF files in which they are contained were all last saved on 6 November. Sgt Molangoanyane's statements are discussed further, below (paragraphs 184–189).
- 134) It is not therefore clear that there were any statements from SAPS members before October 2012 in which they acknowledged shooting at strikers from positions inside the koppie. It appears possible that the SAPS may have concluded that it would need to account for the fact that most of the bodies found at Scene 2 were found inside the small koppie area.

A factor in this regard may also have been the sketch plan of the SAPS crime scene expert, Capt. Mohlaki, finalised on 2 October.²⁷⁷ This showed that a number of cartridges fired by SAPS members had been found on top of the high rocks. Accounts from SAPS members who admit to shooting inside the small koppie area only appear to have been submitted after this point. This therefore meant that the SAPS had to partially break from the 'script' provided in the SAPS 17 August media statement.

The evidence can reasonably be seen to indicate that SAPS members adapted their accounts in order to fit in with the version of events that the SAPS wanted to present. It is difficult to avoid the conclusion that they were encouraged to do so by more senior SAPS members who were involved in putting together the account of events that the SAPS presented to the Commission.

- 135) In its heads of argument, the SAHRC says that 'the initial SAPS case presented in Exhibit L in relation to Scene 2, was so misleading that it cannot be described as anything other than false.'²⁷⁸
- 136) In September 2013, a SAPS officer gave a statement that identified the names of SAPS members whose statements provided the basis for the assertions made in Exhibit L about the 11 alleged incidents.²⁷⁹
- a) Statements by 28 of the 60 SAPS shooters – 26 who used live ammunition and 2 who used less lethal weapons only – at the small koppie are referred to as providing the basis for assertions about the 11 incidents. Statements by three non-shooters (Col. McIntosh, Capt. Kidd, and Sgt Harmse) are also cited as sources.
 - b) The September 2013 statement does not explain why the statements of the 32 other shooters at Scene 2 – 31 of whom used live ammunition – were not used by the SAPS as a source of reference in accounting for the events at Scene 2. The list of shooters whose statements were not used includes some of the major shooters.
 - i) Of the 24 NIU shooters, only eight are cited: three in relation to Incident 6, four for Incident 8 and one for Incident 11. These eight shooters accounted for only 40 of the 115 rounds fired by NIU members (38 R5 and two 9mm rounds). Significant NIU shooters at Scene 2 not referred to include Cst Ngwaleni (25 R5 rounds), Cst Mandla (8 R5 rounds), Sgt Silevana (6 R5 rounds), WO Ngqandu (5 R5 rounds), Cst Ngonyama (5 R5 rounds) and Sgt Mthimkhulu (4 R5 rounds).
 - ii) Among the POP shooters not used as a source of reference are: Capt. Makukule and Cst Pelaelo of East Rand POP, who shot 10 and eight rounds, respectively; and WO Makhubela of Johannesburg POP, who shot 8 rounds. Capt. Makukule used an R5, while the others used 9mm firearms.

The opening statement of the SAPS legal team

- 137) As indicated, the legal team representing the SAPS presented the opening statement²⁸⁰ to the Commission on 22 October. The statement made no reference to the 11 shooting incidents referred to in Exhibit L. Instead the statement grouped the 17 deaths at Scene 2 into five categories:

- a) The shooting of Victims A and B (Mr Mdizeni and Mr Thelejane).²⁸¹
 - b) The shooting of Victim C (Mr Mpumza).²⁸²
 - c) The shooting of Victim N (Mr Mkhonjwa).²⁸³
 - d) The shooting of Victim O (Mr Xalabile).²⁸⁴
 - e) The shooting of eight other victims (D, E, G, H, J, K, L and M) – there was an error in omitting Victim I (Mr Nokamba) from this list. Victim I's body was found immediately next to that of Victim J (Mr Saphendu) and presumably should have been included in this group.²⁸⁵ The error was acknowledged in the final heads of argument of the SAPS.²⁸⁶
 - f) According to the SAPS opening statement, 13 people were killed at Scene 2.²⁸⁷ In addition to omitting reference to Victim I, the statement makes no reference to the three other victims who were fatally shot at Scene 2. Because these three victims did not die at the scene, they were not assigned a letter by SAPS Local Criminal Record Centre crime scene personnel. However, photographs taken before paramedics removed the body of Mr Mohai from the scene show that he was also among those fatally shot in the killing zone.
- 138) The opening statement was therefore presented at the Commission before Exhibit L. In so far as the opening statement discusses specific killings, there is a limited correspondence between the 'incidents' described in Exhibit L and the opening statement in that:
- a) Incident 2 in Exhibit L is a reference to the official SAPS version of the shooting of Mr Mkhonjwa (Victim N).
 - b) Incident 6 is a reference to the official SAPS version of the shooting of Mr Mdizeni (Victim A) and Mr Thelejane (Victim B).
 - c) Incident 8 bears some resemblance to some SAPS accounts of the shooting of Mr Xalabile (Victim O).
 - d) Incident 11 is clearly a reference to the official SAPS version of the shooting of Mr Mpumza (Victim C).
- 139) The SAPS opening statement identifies the possibility that it might not be able to give an 'unqualified account' of all of the deaths at Scene 2. In particular it states that:

The evidence will be that some of the thirteen protesters who were shot and killed at Koppie 3 had charged at police officers with dangerous sharp weapons and had been shot in self defence. These are accounted for below. Others could have been killed when police officers returned sharp fire believing shots to have been fired from the bushes and crevices in the koppie by protesters. The police officers are prepared to accept that they may have been responding to 'friendly fire' believing it to be fire from the protesters. Without forensic evidence, we are unable to give an unqualified account explaining the death of some of the persons inside Koppie 3.²⁸⁸

The final SAPS heads of argument

- 140) As indicated, the SAPS opening statement therefore allows for the possibility that members of the SAPS may have made mistakes at Scene 2. Some shots the police fired may have been 'responding to "friendly fire" believing it to be fire from the protesters.'²⁸⁹ On the other hand, the SAPS personnel who appeared before the Commission essentially maintained they had done nothing wrong. Similarly, the final heads of argument prepared by the legal team appearing on behalf of the SAPS is a shift from their original position towards that of arguing that all of the shootings by SAPS members at Scene 2 were justified.
- 141) In its final heads of argument, the SAPS legal team seeks to justify virtually all of the deaths at Scene 2.
- a) The death of Mr Mkhonjwa (Victim N)²⁹⁰ and the death of Mr Mpumza (Victim C)²⁹¹ rely on evidence similar to that in the legal team's opening statement.

- b) The explanation provided for the killings of Mr Mdizeni (Victim A) and Mr Thelejane (Victim B)²⁹² and Mr Xalabile (Victim O)²⁹³ is similar to that provided in the opening statement.
 - c) The heads of argument argue that the nine people whose bodies were found 'inside the koppie'²⁹⁴ may have died 'not as a consequence of shots aimed directly at them but rather as a consequence of them being struck by rounds fired for other reasons.'²⁹⁵ As will be discussed (see Chapter 7), this significantly modifies the concessions regarding 'friendly fire' made in the opening statement.
 - d) Using the statement of Csts Mashishi, Somo, Motlohelo, Mabasa and Mlombo, all TRT members, the heads of argument argue that these corroborate each other and that these SAPS members were acting privately and in self-defence. The assertion that these statements corroborate each other is discussed (paragraphs 167–168).
 - e) According to the SAPS heads of argument, the account in one of the statements of Sgt Molangoanyane is the probable explanation of 'the death of Messrs Mosebetsane and Mabiya'²⁹⁶ (Victims G and H). This assertion is also discussed below (paragraphs 184–189).
 - f) The heads of argument refer to the deaths of Mr Mohai, Mr Sagalala and Mr Ntsoele saying that the circumstances around their deaths had not been explained at the Commission, except that they sustained fatal injuries at Koppie 3. (As indicated above, on the basis of photographic evidence it is reasonable to include Mr Mohai as one of those shot in the killing zone. Mr Sagalala's death is also discussed further below – paragraphs 269–272).
 - g) The SAPS heads of argument also quote four SAPS members (Cst Letswalo, Cst Ngonyama, Cst Mokhele and Lt Ndlela) who said that they had fired shots directly at strikers who were attacking them or other SAPS members. Cst Sefanyetso's statement is also quoted, though the heads of argument make no reference to the parts of his statement referring to when he shot 'to clear the bushes', though he said he had not hit anybody because there was no one there when he checked. None of these SAPS members therefore confirmed that any of their shots had hit, or killed, anybody.
 - h) The SAPS heads of argument also report on the accounts of a number of other SAPS members who said they had either fired into the air or the ground as warning shots.
- 142) The SAPS heads of argument rely on the following as sources of reference:
- a) A reconstruction of Scene 2 carried out by Mr Cees de Rover, a Dutch expert on policing, who acted as an expert witness on behalf of the SAPS. This was based on a 'walk-through' of the scene by Mr de Rover with a number of the SAPS members who had been present at Scene 2. The walk-through was conducted on 26 and 27 March 2013. Mr de Rover told the Commission that he did not maintain that 'what I have set out is then factually correct.'²⁹⁷ If it is correct, as the information in this report suggests, that many of the accounts that SAPS members provided were initially developed on the basis of the 'script' provided by the SAPS 17 August media statement, and later to provide a self-exculpatory account of some of the shootings inside Scene 2, then the implication is that this, rather than the actual events at Scene 2, is the narrative that Mr de Rover was presented with during the 'reconstruction'.
 - b) The evidence of Col. Modiba, Capt. Kidd, Maj. Gen. Naidoo and Col. McIntosh, in addition to 22 statements by other SAPS members. The shooters whose statements were used as a basis for the assertions made in the SAPS heads of argument about Scene 2 were responsible for 137/295 live rounds (46%) reported to have been fired at Scene 2. Shooters whose statements were used included only 13 of the 26 statements by SAPS shooters that were cited as a source for the 11 incidents in Exhibit L (see paragraph 136).
 - i) A feature of the case the SAPS presented to the Commission was therefore a limited degree of continuity in the evidence that it relied on to justify the actions of SAPS members.
- 143) The sources for the SAPS heads of argument therefore make no use of statements by 36 shooters (33 of whom used live ammunition). Those whose evidence was not used include some of the major SAPS shooters:

- a) Cst Mutsi and WO Visser, both of the K9 unit, who discharged 18 and 17 R5 rounds, respectively.
 - b) WO Batsi, Capt. Makukule and Cst Pelaelo of the East Rand POP, who discharged 12, 10 and eight rounds respectively. Capt. Makukule was shooting with an R5 and the others used 9mm firearms.
 - c) WO Makhubela of the Johannesburg POP, who shot eight 9mm rounds.
- 144) A significant aspect of the SAPS heads of argument is that it argues that the statement of Cst Letswalo may be relevant to explaining the deaths in the killing zone.²⁹⁸ However, the most reasonable interpretation of the evidence is that Cst Letswalo was one of the shooters involved in Shooting 1, the incident in which Mr Mkhonjwa (Victim N) was killed. The latter conclusion is consistent not only with Cst Letswalo's statement,²⁹⁹ but also with the report of the independent forensic and ballistic experts, which states: 'The closest 9mm cartridge case would be from AA13-24, and the deceased N was probably fired at from this south-eastern aspect of the koppie.'³⁰⁰ One cartridge case in this group, case AA15, was ejected from Cst Letswalo's 9mm pistol.³⁰¹
- 145) In addition to this obvious misinterpretation of the evidence relating to the shooting by Cst Letswalo, the heads of argument also make no use of the statements by WO Batsi, Cst Pelaelo and Sgt Mahlatsi. These four POP members were all part of a group who approached Scene 2 from FHA2. Not only do their statements indicate that they were involved in the incident in which Mr Mkhonjwa (Victim N) was killed and Mr Gadavu wounded (Shooting 1), but all shots other than AA15 in the AA13–24 group were fired from WO Batsi's pistol.
- As discussed below (paragraph 149), the Families' heads of argument point out that these statements appear to contradict Capt. Kidd's evidence about the circumstances in which Mr Mkhonjwa was killed. The misrepresentation of the evidence relating to Cst Letswalo and the failure to use the statements of WO Batsi, Cst Pelaelo and Sgt Mahlatsi is likely to have been motivated by a concern not to include evidence that would contradict Capt. Kidd's account of this shooting.
- 146) Various aspects of the SAPS heads of argument suggest they were compiled without much concern for their own credibility.
- a) They rely on the evidence of Maj. Gen. Naidoo, despite the inconsistencies between Maj. Gen. Naidoo's written statements and his oral evidence; none of his statements being corroborated by other SAPS members; and the evidence from SAPS members directly contradicting the account that he gave.³⁰²
 - b) They mistakenly say that the statements of the six TRT members corroborate each other. As discussed below, the statements indicate that these TRT members cooperated with each other in compiling their statements.
 - c) They state, 'Mr Xalabile [Victim O] died of a high velocity gunshot wound to the right side of the face',³⁰³ when he in fact died from a bullet wound to the left side of his neck.
 - d) They use the statement of Sgt Molangoanyane to account for the deaths of Mr Mosebetsane (Victim G) and Mr Mabiya (Victim H) even though Sgt Molangoanyane was using a 9mm pistol and Mr Mosebetsane and Mr Mabiya were killed by high-velocity (R5) gun shots.

General observations about the formal accounts provided by the SAPS

- 147) The above review of the principal submissions made on behalf of the SAPS therefore indicate that:
- a) All of them provide narratives that are supposed to account for the deaths of Mr Mkhonjwa (Victim N), Mr Mdizeni (Victim A) and Mr Thelejane (Victim B), and Mr Mpumza (Victim C).
 - b) The opening statement and heads of argument also put forward accounts of the death of Mr Xalabile (Victim O). Some of these accounts appear to be aligned with Incident 8 in Exhibit L.
 - c) A fairly minimal account of the deaths of nine of the other victims is provided in the heads of argument, while these are not referred to at all in Exhibit L and only in passing in the opening statement.

d) The deaths of Mr Mohai, Mr Sagalala and Mr Ntsoele are referred to in the heads of argument, but not in the other submissions.

Mr Mkhonjwa (Victim N)³⁰⁴

148) According to the SAPS, the statements that informed the description of Incident 2 in Exhibit L were those of Capt. Kidd, WO Batsi and Sgt Mahlatsi.³⁰⁵ However, in the heads of argument the two latter statements are no longer referred to at all. The heads of argument rely exclusively on the evidence of Capt. Kidd. As indicated, Capt. Kidd's account of the circumstances in which Mr Mkhonjwa was allegedly killed was one of the few consistent features of the formal accounts the SAPS provided of the events at Scene 2. In what appears to be Capt. Kidd's initial handwritten statement, he describes the shooting incident on the west side thus:

While I was watching over the members I could see clearly onto the hill, I witnessed people running in a small group of about ± 100 black males. They were carrying dangerous weapons that included spears, sticks, steel pipes, axes amongst other weapons. The group was making a hissing sound. They approached the members on the western side and stopped nearby some bushes. The males in the front were bending or crouching [crouching in original] and pointing their weapons in their hands at the police in an aggressive manner. At that time two (2) persons of the group near the bushes on the western side charged at the police situated on my right hand side.³⁰⁶ The two persons were making noises by shouting something. They charged in the direction of the police officers who were shouting the two persons to drop the weapons in their possession. These two (2) persons did not listen and proceeded forward towards the police. As I was only ten (10) metres away I could see their faces. They looked possessed and focussed on what and where they were going. At that moment shots were fired and one of the men fell to the ground. The other male ran back towards the hill to join the group of men standing near the bushes. This same male dressed with a red jacket, returned about 20 sec later.³⁰⁷ He ran straight towards the police. Shots were fired and he fell to the ground. After this happened the group of men standing near the bushes on the hill, went behind some rocks on the hill, shouting and raising their weapons in the air.

149) The Families argue that Capt. Kidd's statement about the events at the small koppie are contradicted by the statements of a number of the SAPS members who were also involved in the events on the west side of the small koppie.³⁰⁸

a) An additional reason to doubt the reliability of Capt. Kidd's evidence is that there are significant inconsistencies between his original statement and later statements, and verbal evidence about the reasons for the SAPS being stationed in FHA2, which is the location from which his group approached the small koppie.³⁰⁹ While the SAPS based its case with respect to the killing of Mr Mkhonjwa entirely on the version of Capt. Kidd, these inconsistencies also suggest that he may have changed his account on other questions of detail in order to align it with the formal account provided by the SAPS that began emerging at the Roots meeting.

150) Lt Col. Vermaak took a photograph from the Robinson helicopter at 16:07:24,³¹⁰ roughly a minute and a half (i.e. between 78 and 96 seconds) before Mr Mkhonjwa was fatally shot (as reflected in Table 3 this took place between 16:08:42 and 16:09:00). The photograph is taken from relatively close to Scene 2, from the east side, and shows a full view of the interior of the area (see photo on following page). A large number of strikers are scattered haphazardly inside the internal area, with a large proportion apparently unarmed. Capt. Kidd's group can be seen arriving on the north-west corner of the dry dam and other SAPS members from FHA2 are approaching from the south-west side. The water cannon on the north side is spraying jets of water into the central area, while the Johannesburg water cannon is spraying water at burning grass on the south side of the koppie. There is no evidence in this photograph of the group of '± 100' armed men that Capt. Kidd refers to in his statement.

Aerial photograph of Scene 2 taken at 16:07:24 from the north east side



Strikers scattered haphazardly inside the Koppie 3 area while bursts of spray are directed at them by the SAPS North West water cannons on the north side (the other water cannon is directing spray at burning grass on the south side. It starts spraying directly into the Scene 2 area a few seconds after this photograph was taken at 16:07:29). At the top of the picture towards the right side Capt Kidd's group can be seen arriving on the north-west corner of the dry dam. At the top on the left side other SAPS members are barely visible approaching from the south-west. (Image: Marikana Commission of Inquiry, Exhibit JJJ10, Image IMG4547.)

151) For the reasons raised by the Families and others it appears reasonable to doubt whether Capt. Kidd's account of the events leading to the shooting of Mr Mkhonjwa should be accepted. Consistent with the argument the Families put forward, the shooting of Mr Mkhonjwa appears to have happened almost immediately after the POP members from FHA2 arrived on the south side of the dry dam on the west side of the koppie.

As indicated above (paragraph 6 and 21), the perception of SAPS members about who they were up against may have been heavily influenced by the killing of two SAPS members in a confrontation with strikers on 13 August. In addition, the statements of Capt. Kidd and other members who were positioned at FHA2 indicate that when he briefed them at FHA2 Capt. Kidd emphasised the potential danger that the strikers might pose to the police.³¹¹

This was apparently followed by the information about the events at Scene 1, which may have led them to believe that the strikers had 'again' attacked the police. It was therefore possible that the POP members were afraid about what they might face from the strikers if they had to engage them. It appears from various accounts that a group of 30-40 strikers did break out of the west side of the small koppie area.

The Families argue that this was partly a response to the jets of water being propelled into Scene 2 by the two water cannons (the Johannesburg water cannon also directed several bursts of spray into the area starting from 16:07:29, shortly after the photograph referred to above was taken³¹²).

At that point, many of the strikers in Scene 2 may not have been aware of the police approaching from the west side and thought they could escape in this direction. However, the POP members may immediately have interpreted the emergence of the group on the west side to mean that they were facing an attack. The statements of Cst Pelaelo indicate that his reactions during the incident were influenced by a sense of panic³¹³ and it is possible that similar emotions influenced other police who were present.

Mr Mdizeni (Victim A) and Mr Thelejane (Victim B)

152) Accounts provided by the SAPS of the deaths of Mr Mdizeni and Mr Thelejane include:

- a) Incident 6, described in the following terms in Exhibit L: 'NIU members on their approach fire at charging protesters on the eastern side of Koppie 3, killing two protesters.'³¹⁴
- b) Similarly, the SAPS opening statement alleges that Mr Mdizeni and Mr Thelejane were killed when a group:

armed with pangas, spears and knobkerries... charged out of the koppie towards the police line. The police shouted out to the charging group to stop and fired warning shots into the ground. The group retreated into the bushes and charged once again. The police shot at the group when it did not stop in response to the warning shots and killed the two.³¹⁵

153) None of the evidence that is alleged to provide the basis for incident 6 in Exhibit L can be used to account for the deaths of Mr Mdizeni and Mr Thelejane. Similarly, the opening statement does not clarify on what basis it makes the above assertion.

- a) According to the SAPS,³¹⁶ the evidence regarding Incident 6, in which two people were said to have been killed, is based on the statements of Lt Col. Modiba, Sgt Chauke and Cst Plaatjie.³¹⁷
- b) However, Col. Modiba's statement does not in fact refer to any incidents in which he witnessed people being killed. Furthermore, when he was cross-examined Col. Modiba could only speculate about the deaths of Mr Mdizeni and Mr Thelejane and did not say he knew exactly how or why they were killed.³¹⁸
- c) Cst Plaatjie, an NIU member who fired four rounds, says he shot at a group of three men after they charged ['discharged'] 'towards me raising their weapons' and says 'some of them went down and other runaway', but does not clarify their identities or if they were killed.³¹⁹ Cst Plaatjie says that the three men were 10–15m away from him when he fired at them. However, no cartridges from Cst Plaatjie's R5 were found at Scene 2, so it is not possible to confirm the location at which he discharged his firearm.
- d) The victims' bullet wounds were on the righthand side of their bodies suggesting they were not charging at the people who fired the fatal bullets at them.³²⁰
- e) Bullet marks on the rocks above where their bodies were found suggest that the shooters were positioned at locations more than 40m away, close to where R5 cartridges from six members of the NIU were found.³²¹ None of the NIU statements clarify why these two men were killed by bullets in their right-hand sides by shooters firing from these positions. For instance, the statement of Cst Mandla (cartridge cases for 6 out of 8 shots that he fired were found on the east side) admits to shooting at some of the strikers, but does not indicate that anyone was killed:

Hand signal was used to advance to the hill for us to take the weapons and arrest. The strikers still had there (sic) weapons. We shouted command telling them to put down their weapons. They did not comply they started charging at us with there (sic) weapons. I fired four warning shots at the ground in front of me, they still advanced. I fired another four [crossed out: warning] shots on [crossed out: the ground] their direction and some of

them surrendered and put down their weapons. Some ran away with the weapons. We arrested them.³²²

Mr Xalabile (Victim O)

- 154) As with Mr Mdizeni (Victim A) and Mr Thelejane (Victim B), Mr Xalabile's body was found on the edge of the high rocks. However, Mr Mdizeni and Mr Thelejane's bodies were found on the east side of these rocks, whereas Mr Xalabile's body was found on the south side. It was wedged between a rock and a small tree trunk in an area of short trees and shrubs.³²³
- 155) As indicated above (paragraph 130), Incident 8 in Exhibit L appears to be comparable with SAPS attempts to account for Mr Xalabile's death but makes no reference to anyone being killed in Incident 8. It merely states that: 'NIU line with Maj. Gen. Naidoo sweeps through the bushes on the south side of Koppie 3 and fire shots at charging armed protesters in the bushes.'³²⁴ According to the SAPS,³²⁵ the statements that provide the basis for the allegations in Exhibit L that Incident 8 took place are those of Maj. Gen. Naidoo, Lt Ndlela and Cst Sefanyetso.³²⁶
- 156) The killing of Mr Xalabile is one of the killings that is focused on individually in the SAPS' opening statement. However The SAPS opening statement is ambiguous about the circumstances in which Mr Xalabile is alleged to have been killed. It states that SAPS members who were walking into the koppie 'returned fire' after shots were fired at them and that Mr Xalabile's body was found in the vicinity from which these shots were fired. It then also says that a person 'charged at the police who were in the koppie in the vicinity of O and the police shot at the person', but that 'in the absence of ballistic reports, it is not possible at this stage to say with certainty who is responsible for the shooting of this person.'³²⁷ This is possibly intended to imply that if there were ballistic reports this would make it possible to clarify whether Mr Xalabile was killed when the police returned fire at people shooting at them, or whether he was the person charging at the SAPS.
- a) The SAPS heads of argument state that:
- 'the likely explanation for the death of Mr Xalabile' was that 'an NIU member witnessed how an unaware K9 member was almost hacked on the head by a protestor wielding a panga. After shouting a warning to the K9 member, the NIU member fired at the protestor who was attacking the K9 member.'³²⁸
- b) Several pages later, they refer to the statement of Lt Ndlela as 'the probable explanation for the death of Mr Xalabile'.³²⁹
- c) The SAPS heads of argument also put forward two other scenarios as possible explanation for Mr Xalabile's death:
- i) That he was shot while SAPS members were shooting at one or more strikers who were shooting at them;³³⁰ or
- ii) That he was killed in the crossfire.
- 157) The heads of argument state, 'Mr Xalabile died of a high velocity gunshot wound to the right side of the face.'³³¹ As indicated below, this bears no relation to the post-mortem evidence.
- 158) In summary, Exhibit L, the SAPS opening statement and final SAPS heads of argument provide a total of five explanations for the circumstances in which Mr Xalabile may have been killed. These are:
- 1) He was part of a group of strikers who were charging at SAPS members who were 'sweeping the southern side of the koppie'. (This is Incident 8 in Exhibit L. As indicated, Exhibit L makes no reference to anyone being killed in the incident.)
 - 2) He was shot when SAPS members returned fire at strikers who were shooting at them (opening statement; alternative in SAPS heads of argument).
 - 3) He was shot while charging at the SAPS members on his own (opening statement).

- 4) He was shot by an NIU member when he witnessed how a K9 member was almost hit on the head by a protester with a panga (described as the 'likely explanation' in SAPS heads of argument).
- 5) He was killed 'in the crossfire' (alternative explanation in the SAPS heads of argument).

Table 16: Evidence relevant to analysing SAPS scenarios relating to the death of Mr Xalabile (Victim O)

Explanation	Naidoo	Ndlela	Sefanyetso	Dubeni	Mokhele	Ngwaleni
1. Group charging		Warning shots (Incident 2)	Undated (last saved 6 Nov.): shot 'to clear the bushes'	31 Oct: saw four people running toward him Shot once in the air and they ran away		
2. Shooting	Confirms scenario		2			
3. Individual charging		See analysis of Ndlela and Mokhele statements			See analysis of Ndlela and Mokhele statements	
4. Attack with panga						
5. Crossfire						

159) Mr Xalabile had R5 bullet entry wounds on the left-hand side of his lower neck and back of his left thigh.

- a) The bullet that entered his neck exited from the right side of his chest. This means that the bullet travelled on a trajectory from the left side of his neck downwards towards the right side of his body. This suggests that he may have been shot from a position above him.³³² It is also consistent with the fact that the R5 cartridges closest to Mr Xalabile's body were found on top of the high rock, suggesting that he was shot from this position. The scenario that most consistent with the ballistic and medico-legal evidence is therefore that Mr Xalabile was shot by one or two shooters positioned on the high rocks.

160) Beside the absence of a consistent version of the circumstances in which Mr Xalabile was killed there are few, if any, grounds for confidence that any of the explanations provided by the SAPS can be relied on.

- a) Regarding explanations 1, 3 and 4: in the initial photographs taken of Mr Xalabile's body there were no weapons next to it. (In photographs taken later, two iron rods had been placed next to his body.)³³³ There is therefore no evidence that Mr Xalabile was armed when he was shot.
- b) Regarding explanations 1 and 3: Mr Xalabile's wounds are compatible with the possibility that he was bending over when shot. If he was not bending over, the trajectory of the bullet that entered his neck would indicate that he was not charging towards this person. In addition, the bullet entry wound in the back of his left leg suggests that he was not charging towards the person who shot him.
- c) Regarding explanation 2: the only cartridges found at Scene 2 were linked to the firearms of SAPS members. There is no ballistic evidence that any of the strikers fired at members of the SAPS from inside Scene 2. In addition, the principal evidence that Mr Xalabile was killed while SAPS members were being fired at comes from the statement of Maj. Gen. Naidoo. As discussed (paragraphs 52 and 121), there are substantial reasons not to accept the reliability of Maj. Gen. Naidoo's account of the events at Scene 2.

d) Regarding explanation 5: The ballistic and forensic evidence indicates that the angle at which Mr Xalabile was shot and position in which he was killed suggests he was fired at by a shooter on the high rocks.³³⁴ This implies that the shooter was aiming at him directly and he was not killed in 'crossfire'.

- 161) Cartridges from the firearms of six SAPS members, five of whom were using R5s, were found on top of the rocks. The three whose cartridges were closest to Mr Xalabile were those of Cst Ngwaleni (five cartridges), Cst Mokhele and Lt Ndlela. Some of the NIU members provided contradictory statements, but none of them accounted for the death of Mr Xalabile. The statements by these members are discussed below.
- 162) One statement that possibly may describe the circumstances in which Mr Xalabile was killed is that of Sgt Harmse of the Potchefstroom K9 unit.³³⁵ Sgt Harmse describes approaching the koppie in the vicinity of the high rocks, but he did not ascend the rocks, possibly indicating that he advanced into the koppie on the south perimeter of the rocks, close to where Mr Xalabile was killed.

a) According to Sgt Harmse's statement (translated from Afrikaans):

We moved further into the koppie. I noticed that there was a man who came out of the bushes on the left in our direction at which point NIU members said to the man he must lie on the ground but the man did not lie down. There was shooting at the man from my right side but I can't say who it was who shot.³³⁶

b) The statement is of interest in relation to the shooting of Mr Xalabile on several counts. Not only does it appear to describe a shooting in the vicinity of where Mr Xalabile was killed, but if Sgt Harmse was approaching from the east side (as he describes earlier in his statement), near the base of the high rocks, then a shooting from 'my right side' would have been likely to have come from the top of the rocks. As indicated, this is consistent with the ballistic and forensic evidence including Mr Xalabile's wounds. In addition, consistent with the absence of evidence that Mr Xalabile was armed, Sgt Harmse's statement does not indicate that the man who was shot was armed or was attacking SAPS members when he was killed.

c) Immediately before this point in his statement, Sgt Harmse also refers to seeing a man who looked like he was carrying an R5.³³⁷ He said that he pointed the man out to Maj. Gen. Naidoo, after which the NIU members fired at the man, who fell down. In his consolidated statement, Maj. Gen. Naidoo refers to seeing a man with a long-barrelled firearm who was running away but does not refer to this man being shot.³³⁸

In other respects, Sgt Harmse's statement bears no significant resemblance to that of Maj. Gen. Naidoo and is not evidently unreliable, despite the questions about the reliability of Maj. Gen. Naidoo's statement. No R5s or other long-barrelled firearms were found at Scene 2 and it is unlikely that any strikers had such weapons in their possession. Nevertheless, it is possible that SAPS members thought that one of the strikers, who was possibly carrying a weapon of some kind, was carrying a R5 or other weapon of this kind.

Other deaths in the 'killing zone'

- 163) As indicated, the opening statement by the SAPS legal team indicated that the SAPS might not be able to give an 'unqualified account' of all of the deaths at Scene 2. In particular, it stated:

The evidence will be that some of the thirteen protesters who were shot and killed at Koppie 3 had charged at police officers with dangerous sharp weapons and had been shot in self defence... Others could have been killed when police officers returned sharp fire believing shots to have been fired from the bushes and crevices in the koppie by protesters. The police officers are prepared to accept that they may have been responding to 'friendly fire' believing it to be fire from the protesters.³³⁹

- 164) However, a different approach is taken in the SAPS heads of argument. In this document, the SAPS lawyers:
- a) State there is no direct evidence indicating which member was responsible for the deaths of Victims D, E, G, H, I, J, K, L and M (incorrectly referred to as N).³⁴⁰
 - b) Acknowledge, 'The account is that the nine (9) deceased persons may have died not as a consequence of shots aimed directly at them but rather as a consequence of them being struck by rounds fired for other reasons, travelling through that area'.³⁴¹ These included 'rounds fired by members of POP from the north, NIU from the east, TRT and K9 from the south and TRT from the west'.³⁴²
 - c) Suggest that many of the bullets fired into the killing zone were linked to cartridges identified in the 'ballistic investigation report'.³⁴³ They then argue that the evidence suggests that, despite not being aimed at those who were killed, the shootings themselves are likely to have been justified. Over the following 16 paragraphs (paragraphs 219–234), the heads of argument suggest in a speculative manner that a number of statements by SAPS members provide a putative justification for these shootings. The statements relied on are those of:
 - i) Cst Mashishi, Cst Somo, Cst Motloheloa, Cst Mlombo, Cst Mabasa and Cst Thoka of the Pretoria TRT. A total of 13 cartridge cases from their six R5 rifles were found on the south side of Scene 2 (paragraphs 219–222 of the heads of argument).
 - ii) Cst Letswalo of the POP (paragraph 223 of the heads of argument). The shooting by Cst Letswalo is discussed above (paragraph 146 of this report). As indicated, the evidence suggests that Cst Letswalo fired towards the strikers on the west side of the koppie and not in the direction of the killing zone.
 - iii) WO Mvunge of the TRT, who fired from the northern part of the east side, roughly 100m from the killing zone.³⁴⁴ WO Mvunge states that he fired two rounds into the air (paragraph 224 of the heads of argument).³⁴⁵
 - iv) Cst Ngwaleni, Cst Ngonyama, Cst Poswa, Cst Mandla, Cst Mokhele, Lt Ndlala, Cst Dubeni, Cst Sefanyetso and Cst Nyathela, all of the NIU (paragraphs 225–233 of the heads of argument). As indicated above (Table 11), some of their cartridge cases were found on the east side and others were found on top of the high rocks, with one cartridge case from Maj. Gen. Naidoo. Cst Mandla and Cst Poswa say they shot warning shots into the ground and cartridge cases from their R5s were found on the east side, some distance from the killing zone, with the intervening area composed of boulders and thick undergrowth. The report of the independent ballistic and forensic experts indicates that it is likely that shooters firing from these positions shot towards the positions where the bodies of Victims A and B were located and not towards the killing zone. Cst Dubeni says he shot into the air with his R5. Considering that he was shooting with an R5s, there is no possibility that bullets shot into the air would have hit strikers in the killing zone. Cst Ngwaleni also says that all of his shots were warning shots. Further aspects of the statements of some of the NIU members are discussed below.
 - v) Sgt Molangoanyane of the Zeerust K9 unit (paragraph 234 of the heads of argument). Sgt Molangoanyane's statements are also discussed below.
- 165) As indicated above (paragraphs 144 and 146), in seeking to use the statements of these SAPS members to justify the deaths of the victims in the killing zone the SAPS legal team appears to have shown little apparent concern for the reliability of the accounts provided or the plausibility of the assertion that these shootings caused the deaths in the killing zone. The attempt to provide an exculpatory account therefore does not amount to a credible account of the events at Scene 2. This is illustrated below.
- 166) It is also not clear why the heads of argument make no reference to the statements of some of the principal shooters such as Cst Mutsi and WO Visser, who admit to shooting into the south side of Scene 2 and are likely to have contributed to the death toll in this area.

Statements by TRT members who were on the south side of the small koppie

167) The TRT members who were involved in the shooting at the small koppie were all part of the FHA2 group under the command of Capt. Kidd that approached the small koppie from the west side. As indicated above, the police from FHA2 approached the west side of the koppie in different groups. It is apparent from the ballistic evidence (and corroborated by some SAPS statements) that a group of six TRT members from FHA2 did not remain on the west side but moved onto the south side and were involved in shooting from this side. Cartridge cases for 13/27 shots fired, including cartridge cases for all six members of this group, were found close together, indicating that members of this group fired from similar positions on the south side of the koppie.³⁴⁶ They were therefore positioned on the south side of the small koppie indicating that they had moved away from the west side where the other SAPS members from FHA2 were.

168) In discussing the statements of these six TRT members, the SAPS heads of argument talk about how the statement of Cst Somo, Cst Motloheloa, Cst Mabasa, Cst Mlombo and Cst Thoka all 'confirm' the statement of Cst Mashishi and each other.³⁴⁷ However, this is misleading. The degree of similarity between many of the passages in the statements of members of the group is so great that it is clear they colluded in writing their statements. It is therefore a misrepresentation to say that these statements 'corroborate' one another. The similarities between them indicate they are not independent accounts, but rather that these SAPS members, who said they had fired into the air, cooperated with each other in compiling them.³⁴⁸

a) In the cases of Cst Somo and Cst Mlombo, the two statements are very similar to each other. For instance, towards the end of Cst Somo's statement, he says:

Despite our efforts by instructing them to stop, they continued towards us by charging with big numbers. While they were approaching towards us a shot was fired from the strikers to the police and the water cannon and public order members retreated [retrited in original] by moving backwards since the shots were fired at us. We were then left with no cover as we were on an open space next to the mountain. We could not clearly see who was firing the shot at us as the strikers were charging at us in big numbers.³⁴⁹

b) Cst Mlombo's account is that:

Despite our efforts to instruct them, they continued to approach with large number. While they were approaching a shot was fired from them to the police and the water cannon [inserted: and P.O.P. members] decided to fled the scene moving [inserted: backwards] since there were shots fired at us. Then we were left without a cover and we were on an open space next to that Hill. We could not clearly see who was firing the shots since they were [crossed out: taking cover with big stones on the Hill] charging at us in big numbers.³⁵⁰

c) Cst Mabasa's statement does not resemble that of Cst Somo's as closely as that Cst Mlombo's does. His statement reads in part:

We continued to tell them to stop and surrender but we failed to win, they continued coming in large numbers. Shot was fired but I could not see who fired the shot to us or our direction. We used water canon as our cover and POPs fled the scene. We were left on an open space facing the mountain. They (strikers) continued charging at us in large numbers holding their dangerous weapons.³⁵¹

d) Cst Mabasa's statement has certain similarities to the statement of Cst Somo in certain ways including in terms of the organisation of the paragraph and the use of similar terms or phrases. However, in this passage, the most obvious resemblance is between Cst Mabasa's statement and that of Cst Motloheloa, which states:

We continued to tell them to stop and surrender but we failed to win and they were coming in large numbers. Shot was fired but I could not see who fired to us or at us (police). Water cannon [inserted: our cover] and POPS flee the scene, we were left on an

open space facing the mountain. They (strikers) continued charging at us in large numbers holding their spears, pangas, stone.³⁵²

- e) Though there is a degree of variation between the statements of members of this group,³⁵³ each statement shows such strong similarities with one or more of the other statements that there can be little question that the statements were written collaboratively. Where statements are written in this way, it is misleading to say that they 'confirm' each other. Rather, they may be taken to indicate that the SAPS members involved were concerned they might contradict one another if they did not cooperate in writing their statements. This raises questions about the trustworthiness of their accounts.
- f) The accounts provided in these statements are not corroborated by objective evidence and are consistent with the possibility that they were written in order to conform to the script provided by the SAPS media statement of 17 August issued by Commissioner Phiyega.
- g) The statements of the six TRT members all refer to the movement of the water cannon away from where they were positioned, which, according to their statements, left them without cover. Evidence from the water cannon personnel is that the water cannon, which is a 'soft top' rather than armoured vehicle, moved away after being hit by one or more bullets.
 - i) The heads of argument make the obviously misleading and unjustified assertion that the movement of the water cannon is 'independent confirmation that there were indeed bullets shot from the bushes'.³⁵⁴ In the Heads of Argument this is intended to confirm the assertion, ostensibly made by SAPS members, that 'The attackers were darting in and out of the bushes and also fired gunshots at the police.'³⁵⁵
 - ii) However, the immediately preceding paragraph of the heads of argument acknowledges that there were bullets 'travelling through' the small koppie area that were being fired by members of the various police units. There is no reason why one of these bullets could not have hit the water cannon. The likelihood that this was so is supported by the evidence that, although three firearms found at Scene 2 apparently belonged to strikers, no cartridges from these firearms were found at the scene.

Lt Ndlela's statements

- 169) Maj. Gen. Naidoo fired at least one shot from on top of the high rocks with a 9mm pistol (only one of two cartridge cases from shots fired by Maj. Gen. Naidoo was found). The other five SAPS members who fired from this position were all members of the NIU:
- a) Lt Ndlela of NIU Durban – six shots fired: four cartridge cases from his rifle found at the top of the high rock (others not found).
 - b) Cst Ngwaleni of NIU Mthatha – 25 shots fired: eight cartridge cases found on top of the high rocks and 15 found in two positions on the east side (two not found).
 - c) Cst Mokhele of NIU Mthatha – nine shots fired: three cartridge cases found on top of the high rocks and six found in two positions on the east side.
 - d) Cst Dubeni of NIU Mthatha – three shots fired: one cartridge case found on top of the high rocks (others not found).
 - e) Cst Sefanyetso of NIU Pretoria – seven shots fired: one cartridge case found on top of the high rocks and six found in positions on the east side.³⁵⁶
- 170) Lt Ndlela was therefore one of the shooters who fired from the top of the high rocks, with at least four of his six shots fired from this location. He was one of the NIU representatives called on to attend the Roots meeting and attended the first four days of the meeting.
- 171) Three of Lt Ndlela's statements were examined in compiling this report. They are referred to as statements A, B and C on the basis of the conclusion that this is the order in which they were completed.

- a) Statement A (final three pages of file 124) is the original draft of Lt Ndlela's handwritten statement in cursive writing.
- b) Statement B is a signed statement that is a slightly revised version of the original. This is the statement submitted to the IPID (both A and B are included in Exhibit MMM25). It should be noted that his warning statement indicates that he will make a statement in the presence of his attorney. The statement is appended to his warning statement and though undated a correction is initialled with the date 23rd August (the same as that of his warning statement).
- c) Statement C is a version of the statement. Though the statement is undated, two corrections are dated 16 October. Statement C is in the same cursive handwriting as statement A. The fact that corrections in statement C are initialled by Lt Ndlela confirms that it is his statements.³⁵⁷

172) Statements A and B are very similar and would appear to have been completed within the first week after the massacre. It appears that statement A is an initial draft in cursive writing and statement B is a version of statement A, with minor modifications, written in print lettering. On the other hand, although the first five paragraphs of statement C are almost exactly the same as those in statements A and B, the final long paragraph in statement C, which deals with the events at the Scene 2, is substantially different.

173) Statement B describes a single continuous attack, 'as we started clearing the bushy side of the koppie'. During this incident, armed warriors 'from behind the rocks charged at us'. Lt Ndlela 'shouted at them to drop their weapons and surrender but they didn't.' The warriors 'came close to less than one hundred metres and it was clear that they were attacking'. Realising that their lives were in danger, Lt Ndlela 'started shooting on the ground between us and them to warn them' (in version A this was estimated to be 'about three shots').

However, the charge by the warriors continued; at this point there was gunfire from an unknown source. When the charging warriors 'came too close', one of them was about to attack his colleague who was not aware of the attack. The colleague (or the warrior) could not hear Lt Ndlela shouting to warn him (or stop the warrior). He fired again, this time aiming at the lower body of the person. Apparently, the person that he shot and other warriors then ran back behind the rocks, though Lt Ndlela 'saw one of them falling'.

174) Statement B indicates that the shootings by SAPS members took place during a single continuous attack by a group of 'warriors'. The attack is carried out by 'warriors' 'from the rocks' and after the attack they run back behind the rocks. The group of warriors approaches from a distance of 100m away, 'while we started clearing the bushy side of the koppie', and only retreat after both of the incidents in which Lt Ndlela discharges his R5. It appears possible that narrative in Statement B (signed 23 August) has been shaped by the 17 August SAPS media statement. Points of similarity with the SAPS media statement include not only the overall nature of the events described but also:

- a) Version A refers to 'traditional weapons'. The media statement, however, refers to dangerous weapons. In statement B, the words 'traditional weapons' have been crossed out leaving the word 'dangerous' (presumably this is a mistake and the intention was to refer to 'dangerous weapons').
- b) The media statement also says that 'the police retreated systematically' and refers to the 'high bushy ground' as well as to 'warriors'. In Lt Ndlela's statement the words 'systematically', 'bushy' and 'warriors' are all used, though the reference is to the protesters moving systematically to the koppie and he refers to 'the bushy side of the koppie'.
- c) One difference between the two is that Lt Ndlela only indicates that the gunfire was from an unknown source and does not say that the warriors were shooting.

175) Corrections to Lt Ndlela's statement C are initialled on 16 October, almost two months after statement B, after the Roots conference and during the period in which the SAPS was involved in developing the account of the events at Scene 2 provided in Exhibit L. As indicated, the first five paragraphs of statement C are the same as statement B, but the final paragraph gives a description of events that is completely different from statement B. Statement C was therefore clearly written for the purpose of modifying

Lt Ndlela's account of the events at Scene 2 as provided in statement B. In statement C, the single continuous event described in statement B becomes a series of events. While in version B the strikers only retreat at the end of the whole episode, in statement C there are three distinguishable 'events'.

a) In the first event, 'as we were reaching the koppie', 10 armed protesters attack. Lt Ndlela shouts at them to drop their weapons, but they only retreat after being driven back by 'gun shots from our lines'.

b) In the second event, while the NIU is 'tactically sweeping' there is a second attack, this time by a group of six armed protesters. Lt Ndlela fires three warning shots and this group also retreats. During this episode, there is gunfire from an unknown source, but the statement specifies that it is 'from the Southern side'.

c) In the third event, Lt Ndlela fires at a protester charging at a colleague, who is unaware. In statement C, this incident occurs 'When carrying on approaching I noticed one protester charging from behind the rock', while in Statement B it occurs during the course of the continued attack by the warriors, ending: 'When the charging warriors came too close I could see one of them attacking my colleagues from the rocks'. In statement B, therefore, the individual who attacks the colleague is part of the group of 'warriors', while in statement C a sole 'protester' charges at the colleague.

176) Other differences between statements B and C include:

a) Statement B appears to acknowledge that one of the strikers might have been hit by bullets fired by Lt Ndlela ('I saw one of them falling and the rest ran behind the rocks.') In statement C, Lt Ndlela omits any reference to someone falling.

b) In statement B, the distance from which the strikers were attacking is described as 'less than one hundred metres'. But in statement C there is no reference to this distance and the charging protesters are now about 15m away. The reference to a distance of 15m is also contained in the version of Exhibit L that was last saved on 2 October,³⁵⁸ two weeks before Lt Ndlela initialled this version of his statement. Referring to events on the eastern side this says that "When the attack commenced the attackers were approximately 15 meters away from the advancing NIU members." It is reasonable to ask why there is this discrepancy between Lt Ndlela's earlier and later statement, and how it happened that the account provided in the draft of Exhibit L (last saved on 2 October) came to be aligned with that in Lt Ndlela's statement (initialled on 16 October).

Cst Mokhele's statements

177) Another interesting aspect of the NIU statements concerns certain similarities between the statements of Lt Ndlela and Cst Mokhele. Lt Ndlela was from Durban NIU, while Cst Mokhele was from Mthatha NIU. One of Cst Mokhele's commanders, Lt Col. Nkebe, attended the Roots meeting with Lt Ndlela.

178) Cst Mokhele was part of the group that shot on the top of the high rocks. Three cartridge cases from his rifle were found next to those of Cst Ngwaleni and Lt Ndlela, in the positions closest to where Mr Xalabile's body was found.³⁵⁹

179) One element of the statements of both Lt Ndlela and Cst Mokhele is a reference to an alleged incident in which one of the strikers tries to attack a SAPS member.

a) One of Cst Mokhele's versions of this event is in an submitted to the IPID in August 2012. In this statement, the incident is described in the following terms:

We proceeded with our job of clearing the hill. We were approaching the hill from different directions, and while we were busy searching for the striking miners. (sic) I saw one black male holding a spear on the right hand with a blocket [presumed intended to be blanket] on the left hand, trying to stab my colleague, I shouted at him but he ran to that member I then shot on his direction aiming at the lower body and then he ran away hiding behind the rocks.³⁶⁰

b) Cst Mokhele has a later statement, dated 31 October:

We proceeded with our task of clearing the hill and as we were busy moving, keeping observa... [unclear], searching for other miners I saw one person with a blanket carrying a spear on the other hand attacking a police official who was a distance from where I was standing. I shouted at the miner but he proceeded and attacked the police official. I could realise that the police official was not aware of that miner. I pointed towards the miner at his feet and discharged one shot. I aimed at his lower body and shot but he ran away.³⁶¹

180) A similar alleged incident is described in Lt Ndlela's statements.

a) His statement of 23 August describes:

When the charging warriors came too close I could see one of them attacking my colleagues from the rocks. I could see my colleague was not aware. There was a lot of noise so he [who?] could not maybe hear me shouting. I aimed at his lower body while shooting. He ran behind the rocks. I saw one of them falling and the rest ran behind the rocks.³⁶²

b) As indicated in Lt Ndlela's statement that is initialled on 16 October, this is now a third discrete incident rather than part of the first continuous sequence of events:

When carrying on approaching I noticed one protester charging from behind the rock being a threat to an unaware colleague who was approaching from southern side. I aimed at his lower body and fired three shots. He ran behind the rocks and I am not sure if I hit him. I then moved closer while shouting for them to come out and leave their weapons.³⁶³

181) The first Cst Mokhele statement was completed in August 2012. However, the second statement was clearly completed at a time that coincides with the period when the final draft of Exhibit L was still being developed. It is interesting that the detail about the colleague being unaware, which is a feature of both of Lt Ndlela's statements, is inserted in the second statement.

Cartridge cases from Lt Ndlela were found immediately next to those of Cst Mokhele, but there is no reference to the proximity of colleagues by either SAPS member. Nevertheless, both men also say that they shot at the man's 'lower body'. All of the statements therefore indicate that, despite the striker carrying out a potentially lethal attack on their colleague, they aimed at his 'lower body'.

182) While Cst Mokhele's IPID statement does not indicate the number of shots he fired at the man, in the 31 October statement he says explicitly that he fired 'one shot'. In relation to this statement, the SAHRC heads of argument, state that Cst Mokhele:

claims to have fired four shots on his approach to the hill, and then says that when he was clearing the hill, he witnessed a protestor attacking a police member. He then says that he fired a single shot towards the lower body of the striker 'but he ran away'. This account also appears dishonest. [Three] cartridges were found from Cst Mokhele's weapon on top of the rock at Scene 2. Cst Mokhele's statement accounts for only a single round fired from that location.³⁶⁴

Cst Ngwaleni's statements

183) Among the NIU shooters who were on top of the high rocks, none of Cst Ngwaleni's statements admit to firing from this position. In his first statement to IPID he failed to mention that he had fired any shots at all. Some time prior to 19 October 2012 he then submitted a second statement where he admitted to firing five shots. At a date 'after ballistic evidence showed he had fired 25 rounds' he submitted a further statement in which he acknowledged that he had fired 25 rounds. In his second statement he only admitted to firing his R5 'in the air' while approaching the koppie. However cartridge cases from his R5 were found both at positions to the east of the rocks and on top of the high rocks. In comments on Cst Ngwaleni's statements the SAHRC heads of argument state that: 'His evidence is transparently dishonest. The ballistic evidence shows that Cst Ngwaleni fired in at least two different locations, at least 60m away

from each other. In his statements, he admits to firing shots on the approach to the koppie, but not to firing at least eight more rounds from on top of the rock where his cartridges were found.³⁶⁵

Sgt Molangoanyane's statements

- 184) Sgt Molangoanyane was a member of the Zeerust K9 unit and approached the small koppie with the group from FHA1 under Maj. Gen. Naidoo.
- 185) According to what appears to be his first additional statement³⁶⁶ and the official SAPS firearm discharge report, Sgt Molangoanyane fired a total of 12 shots with his 9mm. One cartridge case from his firearm was found on the south side of Scene 2.
- 186) One of Sgt Molangoanyane's statements is cited as the source for Incident 10 in Exhibit L.³⁶⁷ According to Exhibit L, in this incident, 'The K9 members approach and enter the bushes on the south western side of Koppie 3 and shoot at armed protesters who attempt to attack them when moving between the large rocks.'³⁶⁸
- 187) The final SAPS heads of argument suggest that what appears to be the second additional statement by Sgt Molangoanyane³⁶⁹ may be relevant to accounting for the deaths of Mr Mosebetsane (Victim G) and Mr Mabiya (Victim H).³⁷⁰ Sgt Molangoanyane may have written the statement in November 2012, around the time that Exhibit L was being finalised, as it was last saved on 6 November, but it is otherwise undated.³⁷¹
- 188) The second additional statement provides a narrative account of the alleged incidents in which he claims to have been involved that is completely different from what appears to be his initial written statement, also possibly submitted in November.³⁷² In the second additional statement³⁷³ Sgt Molangoanyane alleges that he ran into Scene 2 after he saw movement in the 'shade'. He was involved in a confrontation with a panga-wielding man, shooting him in the thigh and left arm and finally the head, though the man was still alive when he fell down.³⁷⁴ Sgt Molangoanyane was then involved in a confrontation with another panga-wielding man, who he shot in the hand. After this, Sgt Molangoanyane 'heard shots', apparently fired by another person, and saw the man 'going down'.
- 189) It is not apparent why the SAPS heads of argument seek to suggest that Sgt Molangoanyane's statement may account for the deaths of either Mr Molangoanyane or Mr Mabiya.
 - a) No cartridges from Sgt Molangoanyane's firearm were found close to where Mr Mosebetsane and Mr Mabiya died or anywhere inside Scene 2. The only cartridge case linked to Sgt Molangoanyane's firearm was found on the south side of the koppie. No cartridge cases from him, or any other SAPS member, were found inside the small koppie area.
 - b) Sgt Molangoanyane was using a 9mm pistol, whereas Mr Mosebetsane and Mr Mabiya were killed by high-velocity (R5) rounds. Mr Mosebetsane had R5 bullet entry wounds under the right eye and in the top lip. Mr Mabiya was shot with an R5 round in the back of the head. Neither Mr Mosebetsane nor Mr Mabiya had 9mm bullet wounds in the head, thigh, left arm or hand.³⁷⁵

WO Visser and WO Mentesh's statements

- 190) In addition to Cst Mutsi and Sgt Molangoanyane, WO Visser was one of the main K9 shooters at Scene 2. Cst Mutsi, WO Visser and Sgt Molangoanyane, may reasonably be regarded as some of the principal contributors to the gunfire into the killing zone.
- 191) Inconsistencies between Cst Mutsi's statements are noted above (paragraph 108).
- 192) There are also inconsistencies between the initial (see paragraph 107) and additional statements submitted by WO Visser. Notably, in his IPID statement, submitted in Afrikaans, WO Visser says that 'there was shooting from the crowd at the police with firearms' and he returned fire, towards where the people were firing at him.³⁷⁶ There is a shift in his supplementary statement: not only does he now say that there was only a single man shooting at him and his colleagues, but also that he could clearly see the man who was allegedly shooting at him.³⁷⁷

193) Another K9 member, WO Mentesh (one 9mm round discharged) also makes the same shift. In his second statement, but not his first, he said he had seen a striker with a gun.³⁷⁸

The shooting of Mr Mpumza (Victim C)

194) The account of the death of Mr Mpumza (Victim C, Shooting 4) provided in the SAPS opening statement is as follows:

The body marked 'C' was inside the koppie and came out running (sic) towards the line of police who were moving towards the koppie to effect arrests. The shooting from the koppie had stopped at this point. The person was armed with a spear and a knobkerrie. Members of the Police Service shouted at the person to stop. The person broke his run and walked towards the police. The police instructed the person to lie flat on the ground on his stomach. The person knelt down and placed his hands on the ground without letting go of his weapons. A police officer approached the person to effect an arrest. The person jumped up with a spear in his hand and lunged at the police officer missing the neck of the police officer. The police officer fired at the person and the person continued to lunge and attempted a further assault on the police officer. The police officer continued to shoot at the person and another police officer also shot at the person. While continuing to shoot at the person, the police officer under attack tripped and fell on his back and the person also fell on his back next to the police officer.³⁷⁹

195) The account submitted two years later in the SAPS heads of argument is similar in many respects.

'Capt. Kidd's members on the north western side of the koppie provided support to members of POP who were conducting arrests in that area. It is in this area that the members encountered Mr Thobile Mpumza (Victim C), who was running from the south-west direction of the koppie and the direction of Capt. Kidd. Mr Mpumza was confronted by members of TRT and ordered to lie down and to put his weapons down. He pretended to put down his weapons and to lie down on his hands. When Cst Sebetjane went to arrest him, Mr Mpumza jumped up and attempted to stab Cst Sebetjane with a spear. Cst Sebetjane fired at Mr Mpumza and when Mr Mpumza continued to charge at Cst Sebetjane, Cst Mabe also shot in the direction of Mr Mpumza. Mr Mpumza suffered 12 bullet wounds and died on the scene. Mr Mpumza was shot in self- and private defence. Col. McIntosh witnessed the attack on Cst Sebetjane. He testified that from where he witnessed the attack, it appeared that Mr Mpumza had stabbed Cst Sebetjane, which he found not to be the case when he arrived at the scene.'³⁸⁰

196) The opening statement therefore indicates that two police officers fired at Mr Mpumza. The heads of argument refer to two police officers, Cst Sebatyane and Cst Mabe (both TRT members). However, the evidence they provide is not consistent with the post-mortem records. Mr Mpumza suffered around 12 or 13 bullet wounds, but the post-mortem indicates that most of these were from high-velocity rounds.³⁸¹ Cst Sebatyane was using a 9mm and most or all of the rounds that he fired appear to have missed Mr Mpumza.³⁸² According to the Commission report:

Cst Mabe said that he fired four shots at the legs and lower body of Mr Mpumza in private defence. A bullet and two bullet fragments were retrieved from the lower limbs of Mr Mpumza. There is no explanation as to who fired the other shots that inflicted the other wounds described as being caused by high velocity gun shots.³⁸³

In addition to the gunshot wounds to the lower limbs Mr Mpumza sustained a large number of other bullet wounds, most of them from high velocity firearms, largely to the left side of his torso as well as his left arm. They included wounds to the left side of his chest and left armpit.³⁸⁴

Neither the account provided by Cst Sebatyane, that of Cst Mabe nor that provided in the opening statement or heads of argument can therefore be regarded as an account of how Mr Mpumza was killed.

197) Exhibit L also deals with the incident but does not mention Cst Mabe. Instead it says that the two police officers involved were Cst Sebatyane and Cst Buthelezi, though it does not actually say who fired at Mr Mpumza or who killed him.³⁸⁵ Cst Buthelezi also stated that he shot at Mr Mpumza during this incident, but he fired two shots with a 9mm. His statement therefore does not account for Mr Mpumza's high-velocity gunshot wounds. The evidence therefore implies that a fourth SAPS member was also involved in the incident, and possibly fired the most lethal rounds, unless Cst Mabe fired more rounds than he admitted to.

198) There is therefore no SAPS version of the death of Mr Mpumza that accounts for the gunshots that caused his fatal injuries. The Families argue that the evidence contradicts the SAPS members' assertions about the events immediately before the shooting of Mr Mpumza.

a) Using footage from a cell phone video filmed by Capt. Ryland, the Families argue that Mr Mpumza probably first tried to hide in some large bushes close to the position where he was killed, roughly 20 seconds before he was killed.³⁸⁶

b) The audio record provided by the video also does not support Cst Sebatyane and Cst Buthelezi, 'who say that they shouted at Mr Mpumza repeatedly to stop and put down his weapons.'³⁸⁷

c) The Families quote the statement of Capt. Greyling, one of the SAPS negotiators, who describes: about four police officers chasing a striker with an 'assegai'. Another Nyala blocked this striker from fleeing, which resulted in him (the striker) turning around and with the 'assegai' above his head, stormed the police officials who was chasing him. He was about 5m away from the nearest police official when this official opened fire on the striker, killing him almost instantly. Lt Col. McIntosh tried to revive the striker but he was already dead.³⁸⁸

d) The Families argue: 'Capt. Greyling was one of the negotiators. He was in the same Nyala as Lieutenant-Colonel McIntosh. He was thus an important SAPS witness. He had no motive or reason to lie or to give evidence that is damaging for SAPS.'³⁸⁹

e) The Families point out that Capt. Greyling's account contradicts the version of Cst Sebatyane and others that Mr Mpumza 'was killed in a close-quarters, hand-to-hand fight'.³⁹⁰ The Families point out a number of other differences between the accounts of the SAPS members.³⁹¹

f) The Families argue that the most likely explanation for Mr Mpumza's actions include that, before running out of Scene 2, he had 'seen people killed or at least shot before doing so' or at least 'heard the gunfire' and was probably terrified as a result. The Families state that the most plausible explanation is that:

Mr Mpumza attempted to hide in the bushes... saw or heard that members of the SAPS had seen him and were closing in and then tried to 'make a run for it' past Constables Sebatyane, Mabe and Buthelezi, who all opened fire at him for the nine seconds audible on Exhibit I2.³⁹²

199) It appears reasonable to argue that Mr Mpumza was trying to flee from Scene 2 and likely that he had witnessed not only some of the shootings, but also some of the subsequent assaults by SAPS members on strikers (see below). Nevertheless, it is arguable that the Families' account does not do full justice to the evidence. If Capt. Greyling's statement is credible, then police officers were chasing Mr Mpumza who had a spear or assegai.

According to Captain Greyling, after he was blocked from fleeing by a Nyala, Mr Mpumza turned round and 'with the assegai above his head', rushed at ('stormed') the police officials who were chasing him. According to Capt. Greyling, 'He was about five metres away from the nearest police official when this official opened fire on the striker.'³⁹³ However, it appears that at least four SAPS members opened fire on Mr Mpumza, though this may not have been apparent to Capt. Greyling from where he was.

200) Mr Mpumza was the last person to be shot at Scene 2. The incident in which he was killed appears to have happened more than a minute after the other shootings had ended. It appears clear that he raised

his spear, though his exact motivation for doing so is unclear. He may have primarily wished to frighten the police away so that he could flee. It seems clear that he was trying to avoid being apprehended. Though in his final moments he might be described as ‘attacking’, it seems reasonable to conclude that his primary motive was to avoid capture and his actions might therefore be seen as having been in some respects defensive in nature (see further paragraph 276(b)).

SAPS statements indicating that shootings by SAPS members were not clearly justified

- 201) At least some statements by SAPS members indicate that SAPS members shot at strikers, or in the direction of strikers, in circumstances where this was not clearly justified.
- 202) The statement of Sgt Harmse is discussed above (paragraph 162). This report suggests that Sgt Harmse’s statement may be relevant to understanding the circumstances in which Mr Xalabile (Victim O) was killed.
- 203) The other statements discussed here, of Lt. Col. Gaffley and the occupants of SAPS Nyala Papa 11, are most relevant to understanding other shootings by SAPS members that resulted in the deaths in the killing zone.
- 204) Lt Col. Gaffley was deployed at Marikana as the STF ground commander. The Casspir he was in with other STF members was one of the first vehicles to arrive at Scene 2. From photographs, it is apparent that it remained on the south edge of Scene 2, just outside of the overgrown area, from at least 16:07:18³⁹⁴ to 16:16:5,³⁹⁵ and probably remained there after this.

a) According to Lt Col. Gaffley’s statement of 16 October:

11: We waited inside the Casspir for a little while and then I saw the K9 unit approaching from behind us. I order my members to get out of the vehicle, but not to approach as yet, but just to line up next to the Casspir. I also got out of the vehicle and started talking to the crowd ordering them to lay down their weapons, but this had no effect. I could not however identify any person within the crowd that was visible to me with any firearms in his hand. 12: At this stage I heard gunshots coming from the direction of the bushes in front of us, but could not see any person shooting. Then the K9 members also started firing from behind us into the koppie. I also heard shots from our left and right. 13: At this stage the Scorpion [another STF vehicle] had joined us and the members had formed a line in front of the Casspir, ready to approach the Koppie on foot. I ordered the members to fall back and take position behind the vehicles as it was clear that the police are firing from different directions and members could be caught in cross-fire. 14: I could see that some of the protesters were hit and members were still firing. This is when I started screaming the command ‘Cease fire’ at the members shooting from behind us. 15: The shooting started getting less and you could only hear individual shots every now and then. I then got back into the Casspir to have a better view into the Koppie. This then when I saw that there is actually a gap in the bush where the Casspir can drive right up to where a group of protesters were with their weapons. I then ordered the driver of the Casspir to drive into that gap. As we entered the Koppie, I noticed that there were bodies lying on the ground. Some looked like they were deceased and others looked like they were wounded, while others were just lying there in a surrendering position. As we entered the Koppie with the Casspir I also noticed that there were already other policemen inside the Koppie.³⁹⁶

b) The photographic evidence therefore indicates that Lt Col. Gaffley was present very close to the south perimeter of Scene 2 before the first shootings. From his statement it is apparent that he remained at Scene 2 until after the shootings had been completed and police entered Scene 2. He says, ‘I also got out of the vehicle and started talking to the crowd ordering them to lay down their weapons, but this had no effect’. Though his impression was that strikers who were armed were reluctant to surrender their weapons, he describes no combative conduct by the strikers and his statement seems to imply that they appeared placid enough for him to attempt communication with them.

c) In Exhibit L, the synopsis of this part of Lt Col. Gaffley's statements is that:

Lt Col. Gaffley started instructing armed protesters who were moving around amongst the bushes at the koppie to lay down their weapons. They did not adhere to the instructions. Shots were fired from an undetermined direction and Lt Col. Gaffley determined that to sweep and clear at that time would be dangerous for the STF members as gun fire was heard all around the perimeters of the koppie.³⁹⁷

Exhibit L therefore omits that Lt Col. Gaffley stated, 'the police are firing from different directions and members could be caught in cross-fire'³⁹⁸ and that this was the reason for his concern that members might be hit by gunfire.

d) Observations by the Evidence Leaders in relation to Lt Col. Gaffley's statement include that:

i) 'The uncontrolled shooting of the K9 forces effectively removed the STF from the operation. The STF were about to move in to sweep the koppie when the K9 members started shooting into the koppie through their lines.'³⁹⁹

ii) 'One of the striking features of the gunfire at Scene 2 is that the STF did not find it necessary or appropriate to fire a single shot. The STF is the most highly qualified unit of the SAPS for dealing with tactical operations. Its members were in position at Scene 2 closer to the 'killing zone' than any other unit, from very early in the Scene 2 operation. They also appear to have had a view of the 'killing zone', because Lt Col. Gaffley saw strikers being hit by the gunfire coming from behind him. (To his credit, he appears to have attempted to stop this gunfire, but without success). The STF members saw no reason to fire any shots into the 'killing zone'. It is difficult to see on what basis the members further away from the 'killing zone' would have had reason to do so.'⁴⁰⁰

e) It should be clarified that, in this statement at least, Lt Col. Gaffley does not say that the strikers were hit by gunfire from behind him specifically, but that 'it was clear that the police are firing from different directions' and that 'I could see that some of the protesters were hit and members were still firing'.⁴⁰¹ The statement does not identify the direction from which they were hit.

205) Photographs taken from the Squirrel helicopter show the SAPS Nyala Papa 11 driving towards Scene 2 from the north side from 16:14:37. By 16:15:01 it had stopped in a position between the high rocks and the killing zone (see photo on following page). Subsequent photographs appear to indicate that the occupants may only have emerged from the vehicle more than a minute later, after 16:16:09. A photograph taken at 16:16:39 shows SAPS personnel at the back of the vehicle and one taken at 16:16:57 shows one of them standing in front of the vehicle.⁴⁰²

In these photographs, a few SAPS members, some with R5s and one of them apparently with a pistol, can be seen coming over the high rocks from the east side towards the killing zone. They appear to be pointing their firearms towards the killing zone and are likely to be some of the group that included Maj. Gen. Naidoo and five NIU members who fired their weapons from these positions. These photographs raise the possibility that police may have fired into the killing zone from these positions up to 16:17:01 and perhaps for a short period after this.⁴⁰³

206) WO Mamabolo of POP was the commanding officer in Papa 11. In his supplementary statement, WO Mamabolo describes what he witnessed after the arrival of Papa 11 inside Scene 2:

At the time that we arrived at the koppie the [shooting] was still occurring... We parked our Nyala such that the police and the... protesters were separated. I got out of the Nyala on the side of the police who were on top of the boulder, firing live ammunition towards the direction of the protesters. I expected the members to notice me and I shouted at them 'cease fire and stop fire'. I raised my hands to indicate to the police to stop and cease fire but the shooting continued... I observed Gen Naidoo emerging on the top of the boulder from the same direction that the firing occurred with a pistol in his hand but I am not in a position to state whether or not he shot. Except for Gen Naidoo, other police

Aerial photograph of Scene 2 from the south west side at 16:15:01



The SAPS Nyala (Papa 11) has just arrived in the middle of Scene 2. The area of thick bushes in the centre of the photograph conceals a number of large boulders. This is the 'killing zone' in which 11 of the strikers were fatally shot. To the right of Papa 11 are the high rocks. In the original version SAPS members are visible on top of the high rocks and these are likely to include some of those who fired into the killing zone area (they may not be clearly visible in this reproduction of the photograph). The northern end of the line of NIU members can be seen on the top right hand side of the picture. These members remained in these positions while some of their colleagues on the southern end of the line became involved in shootings on the east side and from the top of the high rocks. The vehicle at the bottom of the picture on the right hand side belongs to the SAPS K9 unit. (Image: Marikana Commission of Inquiry, Exhibit KKK16, images DSC5130.)

officers had rifles in their possession... Once the shooting of live ammunition stopped I observed some of the protestors coming out of the bushes behind the boulder/rocks with their raised hands. Suddenly I saw one of the protestors falling on the ground. Some of the protestors were crawling towards the open area where the arrested protestors were... I did not see any protestor shooting at the police using firearms or attacking the police with dangerous weapons.⁴⁰⁴

a) Another occupant of Papa 11, Cst Mathavha⁴⁰⁵ alleged that he witnessed Maj. Gen. Naidoo firing his pistol from the rocks at a 'protestor'.⁴⁰⁶ Other occupants of Papa 11 gave evidence consistent with that of WO Mamabolo and Cst Mathavha.

207) The allegations by WO Mamabolo and the other SAPS members who were in Papa 11 were only provided in their supplementary statements. According to the SAHRC heads of argument: 'Members of Papa 11 gave supplementary statements in relation to a shooting incident witnessed at Scene 2. None of this highly relevant evidence appears in the initial statements of the members concerned. Indeed, both Cst Mathavha and Cst Mamabolo originally provided no evidence on Scene 2, falsely stating that Papa 11 had parked 150m away from Koppie 3.'⁴⁰⁷

208) Despite its inconsistency with the earlier statements, it is likely that this is a truthful account. As discussed below (paragraphs 220–221), the general pattern in virtually all SAPS statements is that members refrain from providing any information that may implicate their colleagues in wrongdoing. The misrepresentations contained in the initial statements of the occupants of Papa 11 may therefore be seen as consistent with this pattern.

Likely impact of SAPS media statement and briefing on accounts emerging from SAPS members

- 209) The initial report the SAPS commanders compiled did not indicate that the strikers attacked the SAPS members. The implication is that when Commissioner Phiyega instructed the statement be changed to state that the strikers ‘stormed towards the police’ there was no basis for her to do so, as the main information that she had received was different from this (see paragraphs 96–99).
- 210) SAPS members would not have been aware of the report submitted to President Zuma, but the SAPS media statement was likely to have been widely circulated within the SAPS, including to members of the SAPS who were at Marikana.
- 211) As illustrated above, many accounts provided by individual SAPS members have similarities with the version of events provided in the SAPS media statement. The possibility that the media statement served as a script is highlighted by several of the statements discussed in this chapter including those of WO Makhubela, WO Breed, Cst Mutsi, WO Visser, Col. Modiba, Lt Ndlela and those of the six ‘south side’ TRT members.⁴⁰⁸

Many of the accounts of the events on the west side also raise the possibility that SAPS members possibly understood, or interpreted, what had been an attempt to escape from Scene 2 as an attempt by strikers to attack them. This, too, resembled the content in the media statement. Considering the evidence and other statements that appear to contradict Capt. Kidd’s account of these events, it appears possible that his initial statement may also have been a creative adaptation of the narrative provided in the SAPS media statement.

- 212) However, read as a group, these statements constitute a significant departure from the SAPS media statement. The impression created by the SAPS media statement is that a largely cohesive group of strikers ‘stormed towards the Police firing shots and wielding dangerous weapons’.⁴⁰⁹ But according to the statements of SAPS members, a number of different groups of armed and aggressive strikers attacked the police with bladed weapons and firearms from at least the west, south and east sides of the koppie.⁴¹⁰ This appears to have happened because SAPS members were adapting the media statement to fit into an account that would provide justification for the shootings that they were involved in.
- 213) In the absence of consistent and reliable evidence that such attacks took place, the question that emerges is why there were so many statements alleging that groups of strikers attacked the SAPS members. It appears reasonable to conclude that, given a certain level of consistency between many of the early statements provided by SAPS members, they used Commissioner Phiyega’s media statement as a template, script or model for their own statements. For SAPS members, they appear to have believed this approach would allow them to avoid being held responsible for the killings.

Other characteristics of police statements

- 214) Not all the statements follow this approach. Some make little or no mention of strikers attacking with pangas or other weapons but imply that the main threat police faced from the strikers was from gunfire. Thus, SAPS members contradict the accounts of colleagues who were in similar positions.⁴¹¹ These and other SAPS members also changed the accounts that they first provided in subsequent statements. Examples of inconsistencies between initial and subsequent statements include those of Maj. Gen. Naidoo, Lt Ndlela, WO Visser, Cst Mutsi, WO Mentesh and Cst Ngwaleni and Cst Pelaelo.⁴¹²
- 215) As indicated, it is not clear that before October 2012 there were any statements from SAPS members in which they acknowledged shooting at strikers from positions inside Scene 2. This raises the question why such statements only started to emerge at this point. A factor in this regard appears to have been the sketch plan of the SAPS crime scene expert, Capt. Mohlaki, which showed the locations where the cartridges of SAPS members had been found.

It raises the possibility that there was some level of central coordination of statements so the SAPS could account for why strikers were killed inside Scene 2. In the absence of such coordination, it is not clear why such statements only began to emerge at this point.⁴¹³ In some cases it appears that shooters compiled new statements that now provided details about shootings inside the small koppie area. For other shooters, it is not clear if they submitted any statements before October or even November 2012.

216) In his final written statement, another of the expert witnesses, Gary White MBE, said:

when considered as a whole, many of the statements provided to the Commission by members who were present at Marikana on 13 and 16 August, including from very senior officers, are so lacking in detail that I question whether the SAPS leadership and/or unit commanders made any serious attempt to encourage their members to provide full, detailed and frank accounts of what happened. In my experience, where the [Police Service of Northern Ireland] used higher levels of force in any public order operation, there was an obligation on each and every member present to provide as full and detailed an account of events as possible.⁴¹⁴

a) Similarly, in his testimony before the Commission, Mr de Rover, who appeared on behalf of the SAPS, said of the statements of shooters at Marikana that they 'fall far short' of providing the necessary and required details to justify the shooting.⁴¹⁵

217) Another characteristic of some statements is that they share similarities with others, suggesting there was collaboration in compiling statements or that statement writers referred to other statements as a source for their own.⁴¹⁶

218) One attribute of many of the statements is the assertion that shots fired were only warning shots into the air or the ground or at the 'lower body' or 'legs' or in other ways. Such statements therefore all imply that the members concerned cannot be held responsible for any of the deaths that ensued despite the fact that they discharged their firearms.⁴¹⁷ In this regard, when some of them thought they were being attacked, SAPS members at Scene 1 shot 17 strikers in the space of 12 seconds firing directly at the strikers with few of the shots being fired into the ground or at the legs of the strikers.⁴¹⁸ But a number of the statements relating to events at Scene 2 state that, even when SAPS members or their colleagues were allegedly about to be attacked they only fired into the air⁴¹⁹ or the ground⁴²⁰ or at the feet of the alleged attackers.⁴²¹ Sgt Molangoanyane states that he gave a warning in three official languages before shooting at strikers who were attacking him.⁴²²

219) In a few cases, police officers admit that they shot directly at some of the strikers.⁴²³ These are often only very limited and vague admissions⁴²⁴ or based on scenarios of dubious credibility.⁴²⁵ In some cases, details provided in initial statements that might constitute potential admissions of culpability have been removed from later statements. Alternatively, after admitting to shooting at a striker, the statement immediately implies that the striker that they shot at was not fatally wounded.⁴²⁶ (See also paragraph 141(g))

220) As indicated above (paragraphs 201-208), a few SAPS accounts state that SAPS members were shooting when no one was attacking them. However, according to the SAHRC:

Numerous members present on 16 August 2012, who witnessed relevant incidents, have given accounts that are completely lacking in any detail and simply note their presence in Marikana on 16 August and record the fact that they did not discharge their firearms. Other witnesses provide a little more detail about events, but omit crucial elements.⁴²⁷

For instance, the SAHRC points out, 'Shortly after Mr. Mpumza was shot dead, Papa 5 parked within 15m of the body and members, including Lt Col. Pitsi, alighted from the vehicle and engaged in conversation with Brig Calitz and Lt Col. McIntosh next to the body.'⁴²⁸ But in the statements from occupants of Papa 5, 'there are opaque references to arrests made after Scene 1, but not a single member mentions Mr Mpumza, or any other deaths at Scene 2.'⁴²⁹ Similarly, 'not a single occupant of Papa 4 'mentions anything

beyond the incidents at Scene 1,⁴³⁰ despite Papa 4 also proceeding to Scene 2. Other statements by police who appear to have been present during significant events but make no mention of them include the statement of the driver of Papa 9, the Nyala that drove across the west side during the incident in which Mr Mkhonjwa (Victim N) was killed.⁴³¹

221) As reflected in the latter example, one of the general attributes that applies to the vast majority of statements is that they provide no information about shootings by other SAPS members.⁴³² Practically none of them describe the actions of any other police officer referred to by name, other than when describing briefings by commanders or other fairly innocuous actions.

a) Statements that fall into this category include the initial statement of WO Mamabolo and other members of Papa 11 discussed above (paragraphs 205–208).

222) The SAHRC heads of argument also detail the absence of statements from many members.⁴³³

223) From the above it is apparent that:

a) There are two cases, those of Mr Mpumza (Victim C) and Mr Mkhonjwa (Victim N), in relation to which the accounts provided in documents including Exhibit L, the SAPS opening statement and closing argument, show a certain level of consistency.

b) Other than in these cases, there is no account of events at Scene 2 that can be definitively referred to as the SAPS account. In their heads of argument, the lawyers representing the SAPS maintain the pretence that they are making a coherent case, irrespective of the credibility of the information that they are relying on. However, it is only if read superficially that this document can be taken to provide a justification for the shootings at Scene 2 by SAPS members.

c) In addition to these formal SAPS accounts, there are also the statements of individual SAPS members. As detailed above, there are numerous reasons for lacking confidence in many of these accounts with regard to Scene 2. Not only are the various statements frequently inconsistent, there are also cases where individual SAPS members issued a number of mutually contradictory statements. In addition, there are other indicators of unreliability and dishonesty.

224) The main focus of the SAPS in participating in the Commission was to ensure that the SAPS was absolved of responsibility, rather than to attempt to get to the truth. This is essentially the function of Exhibit L and the heads of argument presented by the SAPS lawyers. Similarly, many – but not all – rank and file SAPS members also appear to have prioritised ensuring that neither they, nor any other SAPS members, would be held responsible for wrongdoing at Marikana.

225) Despite the intricate labyrinth of inconsistencies, contradictions, evasions and lies that are constituted by the statements of many SAPS members, there appear to be some truthful accounts or accounts that contain truthful elements. The continual difficulty, however, is to differentiate those statements, and assertions within statements, that are true, or at least a true reflection of the SAPS members' perceptions of what was happening at the time, from those that are evasive or false.

In the concluding analysis, proved in Chapter 7, this report relies in part on elements of the narrative emerging from some of these statements to present an argument about what happened.

Chapter 6: Strikers' statements regarding the events at Scene 2

226) The point of departure for this chapter of the report is a statement in the SAHRC heads of argument, submitted to the Commission, in which they state, 'Forty strikers who were injured and/or arrested on 16 August allege that strikers were shot by police while surrendering or injured at Scene 2.'⁴³⁴ The allegations referred to are contained in statements taken from injured and arrested strikers by personnel from the IPID.

The IPID is an independent government agency responsible for investigations into certain categories of alleged or possible criminal conduct by the police, including deaths as a result of police action.⁴³⁵ In the days following the massacre, the IPID mobilised its personnel to take statements from strikers who were hospitalised or who had been arrested and were being detained in the holding cells at a number of police stations near Marikana. Ultimately, 289 statements were taken from strikers who had been arrested or were in hospital.⁴³⁶

227) The analysis of these statements has focused primarily on assessing the credibility of the allegations that strikers were shot while surrendering (SWS). However some statements also provide shooting descriptions that do not describe people being SWS. In addition some provide descriptions of other actions of SAPS members. Some describe attempts by some police to stop the shootings. Some also describe assaults and other abusive treatment of strikers after the shootings had stopped. These aspects of the statements are also discussed in this chapter.

a) As already noted (paragraphs 51 and 114(a)) some of the participants in the Commission process raised concerns not only about the reliability of much of the police evidence but also about the evidence presented by some strikers. It is therefore appropriate that the statements of strikers should also be scrutinised to assess their reliability.

228) The methodology used is discussed in more detail in an article by the author of this report that has been submitted for publication to a journal.⁴³⁷ It included the following elements:

a) A review of Annexure G to the SAHRC heads of argument, which is a tabulated list of 277 statements by injured and arrested strikers.⁴³⁸ The tabulation includes an assessment of whether each statement provides information about events at Scene 1 or Scene 2 (or both) and provides a brief synopsis of each statement.

b) Guided by Annexure G, roughly 180–200 of the statements of arrested and injured miners were read. They were first assessed for indications of whether strikers had been present at Scene 2 or not.

c) Some 153 statements were identified that appeared to indicate the strikers had been present at Scene 2. Information from these statements was recorded under a number of headings in a spreadsheet. Statements were then classified in one of four categories in terms of the type of Scene 2 shooting description that they provide (See Table 17).

Table 17: Classification of Scene 2 statements by type of shooting description

	Total	%
No Scene 2 shooting described	39	25
Strikers shot while surrendering (SWS) at Scene 2	57	37
Other Scene 2 shooting description	52	34
SWS described but unclear if at Scene 1 or Scene 2	5	3
Total	153	100

229) The available information indicates that virtually all of the people arrested by the SAPS at Marikana were arrested at Scene 2. The SAPS presentation to the Commission in early November 2012, for instance, indicates that 259 out of 271 (96%) of those arrested at Marikana were arrested at Scene 2.⁴³⁹ It therefore might be assumed that virtually all of the statements from arrested miners should provide information about Scene 2.

However, in the SAHRC Annexure G, only 138 of the 277 (50%) of statements are classified as providing information about Scene 2. For the purpose of this research, it was not assumed that this classification was correct. After reading these 138 statements as well as a number of others, 153 statements were eventually identified that appeared to originate from strikers who had been present at Scene 2. This group of statements includes some 134 of the 138 statements that the SAHRC had classified as Scene 2 statements.

230) As indicated, the SAPS presentation to the Commission in early November 2012 indicates that 259 out of 271 (96%) of those arrested at Marikana were arrested at Scene 2. It is therefore reasonable to ask why there are not more statements that provide clear information about the events at Scene 2. One of the features of many of the statements that appear to include information about Scene 3 is the absence of any clear differentiation between events at Scene 1 and Scene 2. Factors that may have impacted on this have been addressed in the journal submission that is referred to above. Among other things, the article notes that a 'tendency for statement takers to truncate the accounts provided by victims or witnesses has been identified in a previous analysis' of statement taking.⁴⁴⁰

Consistent with the argument in the previous chapter, it is also argued that the SAPS media statement issued by Commissioner Phiyega on 17 August may have influenced the understanding of the IPID statement takers. Commissioner Phiyega's statement created the impression that the killings had taken place in one continuous flow of events.⁴⁴¹ Many of the statements also describe the shootings in this way. In addition, immediate post-massacre news coverage presented the events at Marikana in terms of the shooting at Scene 1 only.

231) A further step in the process involved assessing the statements for indicators that they might be unreliable. Based on this assessment, 29 statements were excluded from the sample. This left a total of 124 statements (Table 18).

Table 18: Classification of statements included and excluded by type of shooting description

	Statements indicating present at Scene 2	Statements excluded (possibly unreliable)	Statements included (final sample)
No Scene 2 shooting described	39	7	32
Strikers shot while surrendering (SWS) at Scene 2	57	11	46
Other Scene 2 shooting description	52	9	43
SWS described but unclear if at Scene 1 or Scene 2	5	2	3
Total	153	29	124

232) As indicated, 153 statements were eventually identified that appeared to originate from strikers who had been present at Scene 2. These statements were classified in one of four categories in terms of the type of Scene 2 shooting description that they provide (Table 17). After removing statements assessed as possibly unreliable, 124 remained (Table 18).

a) Of these, 32 (26%) contained no description of shooting at Scene 2. As suggested above, this might have been because the IPID statement takers had been exposed to the immediate post-massacre news coverage and Commissioner Phiyega's statement and that neither source indicated that there were two distinct massacre sites. This may have affected how they recorded the accounts provided to them.

b) A very small number of the statements (3 out of 124) contained SWS descriptions where it appeared possible that these were descriptions of shootings at Scene 1, not Scene 2.

233) The statements discussed below include the statements that describe people SWS or statements that provided 'other' shooting descriptions. Other statements (such as those that provide no shooting description) may also be relevant in so far as they describe attempts by some police to stop the shootings or that allege assaults and other abusive treatment of strikers after the shootings had stopped.

Allegations that strikers were shot while surrendering

234) Of the final sample of 124 statements, 46 (37%) contained descriptions of strikers SWS. The following are examples of the descriptions of the shootings at Scene 2 provided in these statements.

235) Statement A22: We ran as a small group and hide ourselves at the mountain. There were police officials who were following us. Some of them were at the back. Some of the people I hid with raised their hand up, begging the police to forgive them. One person who raised his hand was shot down. Other one also raised his hands and he was also shot down. //I saw a lot of bodies lying down there. I heard a voice from the police officials shouting stop. After that I did no hear any gun shot. Most of the people were shot while raising their hands and some were seated down on their hiding place. Most of us were armed with sticks but we dropped them when the police started shooting. //They were shooting at us at about ±50m distance.

236) Statement A124: We went to a nearby hill and hide in the rocks. [...] Other people stood up and raised their hands but they were shot and killed by the police. The shooting took a long time. They then stopped shooting and arrested many of us. I saw many bodies on the ground.

237) Statement A238: We tried to hide ourselves under the big stones but that did not help. We decided to surrender ourselves to the police. People came out and lifted their hands. The first one who came out lifting his hands was shot on the hand but I am not sure which side and if he fell down. The second one was shot on the chest having lifted his hands as well. They were just shooting randomly at us until some of them told others to stop. They then stopped.

238) Statement A278: We ran and found another group of police officer armed. They started shooting at us. We tried to hide on the rocks, but the police continued shooting at us. Some stood up and raised their hands, but the police shot and killed them.

239) Statement A296: We ran towards Marikana only to find that there were police members there who were waiting for us with rifles. Those police shot at us as if they were killing flies. //I ran in to the big rocks for cover. I stayed there in the rocks and some people were being shot at although they were in the rocks. About five or six people were shot in front of me. //We opted to come out and surrender, by putting our hands up. The first three or four people to come out with their hands up were shot in cold blood by the police. //We then went back to the rocks for cover. We came out of the covers again with our knees down and hands up. The police stopped shooting at us and the [no word omitted] came to us. They instructed us to sleep/lie on the floor and not to look at their faces. They kicked us around and searched us.

240) Statement A301: I hide myself between the rocks while the police were firing at us. People were falling down injured and others died. Some of the people were shot at while surrendering with their hands in the air. I was then arrested from the spot that I hide myself.

241) Statement A303: We then realised that the police were surrounding the whole area while shooting at us. We tried to hide on the rocks, but the police continued shooting at us. //Others tried to raise their hands, but the police shot and killed them. The shooting stopped and the police started kicking us while lying on the ground. I was arrested and put on a police truck. I saw many people lying on the ground dead. I never saw any person with firearms or shooting at the police officers.

242) Statement A312: I ran for cover into the nearby rocks. Whilst running for cover I saw four people being shot at in front of me. I did not move after taking cover because the police were shooting anything that

was moving. //They sprayed me with the water cannon, but I did not want to get out because I was going to be shot too. //I saw three people who came out with their hands in the air begging for mercy but they were shot at by the police. I saw another man who came out with his hands up. The said man was shouting asking the police to stop shooting. They did not shoot him. They instructed him to go down on his stomach and they searched him. //When I saw this I also came out of the cover.

243) Statement A327: I then saw that the police were shooting at the people and turned and ran to the direction of the Karee (where I stay). //I saw that there were police officials also on that side that were blocking the way. I turned and went to hide in the rocks. I could see that some of us showed themselves by surrendering themselves to the police with their hands up. I could see that whoever surrendered was shot and I was scared to come out. I peeped and saw a person surrendering, he was shot on the thigh area and he fell down. As he was down he lifted his hands still surrendering and he was shot on his arm. I stayed hidden as I was scared. //I then decided to give myself in. I came out from my hiding place with my hands up. Another person followed me and we were told to lie down. The police were saying '*Phantsi, izandla phezulu*' ('Get down, put your hands up'). We were then searched and were put at the back of a police truck. I was not at any stage assaulted. //I would like to add that amongst us were people who were carrying weapons like spears and knobkerries. I had a knobkerrie in my possession before the commotion. I did not see anybody with a firearm. I do not know why we were shot at as we were not rebellious and we did not pose any threat to the police. //I did see the police spraying us with water but it was when I was in the rocks, they had already been firing at us with bullets.

Credibility of allegations that people were shot while surrendering

244) The statements discussed in this report were all taken from strikers between 17 and 21 August. (Given that all other statements at Bethanie were taken on 18 and 19 August it is assumed that the eight Bethanie statements for which dates were not recorded were also taken then). Three of the 124 statements were taken from strikers who were in hospital, but the vast majority were taken from strikers who were being held at one of four police stations near Marikana

245) Based on the remaining 124 statements, the report now briefly examines various issues relevant to assessing the reliability of the allegations that people at Marikana Scene 2 were SWS.

Table 19: Dates on which shot while surrendering statements were taken

	Date not specified	August					Total
		17	18	19	20	21	
Statements taken	8	1	31	63	3	18	124
Statements alleging that strikers were SWS at Scene 2	5	0	7	20	2	12	46
% of statements containing SWS allegations	63	0	23	32	67	67	37
Venue by date	All Bethanie therefore assumed to be 18 or 19 August	Pelgerae Hospital	16 Bethanie; 13 Jericho; 2 not specified	40 Bethanie; 21 Phokeng; 2 not specified	2 Phokeng; 1 Marikana Hospital	17 Mogwase; 1 Marikana Hospital	124

246) The statements were all taken in the five-day period immediately after the Marikana massacre. Of the 124 statements, 103 (83%) were taken within the first three days after the massacre and included statements taken at four different locations (one at Pelgerae hospital, 64 at Bethanie, 13 at Jericho and 21 at Phokeng with four cases where the location was not specified). Of these 103 statements, 32 contained SWS allegations. The SWS allegations started emerging on the first full day of statement taking, Saturday the 18 of August (only one of the statements in this sample was taken on Friday 17th August). At both Jericho and Bethanie there were seven statements taken on that day that included shooting descriptions. At each of these stations, three of these seven statements included SWS allegations. (A large number of the Scene 2 statements taken at both stations on that day contained no Scene 2 shooting description.)

Table 20: Locations at which statements were taken

	Bethanie Police Station	Jericho Police Station	Mogwase Police Station	Phokeng Police Station	Hospitals	Not specified	Total
Statements taken	64	13	17	23	3 ⁴⁴²	4	124
Statements alleging that strikers were SWS at Scene 2	23	3	12	6	1	1	46
% of statements from this location containing SWS allegations	36	23	71	22	33	25	37

247) As reflected in Table 20, more than half of the statements (52%) were from strikers at Bethanie Police Station. Related to this, 23 out of 46 of the SWS statements (50%) are from strikers at Bethanie. Nevertheless, SWS allegations emerged from strikers at all four police stations and from one of the two strikers at Marikana hospital, indicating that, in the five days after the strike, SWS allegations emerged from strikers at five independent locations.

248) There were 29 statement takers involved in taking the 124 statements, some of them at more than one of these locations. Among this group, at least 18 of the 29 statement takers (62%) recorded allegations that strikers were SWS, indicating that the SWS statements were taken by diverse members of the IPID staff involved in statement taking.

249) Another feature of the statements was that many contained allegations of assaults or other vindictive conduct by police against strikers after the shooting. Altogether 69 of the 124 strikers made allegations of this kind, the vast majority being allegations that strikers were assaulted at Scene 2 during the process of being arrested after the Scene 2 shootings. However, those who made SWS allegations were not more likely than others who provided statements to allege that they or others had been assaulted (Table 21). This demonstrates that the existence of SWS allegations cannot be taken as evidence of a bias towards making allegations against the police.

Table 21: People who allegedly experienced (or witnessed) assaults as percentage of people classified by type of Scene 2 shooting description

	No assault	Assault or other vindictive conduct	Total	% alleging assault or other vindictive conduct
No Scene 2 shooting described	11	21	32	66
Strikers SWS at Scene 2	22	24	46	52
Other Scene 2 shooting description	21	22	43	51
SWS described but unclear if at Scene 1 or Scene 2	1	2	3	67
Total	55	69	124	55

250) Finally, two police officers said in their statements that they had called on other police to stop shooting at the strikers.⁴⁴³ Altogether, 14 of the strikers' statements also described police officers calling for other police to stop shooting. Of these, seven (50%) were statements from strikers who also made SWS allegations, further indicating that statements containing SWS allegations may be seen as objective descriptions of the events at Scene 2 and not as evidence of an orientation towards making unjustified accusations against the police.

Number of strikers SWS

251) Roughly 37 of these statements give some indication about the number of people that they had seen SWS. Of these, eight only clearly refer to one person they saw SWS; three refer to two people; two refer to three people; and one refers to four people. Roughly 23 use terms such as 'many' or 'few' to refer to the number of people who were shot. It is not necessarily clear which of the total number of people described in statements as having been shot were SWS. For instance, according to statement A245:

Many people were killed on that spot. Others tried to raise their hands but the police were shooting at them. I lied on the ground while the shooting continued for ±20 minutes. I saw one black male raising his hand but the police shot him.⁴⁴⁴

Other shooting descriptions

252) As indicated, in addition to the 46 descriptions of people SWS, 43 cases were classified as 'Other shooting descriptions'. The following are examples.

253) Statement A85: [After the Scene 1 shooting] I then ran to the direction where the shacks of Marikana were I saw that there were police also blocking the way from that side. The police were shooting at us. I do now know exactly what they shot at us with but I think it was a bullet which had small pellets (like shotgun bullet) as I have small holes for wounds where I was hit.⁴⁴⁵ I also saw something that was shot and fell close to me, it released smoke when it hit the ground. There was also a truck that was shooting at us with water. I then ran to the rocks and hid on the holes there. A lot of people ran to hide there and I saw that people surrendered by putting their hands up and leaving their hiding spots. That is where a lot of people got shot. I do not know how I managed to stay alive as I was one of the people who surrendered but I am guessing that the police got tired of killing us.

254) Statement A118: We were then chased to a certain place with some rocks where most of the people were being shot.

- 255) Statement A153: The police continued to shoot at us even at where we were hiding and some were killed.
- 256) Statement A366: I then realised that we were surrounded by the police [at Scene 1]. We ran to a big stone (mountain) where we hide ourselves and they were busy shooting at us. I surrendered by raising my hands and instructed me to lie down. I did as instructed. I noticed that in front of me they were ±10 people lying on the ground shot dead.
- 257) These 'other' shooting descriptions are of course not inconsistent with the assertion that some strikers were SWS. Considering the perfunctory nature of some statements, it is possible that some strikers in this 'other' group witnessed SWS incidents. Alternatively, they may have been present at Scene 2 but did not themselves witness such incidents. As indicated, the shootings took place in different parts of Scene 2. All of the strikers at Scene 2 would not have witnessed exactly the same events. It appears that only those who could see the killing zone would have seen strikers SWS.

Executions or other shootings of injured strikers

- 258) The approach taken in this report is that the SWS allegations do not amount to allegations of executions. In this report, the term 'executions' is understood to apply when people who have already been subdued and who are 'under the control' of those arresting them are then killed. In general, the SWS descriptions provided appear to indicate that, when strikers were shot, the police had not yet established control over them.
- 259) The issue of executions is nevertheless of interest in relation to Scene 2, partly because some parties to the Commission regarded it as a possible explanation for some of the deaths at Scene 2.⁴⁴⁶ This was partly because some of the initial media coverage of Scene 2 suggested that strikers at Scene 2 had been executed,⁴⁴⁷ but also because two SAPS members provided written statements saying that while police were searching Scene 2 after the shootings a police officer had shot one of the strikers (neither statement confirms that the shooting was fatal).⁴⁴⁸

Aspects of these allegations are confusing: they emerged more than a month after the massacre; and the second SAPS member to make these allegations indicated that the SAPS member who had first made the allegations had himself admitted to doing this.⁴⁴⁹ However, the possibility that at least one of them might have some substance to it cannot be entirely dismissed. In the analysis of strikers' statements, one of the issues examined was therefore whether any of the statements supported the assertion that any of the strikers who had submitted to arrest were shot by police while the police were searching Scene 2 after other shooting had stopped.⁴⁵⁰

- 260) Roughly seven statements might provide evidence of executions or execution-like behaviour. One that alleges a police officer was cutting the throats of strikers⁴⁵¹ would appear to be inconsistent with the fact that wounds of this kind were not identified in any of the post mortems.⁴⁵² Among the others, some amount at most to allegations that police threatened – or wanted – to execute some of the arrested strikers;⁴⁵³ or that they attempted to but were unsuccessful or were discouraged from doing so by other police officers.⁴⁵⁴ Overall, there is little consistency between them in relation to the type of execution-related police behaviour they allege and none of them corroborate the account provided in either of the SAPS members' statements.

Evidence of police intervention to stop shootings

- 261) As indicated (paragraphs 204–208), two police officers said in their statements that they had called on other police to stop shooting at the strikers.⁴⁵⁵ Altogether, 14 of the strikers' statements also described police officers calling for other police to stop shooting.
- 262) Statement A22 ('I heard a voice from the police officials shouting stop.') and statement 238 ('They were just shooting randomly at us until some of them told others to stop. They then stopped. '), quoted above, are examples of these statements.

263) Other examples are:

- a) Statement A30: We then came out with our hands up as they already had surrounded us but even though we were having our hands up they continued shooting, until one officer told them to stop shooting as we were of no danger to them.
- b) Statement A70: We then lifted our hands and some police officials told others to stop shooting as we were being finished dying.
- c) Statement A89: I stood up and tried to run but I was stopped by one police officer who was busy commanding the police to stop shooting to go back to hide in that rock. I went back and took a cover.
- d) Statement A96: I heard some of the police saying we must not kill them all.
- e) Statement A106: There was one police officer who then shouted that police officers must stop shooting as we were not dangerous, they cannot kill us like that. The police officers then stopped shooting.
- f) Statement A282: There was a police official standing on top of rock we were hiding under who ordered the other police officials to stop shooting.
- g) Statement A306: I heard one of the policemen talking in Xhosa saying '*baxoleleni*' meaning forgive them. That is when the police stopped shooting and we came out of the cover. Some were injured, some were lying unconscious on the floor which I think they were dead.
- h) Statement A326: There was a certain police officer who was standing next to the hippo [an armoured police vehicle] and I saw him raising his hand and the police stopped firing.
- i) Statement A350: While still running I was shot at with by firearm and I hide between the stones that are close while we were there they keep on shooting until one police officer stop them.
- j) Statement A322: Some of the people I was with raise their hands up and police official who saw them warn his colleagues to stop shooting. I also raise my hands and we were all ordered to lie down on our stomachs.⁴⁵⁶

264) A number of statements appear to indicate that these efforts to stop the shooting were effective.⁴⁵⁷ However, at least one statement appears to imply that the calls by police for their colleagues to stop shooting were disregarded.⁴⁵⁸ This is consistent with the statements of Lt Col. Gaffley and WO Mamabolo, which indicate that their efforts to stop the shooting did not end it immediately. The intervention by some police appears to have played a role in ending the shooting, though a couple of strikers suggested that pleas by some of the strikers also helped to achieve this.⁴⁵⁹

265) At least one statement says that a SAPS member intervened to stop an assault by police on a striker after the shootings.⁴⁶⁰

After the shootings

Assault by police after shooting

266) As indicated above, 68 of the 124 statements (55%) alleged that police had assaulted strikers after the shootings. These allegations were a general feature of the Scene 2 statements, irrespective of category. As indicated in Table 22, they were not only a feature of these 68 statements but also 18 of the 29 statements identified as possibly unreliable. Additionally, during the process of trying to identify statements dealing with Scene 2, some statements were not clearly applicable to Scene 2 but also included allegations of assault after the shootings had finished.⁴⁶¹ Data from the latter statements was not recorded systematically. More cases would have been recorded from the 180–200 statements that were read if all allegations of assault contained in these statements had been recorded.

Table 22: Allegations of assault recorded from statements

	No assault	Assault	Total
No Scene 2 shooting described	11	21	32
Scene 2 SWS	23	23	46
Other Scene 2 shooting description	21	22	43
SWS described but unclear if at Scene 1 or Scene 2	1	2	3
Sub-total	56	68	124
Possibly unreliable	11	18	29
Other statements not clearly identified as dealing with Scene 2	(not recorded)	12	
Total statements that contain allegations of assault or other vindictive treatment by police		98	

267) Allegations of assault include that strikers were kicked, beaten with rifle butts, shot with ‘a pump gun on my right thigh’ (statement A336, quoted below) and teargassed after being loaded into the police Canter.

268) Examples of descriptions of assaults include:

- a) Statement A95: They came and started searching us. Kicked us saying we must take out the firearms that are with us, we then told them that we do not have any firearms. They then told us that we are lucky, they could have killed us all and further that we are using muti.
- b) Statement A128: While in that [police] truck they still poured us with teargas inside that truck.
- c) Statement A153: I was hit on the head with a knobkierie, which I believe they took from other workers.
- d) Statement A242: As I lay down I was assaulted. I was kicked in the rib area and when I stood up I was kicked in the chest. As a result, I am experiencing problem with breathing.
- e) Statement A255: Kicked – While hiding I was approached by the police who came and pointed at me, instructed me to get out. I got out and was instructed to lie down where I found some of the people. They started to kick us while lying on the ground. I sustained assault injuries on my head, back, shoulders and forehead.
- f) Statement A269: The police came to us and told us to move with our stomach towards them to an open field where they kicked us and were telling us that there are no cameras so that they can kill us and burn us.
- g) Statement A274: I then raised my hands and went to them. While with them they started to assault us by kicking us all over the body. I sustained injuries on my right hand, left leg, stomach, shoulder [right] and head.
- h) Statement A294: I was dragged from the rocks by a certain police official who kicked me on the head. They hand cuffed me and continued to kick me.
- i) Statement A301: I was instructed by the police to crawl on my stomach. While crawling on our stomach we were severely kicked all over the body.
- j) Statement A336: While we were crawling one police who I can identify and was speaking Zulu said that I’m crawling slowly and he shot me with a pump gun on my right thigh. He also kicked me on left hand side of my ribs. I think I sustained a fracture on my ribs as I’m feeling pain at night.
- k) Statement A341: The police instructed us to lie down supine. We complied but the police kicked us with booted feet. I was kicked on my stomach and my buttocks.
- l) Statement A348: I was only kicked once on the back by a police officer.

m) Statement A353: They instructed me to lie down on the ground. They trapped⁴⁶² my [penis/hands?] with their feet. I was then handcuffed. When I stood up I was assaulted with stick on the head... I sustained injuries on head due to that assault of stick by police officers. My head was painful and I did not receive medical attention.

Alleged denial of medical treatment to seriously injured striker

- 269) The Marikana Commission report says that Mr Sagalala was one of three victims who died subsequently in hospital.⁴⁶³ However, according to the IPID Mr Sagalala did not die in hospital, but in one of the police Canters.⁴⁶⁴
- 270) The report of the independent forensic and ballistic experts indicates that Mr Sagalala died from a 'high velocity gun shot wound of the chest (rear to front),⁴⁶⁵ Given that three of the four statements quoted below refer to a person with chest wounds who died in the Canter, it seems reasonable to regard the following statements from strikers as describing what happened to Mr Sagalala.
- a) Statement 335: There was an African male inside the truck who was shot on his chest and was bleeding. We told the police, but they said he must die and they did not assist him up until we taken to a place called Number where on our arrival that person was already dead.⁴⁶⁶
 - b) Statement 336: We were then put in the police truck and inside the truck there was an African male who was shot on his chest and was bleeding. We told the police that someone was shot but they said that he must die because we also killed the police.⁴⁶⁷
 - c) Statement 342: One guy was shot in the chest and was put in the truck while injured. I notified the police that there is a person who needs help as he is injured. The police officers said he is fine, let him die.⁴⁶⁸
 - d) Statement 354: We also reported to the police officers that there was a person who will die. They never listen to us. On arrival at B3 that person passed away.⁴⁶⁹
- 271) The statements are all from strikers who were interviewed in custody at Phokeng police station on 19 August. It is likely that strikers who were initially held in the same Canter would have been taken to the same police station. That all of these statements come from strikers at the same police station does not in itself indicate that they should not be regarded as reliable.
- 272) A matter of concern expressed at the Commission and in its subsequent report was the manner in which injured people at Scene 1 were dealt with.⁴⁷⁰ However, the circumstances of Mr Sagalala's death in some respects appear to be distinct from the issues about medical assistance that were raised at Scene 1. The strikers' statements suggest that the police officers notified about his condition consciously and deliberately neglected to take any action to secure medical attention for him.

Significance of statements from injured and arrested strikers

- 273) The statements by the Marikana strikers are a unique source of information about the Marikana massacre. They were taken at six discrete locations in the five-day period immediately after the massacre. Some statements with features indicating that they were possibly unreliable were removed from the final sample analysed. That 46 of the statements in the final sample state that strikers were SWS can therefore be taken as indicating, with certainty, that these were the circumstances in which some people in the killing zone were shot. The analysis of these statements therefore confirms beyond reasonable doubt that these allegations are not the product of collusion 'to produce a false account'.⁴⁷¹
- 274) None of the statements contain a single reference to strikers brandishing firearms or shooting at or attacking the police at Scene 2. The statements therefore support the contention that strikers at Scene 2 were not shooting at or attacking the police.
- 275) An additional feature of the statements is that they appear to show that the police disposition towards strikers was strongly hostile in nature.

- a) This is reflected in the generalised evidence that many strikers were assaulted after the shooting had stopped.
- b) Evidence of the denial of medical treatment to a seriously injured man (paragraph 269-272) also supports this contention.⁴⁷²

Chapter 7: Analysis

Absence of evidence of attacks on the police by strikers

276) Based on the analysis conducted, the conclusion of this report is that it is unlikely that there were any attacks by strikers on police at Scene 2. At the very least, there is no convincing or persuasive evidence of any deliberate attacks on police at Scene 2. If there had been such attacks, there should be no reason why the police could not present consistent evidence of this. The SAPS has not been able to present consistent evidence that any of the four shootings at Scene 2 (as defined in Table 3) were in response to an attack.

- a) The most likely explanation for the events on the west side in which Mr Mkhonjwa (Victim N) was killed is that they were an attempt by the strikers to escape towards the west side (see paragraph 148–151)
- b) The evidence supports the conclusion that Mr Mpumza (Victim C) raised his spear against police members in the final moments before he was killed. But Mr Mpumza most likely did not set out to attack the police and was probably trying to escape. We do not know exactly what he had witnessed over the previous 25 minutes, but it would have included elements of the events at Scene 1 and Scene 2, which involved the killing of 33 of his colleagues; and numerous assaults by police on many of those who were still alive at Scene 2.

277) In reaching this conclusion, this report is not trying to suggest that there are not any ambiguities in the information.

- a) The general evidence of violence and other belligerent conduct by some of the people associated with the strike is discussed in Chapter 2 of this report.
- b) Mr Mpumza had traditional scars and muti suggesting that he had been part of the 'core' or militant group.⁴⁷³ One cannot exclude the possibility that his beliefs about the muti played some role in his actions.
- c) Another element of ambiguity concerns where the first shots were fired from. Capt. Kidd and WO Swarts said shots were fired from Scene 2 as they approached. But the research for this report has not enhanced confidence in the accounts provided by Capt. Kidd (see paragraphs 148–151). Based on inconsistencies between his initial and later statements similar questions may be asked about the reliability of evidence provided by WO Swarts.⁴⁷⁴
- d) It is likely that the first shots that were fired at Scene 2 were fired by POP and TRT⁴⁷⁵ members on the west side, possibly taken by surprise at the sight of a group of 30–40 strikers emerging at a run from the western edge of the small koppie area. Nevertheless, the evidence about the firearms found during the search of Scene 2 after the shooting means that the possibility that the strikers fired three or four shots from inside the small koppie, cannot be completely excluded.

278) However, although the possibility cannot be excluded it seems unlikely that the strikers fired any shots. In summary, the evidence is that:

- a) No cartridges were found that could be linked to any of the three firearms found at Scene 2. Although less than 30% of cartridge cases for shots fired by police were found, police firearms were used over a broad area. The probability would appear to be that if strikers had used firearms, they would have been

used from *within* Scene 2. Consequently, the probability is that if they had fired shots a higher proportion of cartridge cases from those shots would have been found.

- b) None of the strikers' statements describe strikers shooting at the SAPS.
- c) There is no consistent and reliable evidence from any SAPS member that any of the strikers were seen shooting at the SAPS.
- d) The evidence of Lt Col. Gaffley and WO Mamabolo is that no strikers could be seen shooting at the police.
- e) Some police gave evidence that they thought that small calibre firearms were being fired from within the small koppie area. However, it was not only the strikers who were armed with small calibre weapons. Most of the firearms members of the K9 unit used, for instance, were 9mm.
- f) A number of police acknowledged in their statements that they could not identify the source of gunfire.⁴⁷⁶

279) If the strikers did not shoot at the police, did they attack them with other weapons? Apart from the SAPS statements, there is no evidence that groups of strikers attacked SAPS members on the east, south or west sides of the small koppie. (In so far as Mr Mpumza may be said to have attacked police, this was clearly as an individual and not as part of a group.)

280) A number of SAPS helicopters were taking pictures of the events at Scene 2. Though the coverage is not comprehensive, it seems reasonable to conclude that if groups of strikers were attacking SAPS members in armed formations this would have attracted the attention of the SAPS personnel taking photographs from the helicopters. But none of the photographs taken by helicopter personnel, or any other video material, show anything of the kind.

'Crossfire'

281) The SAPS heads of argument suggest that 'crossfire' may have been responsible for some of the deaths at Scene 2.⁴⁷⁷ The argument about what some have termed crossfire has been expressed in different ways in discussions of the events at Scene 2.

- a) The term was not used in the SAPS opening statement, though it referred to 'friendly fire'. The opening statement said that some strikers:

could have been killed when police officers returned sharp fire believing shots to have been fired from the bushes and crevices in the koppie by protesters. The police officers are prepared to accept that they may have been responding to 'friendly fire' believing it to be fire from the protesters.⁴⁷⁸

- b) In the heads of argument, the term crossfire appears to be used with reference to the supplementary statement of Mr de Rover, an expert witness who appeared on behalf of the SAPS. Paragraph 60 of his statement is quoted verbatim by the SAPS in its heads of argument.⁴⁷⁹ Referring to the killing zone area in his supplementary statement, Mr de Rover argues that:

59: In the geography of Koppie 3 there is an area appearing to provide optimum sight and fire cover. It is in this area that most of the protestors were and from where they mounted their attacks, in various directions, against approaching police. This relatively small area was where most of almost 280 people congregated for most of the time. 60: It is in this area that nine people lost their lives. I believe that loss of life was not a consequence of fire aimed directly at them but rather as a consequence of them being struck by rounds, fired for other reasons, travelling through that area; rounds fired by members of POP from the North, NIU from the East, TRT and K9 from the South and TRT from the West. Possibly as many as half of all 325 rounds fired (both 5.56mm and 9mm), maybe more, may have travelled through this area, although the exact number is hard to calculate. As a consequence, this apparently safe area was in fact the most dangerous location within Koppie 3.⁴⁸⁰

Based on the argument that the strikers were hit by rounds 'fired for other reasons, travelling through that area', Mr de Rover concludes that 'the deaths of nine protestors at Koppie 3 referred to above were incidental and not intentional'.⁴⁸¹

- c) Mr de Rover's conclusions are therefore that the gunfire that killed strikers in the killing zone area was fired for another purpose but happened to hit the strikers in the killing zone accidentally. As indicated above (paragraph 164; see also 141–142), the SAPS heads of argument argue that a number of statements by SAPS members provide a putative justification for these shootings. In other words, the argument presented in the heads of argument is significantly different from that in the opening statement.

The opening statement merely argues that SAPS members believed they were being fired at when in fact it was 'friendly fire' from other SAPS members. The heads of argument, on the other hand, argue that SAPS members were not mistaken. They were justified in shooting, but these bullets happened to 'travel through' the killing zone area, inadvertently hitting some of the strikers there. Paragraphs 141–2 and 163–164 above discuss the ballistic evidence and statements that are used to support this contention.

282) The term crossfire is also used:

- a) In the Families' heads of argument as a possible explanation for the deaths of a number of those who died in the killing zone. For instance, referring to Mr Mancotywa (Victim D), the heads of argument state that he was either 'targeted by the SAPS member who shot him and shot execution style from a distance or caught in SAPS cross-fire at Scene 2'.⁴⁸² A similar formulation is used in the discussion of other killing zone deaths.⁴⁸³ Beyond indicating that such killings would be unlawful, the Families' heads of argument do not discuss the meaning of the term.
- b) The term also features in the heads of argument of the SAHRC. Among other things, the SAHRC appears to equate crossfire with 'stray bullets', stating that:

Scene 2 occurred as a consequence of a complete breakdown in command and control and the creation of a situation of dangerous crossfire... There is no adequate explanation for at least 14 of the deaths, and it appears likely that recklessly fired, stray bullets shot most of those 14.⁴⁸⁴

283) The term crossfire is, however, misleading when applied to this situation. In general, the term refers to a situation in which, for example, the police are involved in an exchange of fire with an armed individual or group. An (innocent) third party is 'caught in the middle' of this and injured or killed and is said to have been 'caught in the crossfire'. The term arguably differs in meaning from the term 'stray bullet', which might be used more appropriately if an innocent person on the periphery of such a confrontation is hit. However, if the term crossfire is used loosely, it might also apply to this situation.

284) At Scene 2, there was no crossfire of this kind. There is no reliable evidence of police identifying a striker who was shooting at them and returning fire; and therefore no 'exchange of fire' between police and an adversary. However, there was crossfire in the sense that police were shooting from different sides. Consequently, police members had the experience that bullets were being fired in their direction. It is widely accepted that some SAPS members at Scene 2 believed strikers were shooting at them.

- a) Referring to 'the multitude of statements alleging that strikers were firing live ammunition at SAPS members', the SAHRC says:

it is impossible to reconcile the sheer number of statements alleging live ammunition fire from strikers with the complete absence of any 9mm cartridges linked to strikers' firearms. On the most favourable interpretation for the SAPS, many of its members must have mistakenly believed they were facing live ammunition fire from strikers, when in fact they were facing live ammunition fire from fellow SAPS members.⁴⁸⁵

- b) The evidence leaders state that: 'It appears that some SAPS members at Scene 2 genuinely thought that they were being shot at. As the SAPS partially acknowledged in its opening statement, these

members probably mistook shots fired by their colleagues on the other side of the koppie for shots fired at them by strikers. This testifies to the appalling lack of coordination, command and control of the SAPS operation at Scene 2.⁴⁸⁶

c) As referred to by the evidence leaders, and quoted above, in their opening statement the SAPS lawyers stated that 'The police officers are prepared to accept that they may have been responding to 'friendly fire' believing it to be fire from the protesters.'⁴⁸⁷

285) The gunfire was not directed at the police, but at the strikers. This is strongly evoked by the statement of Maj. Holtzhausen, the pilot of an SANDF helicopter that had been brought to Marikana to transport NIU members:

We were circling approximately between 300ft and 600ft and between 800m and 3km away from the centre point of the small koppie. [Then describes various factors that imposed a 'workload on lookout]. //A few minutes after arriving in the area I saw a sudden increase in movement and activity within the strikers in the small koppie area and I saw a large number of policemen falling flat on the ground pointing firearms towards the small koppie area. It seemed like the policemen were firing towards the strikers although I could not differentiate between the types of firearms used. A few minutes afterwards, some of the strikers started walking towards the police with their hands in the air and the rate of this increased quickly until all of the strikers appeared to have handed themselves over to the police.⁴⁸⁸

286) The reason why SAPS members thought they were being fired at is therefore more accurately captured by the term 'friendly fire' rather than 'crossfire', 'stray bullets' or 'incidental fire'. But in responding to this 'friendly fire' the SAPS members did not direct gunfire at their colleagues on the opposite side of Scene 2 who were in effect firing at them. The strikers were not hit by stray bullets or by 'incidental fire' but by bullets directed into Scene 2. Many strikers were grouped in a fairly central area in the rocks and bushes in Scene 2. This became the killing zone.

Police fire was directed into the killing zone

287) The evidence is persuasive that a number of members of the K9 unit believed strikers were firing at them from within Scene 2. The utility of the evidence on this is undermined somewhat by changes between initial and subsequent statements provided by the K9 members. Nevertheless, the following statements are among those that support this contention.

288) In the case of Cst Mutsi, his first statement (quoted above) describes shooting at a group of strikers charging at the police on the south side and this appears to be based on the template provided by Commissioner Phiyega's media statement of 17 August⁴⁸⁹ (see paragraph 108). In his additional statement, he does not describe events in this way:

7: During the approach I then saw the [unclear: miners] coming out of the mountain towards our direction and they were ordered to stop and to drop their weapons and that stage police officials were trying to take cover and the miners turned and went (ran) back to the mountain and there were bushes so they hidden themselves with the bushes. 8: And at that stage they then fired shot from the bush where they entered and shots were fired towards our direction and I couldn't take cover as it was just an open space then I shot rounds to the direction were the shots were coming from with an R5 rifle on kneeling position. 9: I then saw TRT members on my left-hand side shooting to the bush trying to retreat as they indicated that there are people shooting at them from the bush. I then decided to shoot to give cover to TRT members as it was difficult for them to shoot going backwards and I shot till they took cover with the police bakkie.⁴⁹⁰

289) The additional statement of another K9 member, Cst Dintwe (four 9mm rounds at Scene 2), indicates that:

±30 metres towards second small Koppie a fired shot was fired at us by miners hiding behind the rocks and trees. Quickly took cover with Potchefstroom Flying Squad bakkie. WO Mentesh of Phokeng K9 whose dog got loose as he tried to catch it. Then while doing that heard another shots fired from where the miners had hidden. As I was nearby projectiles were flying over us and with my 9mm pistol fired four shots to the direction of where shots were aimed at us.

290) Likewise, what appears to be the initial statement of Cst Molangoanyane also states that:

As we got close ± 60 metres from a hill, I heard a gunshot from a hill, it was right in front of me. I then got down and alerted my colleagues that green bush in front of me that's where gunshot comes. I started to use my pistol shooting in that bush, other TRT members also shot in that bush.

291) The 30 August statement of Cst Motsemme, a member of the Potchefstroom K9 unit who approached Scene 2 with other members from FHA1, is also relevant.⁴⁹¹ Though Cst Motsemme did not fire any shots, he confirms that K9 members were shooting at people believed to be shooting at them from 'behind the trees'.

a) He refers to the presence of the NIU and STF and says:

as we were close to that hill some people was shooting at us from that hill we took cover from the van that was coming behind us and some were still behind the trees and they were still shooting at us and that was when the police started to shoot from a command that was given and they stopped and we went to the hill. //At that time some people were still there and they were arrested.

292) At face value, what these statements appear to say is that, believing that shots were being fired at them, many of the K9 members fired into the bush, towards the point from which they thought the shots were coming.

293) The most reasonable explanation for the deaths in the killing zone is that they were killed by gunfire directed at the strikers. The strikers in the killing zone were not caught in crossfire that was directed at another target. It was not incidental fire, but fire that was directed into Scene 2, partly influenced by the belief that strikers inside Scene 2 were firing at the police. This is evident from the K9 members' statements. The report of the independent forensic and ballistic experts also indicates that fire was directed from the top of the high rocks into the killing zone (see Table 4).⁴⁹² This would not have been crossfire.

The genuineness of the police belief that strikers were firing at them

294) As indicated above (paragraph 284), it is widely accepted that some SAPS members at Scene 2 believed they were being fired at by strikers. One may debate whether police were reasonable in believing that strikers were shooting at them. Given they were not aware that there were police on the other side of the koppie, it is arguably understandable that some of them concluded that the strikers were firing at them.

a) The belief or awareness that some strikers were armed may have also contributed to the tendency for SAPS members to come to this conclusion. Capt. Kidd, for instance, said that when he briefed his unit:

His members had certain queries about what type of weapons or firearms they would be encountering and he said to them that firearms had been taken from the police at the incident on the 13th as well as from security personnel before that.⁴⁹³

Evidence supporting Capt. Kidd's assertions in this regard is also provided by others.⁴⁹⁴

295) One aspect of the evidence showing that police believed they were at risk of being hit by gunfire are photographs taken from the helicopters showing police taking cover on various sides of Scene 2.

- a) There are photographs showing police taking cover, notably on the south and west sides.⁴⁹⁵
- b) However, the pictures of the approach of the NIU generally suggest that they did not believe that they were facing a threat from gunfire. Those on the north-east side of the koppie remain in the line formation,⁴⁹⁶ while those on the east side of the high rocks stand upright.

- 296) Nevertheless, it is not clear that all police on the south side took the danger of being hit by gunfire seriously. In some photographs, one of the SAPS members is shown holding a fixed position in the open consistently for a sustained period of time, though other K9 members appear to be taking cover.
- 297) The evidence that police were taking cover is also not in itself a demonstration that they believed strikers were shooting at them. Thus, in his statement Lt Col. Gaffley says, 'I ordered the members to fall back and take position behind the vehicles as it was clear that the police are firing from different directions and members could be caught in cross-fire.'⁴⁹⁷ It may be presumed that not only Lt Col. Gaffley but other police, too, recognised that they were in danger from shots fired by other SAPS members.
- 298) It is therefore not clear to what degree the shooters firmly believed they were being fired at. Some might have relied on the fact that other police were shooting to justify their own actions.

The police response to 'crossfire'

- 299) If police believed that they were being fired at by strikers but could not clearly see the people who were firing at them the appropriate response would have been, where possible, to take cover and identify the shooters before taking any action against them.
- a) This is what WO Myburgh of K9,⁴⁹⁸ who fired one shot with his R5, indicates that he did: 'As we approached the scene at the koppies from the southern side there were miners shooting at us. I emerged from the vehicle and took cover behind the driver and passenger doors as I moved to see clearly who is shooting at us.'
 - b) In common with many of the other statements quoted here, WO Myburgh's statement is in effect a statement that he was under the impression that the strikers were shooting at the police but that he did not in fact see any miners doing so. However, he indicates that he took cover to try and see who was shooting at the police. His statement contains no confirmation that he in fact saw any striker shooting at the SAPS.
- 300) Given that SAPS members were shooting into Scene 2 and not directing their gunfire at identified targets (i.e. people who were shooting at them), this was reckless in the extreme. Such gunfire would have been directed towards Scene 2 irrespective of the fact that there were a large number of people gathered there who would be at risk of being hit by SAPS gunfire.⁴⁹⁹
- 301) The statements of Cst Mutsi, WO Visser, Sgt Molangoanyane and Cst Dintwe all point to this kind of recklessness in their use of their firearms to shoot into the Scene 2 without any clearly identifiable target and without regard to who might be hit by the shots that they fired.⁵⁰⁰

Does 'crossfire' serve as a justification for the shootings by the police?

- 302) In the way in which it is commonly used, the term crossfire often carries with it a connotation of blamelessness, in that in that it is implied that the one party (the police) was forced by necessity to engage in an exchange of fire with the other.⁵⁰¹ Furthermore, because it was 'crossfire', it may have been fire from either one of the parties that in fact hit innocent people, further reducing the potential that blame could be attached to the actions of the police.
- 303) It was clearly SAPS fire, and not shooting by any 'adversary' that killed the strikers in the killing zone. Even if one concludes that the SAPS members reasonably believed they were being fired at by strikers, the evidence does not indicate they were forced by necessity to shoot into Scene 2. Given that they must have known there were many people in the area, it is reasonable to say they recklessly exposed strikers at

Scene 2 to danger. In relation to Scene 2, the term crossfire does not excuse police from moral culpability or responsibility for the killings.

- 304) In the context of Scene 2, use of the term crossfire is in effect a form of the 'putative defence' argument, whereby a person is excused from blame for shooting someone who was not attacking them if they genuinely believed that they were facing life-threatening and imminent danger and that there was no other way to defend themselves. However, in the absence of clear evidence of necessity, the shootings do not qualify as putative defence and are more reasonably seen as reckless.⁵⁰²
- 305) Furthermore, not all of those who fired into the killing zone necessarily believed the strikers were shooting at them when they did so. Most notably, the SAPS shooters from the high rocks were shooting into a group of people who were cowering in the rocks and bushes beneath them. Unlike the K9 shooters on the south side, there is no evidence they generally believed strikers were firing at them.

The strikers who were shot while surrendering

- 306) As discussed in Chapter 6, if taken collectively, the statements from injured and arrested strikers that were recorded by IPID personnel between the 17th and 21st of August 2012 may reasonably be regarded as demonstrating that some strikers were shot while surrendering. However, it remains unclear from these statements whether the strikers who were surrendering were clearly visible to the SAPS members who shot at them. One possibility is that these strikers were mainly hit by gunfire that was being fired, it seems fairly blindly, into the Scene 2 area by shooters positioned on the South Side. Another possibility is that these strikers were hit by gunfire that was directed towards them by shooters positioned on the high rocks. If this was in fact the case then this would indicate that the shooters were consciously shooting at strikers who were cowering in front of them, and some of whom were in the process of raising their hands in surrender. It may be that it is possible to develop more clarity on this by further investigation of this matter.

'Crossfire' and the emotions of police at Scene 2

- 307) It should be emphasised that it is probably not appropriate to apply an undifferentiated approach to all of the killings at Scene 2. In this report, in particular, it is argued that the fear of an imminent attack may have been a critical factor that led to the shooting in which Mr Mkhonjwa (Victim N) was killed.
- 308) It is argued above (see the concluding paragraphs of Chapter 2) that the preceding events are critical to understanding the events at Scene 2. Significant aspects included:
- a) That many of the strikers were armed and this in itself meant the police saw them as potentially dangerous and were afraid of having to engage them at close quarters;
 - b) How a confrontation between strikers and police on 13 August was understood by police at Marikana: that the strikers had attacked police and killed two of them and that the strikers' willingness to do so was related to the use of muti;
 - c) That many of the police who advanced on Scene 2 believed that the strikers had attacked the police at Scene 1. By the time at which the events at the small koppie unfolded it appears likely that many police believed not only that two of their colleagues had been attacked and killed by strikers on 13 August, but that, consistent with this behaviour, the strikers had again attacked police at Scene 1;
 - d) In addition, the strikers' use of muti may have exacerbated police anxieties that the strikers might pursue belligerent conduct against them, despite their inferior weapons; and
 - e) That police would have experienced uncertainty, apprehensiveness and fear at the risk of being attacked again if they engaged the strikers, as well as a generalised sense of antagonism and vindictiveness towards the strikers. The absence of any command and control at Scene 2 would have provided room for these emotions to be given free rein.

- 309) Within this emotional context it appears likely that the crossfire would have readily been understood as further evidence and confirmation of the strikers' aggression. One of the strikers quoted above describes how, when he was being assaulted by the police, the policemen said to him that 'there are no cameras so that they can kill us and burn us.'⁵⁰³ It was not, therefore, only the absence of command and control. The Scene 2 area was well hidden from the area around the Nkaneng and the small kraal where media were gathered. Police at Scene 2 are likely to have experienced a sense that they had been released from the constraints imposed by the media's presence. Even without crossfire, the absence of constraints would have been likely to lead to excesses. But the crossfire would have lent itself to the interpretation that the strikers were attacking them again, galvanising the police into a 'combat' mode.
- 310) It is therefore likely that an important element in the shootings at Scene 2 was a loss of judgement and self-control by some SAPS members, manifested in a combination of rage and exhilaration. This phenomenon is referred to by Collins as 'forward'⁵⁰⁴ and by Waddington as 'the red mist'.⁵⁰⁵
- 311) In the Marikana Commission report, Capt. Kidd is quoted as saying that as the police approached Koppie 3, 'He heard the sound of gunfire and the sound of bullets flying over their heads, coming from the direction of the koppie in front of them.'⁵⁰⁶ Likewise, Lt Col. Modiba said as he proceeded towards Koppie 3, 'he heard the sound of firing from the mountain and assumed it was from Koppie 3.'⁵⁰⁷ It may be imagined that the sound of gunfire resonating around Scene 2 further stimulated the heightened emotions of the police.

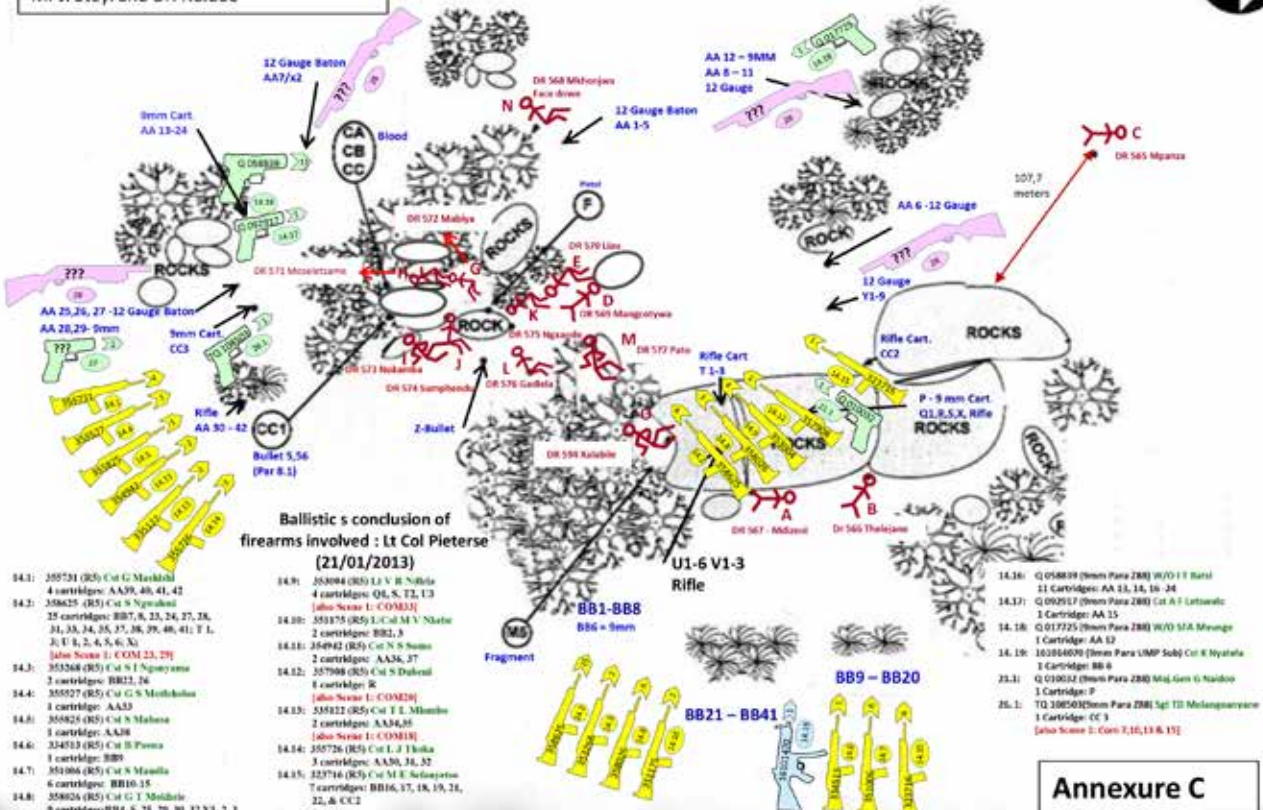
Annexures to the report of the independent forensic and ballistic experts (Marikana Commission of Inquiry Exhibit ZZZ5)



BALLISTIC DATA, MATCHED FIREARMS & DECEASED POSITIONING
 Compiled and Inserted by:
 Mr J. Steyl and Dr. Naidoo

SKETCH PLAN
 Original Scene Layout: Capt Mohlaki

C



Ballistics conclusion of firearms involved : Lt Col Pieterse (21/01/2013)

- | | | |
|--|---|---|
| 14.1: 205721 (RS) Cal G. Makholisi
4 cartridges: AA39, 40, 41, 42 | 14.9: 203094 (RS) Lt V. R. Ndaba
4 cartridges: Q1, S, T2, T3
[also Scene 1: CO0323] | 14.16: Q104839 (9mm Para Z80) W/O T T Baral
21 Cartridges: AA 13, 14, 16 - 24 |
| 14.2: 258625 (RS) Cal S Nyakazi
25 cartridges: BB7, 8, 23, 24, 27, 28, 31, 33, 34, 35, 37, 38, 39, 40, 41; T L, 3; U, 2, 4, 5, 6, 8 | 14.10: 251375 (RS) Lt Col M V. Nkomo
2 cartridges: BB2, 3 | 14.17: Q109517 (9mm Para Z80) Cal A T Letsoale
3 Cartridges: AA 15 |
| 14.3: 253368 (RS) Cal S I. Ngwenyama
3 cartridges: BB22, 24 | 14.11: 244942 (RS) Cal N S. Somo
2 cartridges: AA36, 37 | 14.18: Q117725 (9mm Para Z80) W/O S/A Mwenje
1 Cartridge: AA 12 |
| 14.4: 255207 (RS) Cal G S. Mankholisi
1 cartridge: AA33 | 14.12: 207900 (RS) Cal S. Dabeni
1 cartridge: R | 14.19: 10304679 (9mm Para LMP Sub) Cal E Nyakazi
1 Cartridge: BB 6 |
| 14.5: 200825 (RS) Cal N. Mahone
1 cartridge: AA38 | 14.13: 235212 (RS) Cal T. E. Mhambwe
2 cartridges: AA34, 35
[also Scene 1: CO0318] | 23.1: Q130012 (9mm Para Z80) Maj Gen G. Naidoo
1 Cartridge: P |
| 14.6: 234513 (RS) Cal B. Pansa
1 cartridge: BB9 | 14.14: 205726 (RS) Cal L. J. Thobela
3 cartridges: AA30, 31, 32 | 25.1: TQ 206503 (9mm Para Z80) Sgt T2 Mhlanganyane
1 Cartridge: CC 1
[also Scene 1: Corri 7,10,13 & 15] |
| 14.7: 251306 (RS) Cal S. Masella
6 cartridges: BB10-15 | 14.15: 229716 (RS) Cal M E. Adeniyi
7 cartridges: BB16, 17, 18, 19, 21, 22, & CC2 | |
| 14.8: 258024 (RS) Cal G. T. Mkhobele
9 cartridges: BB4, 5, 25, 26, 30, 32A1, 2, 3 | | |

Annexure C

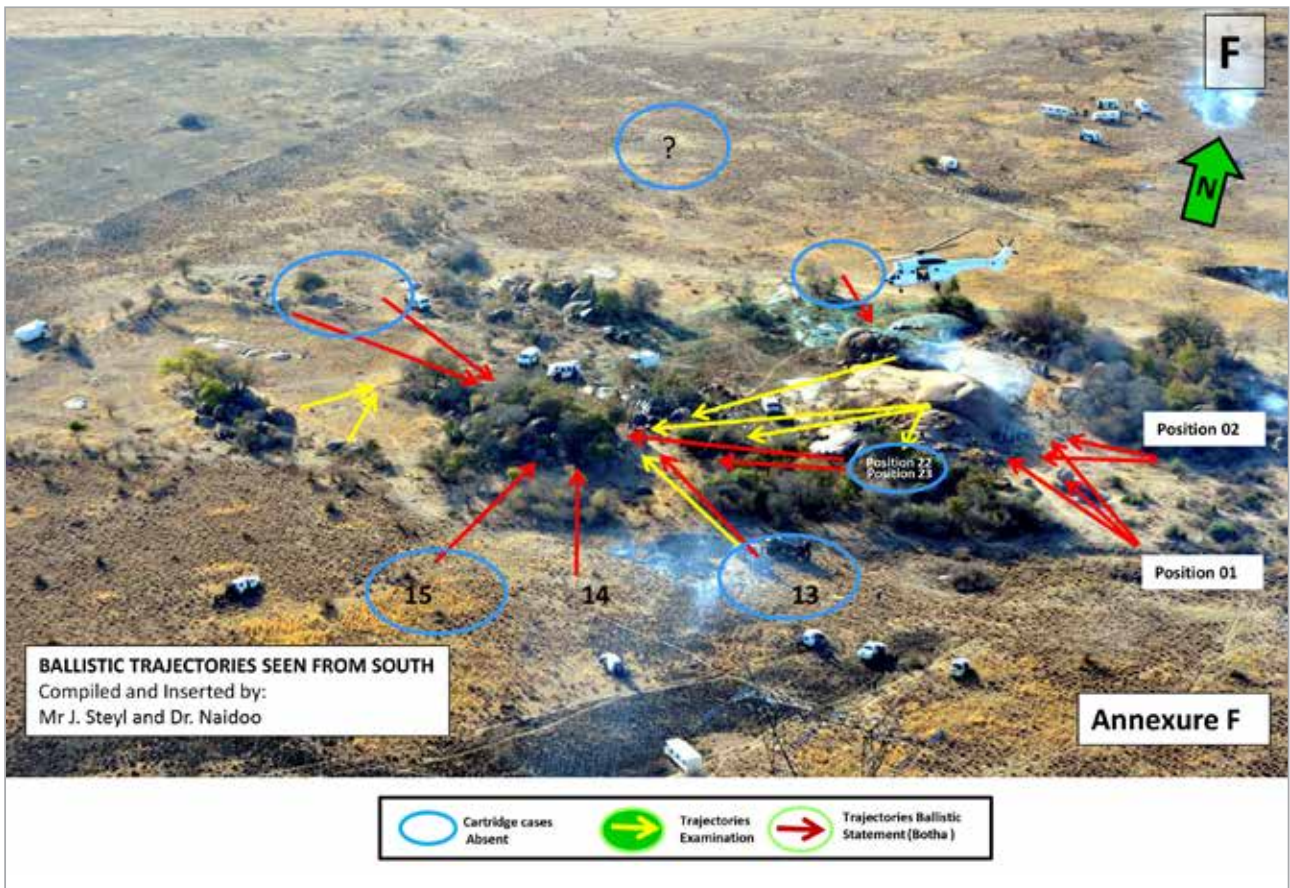
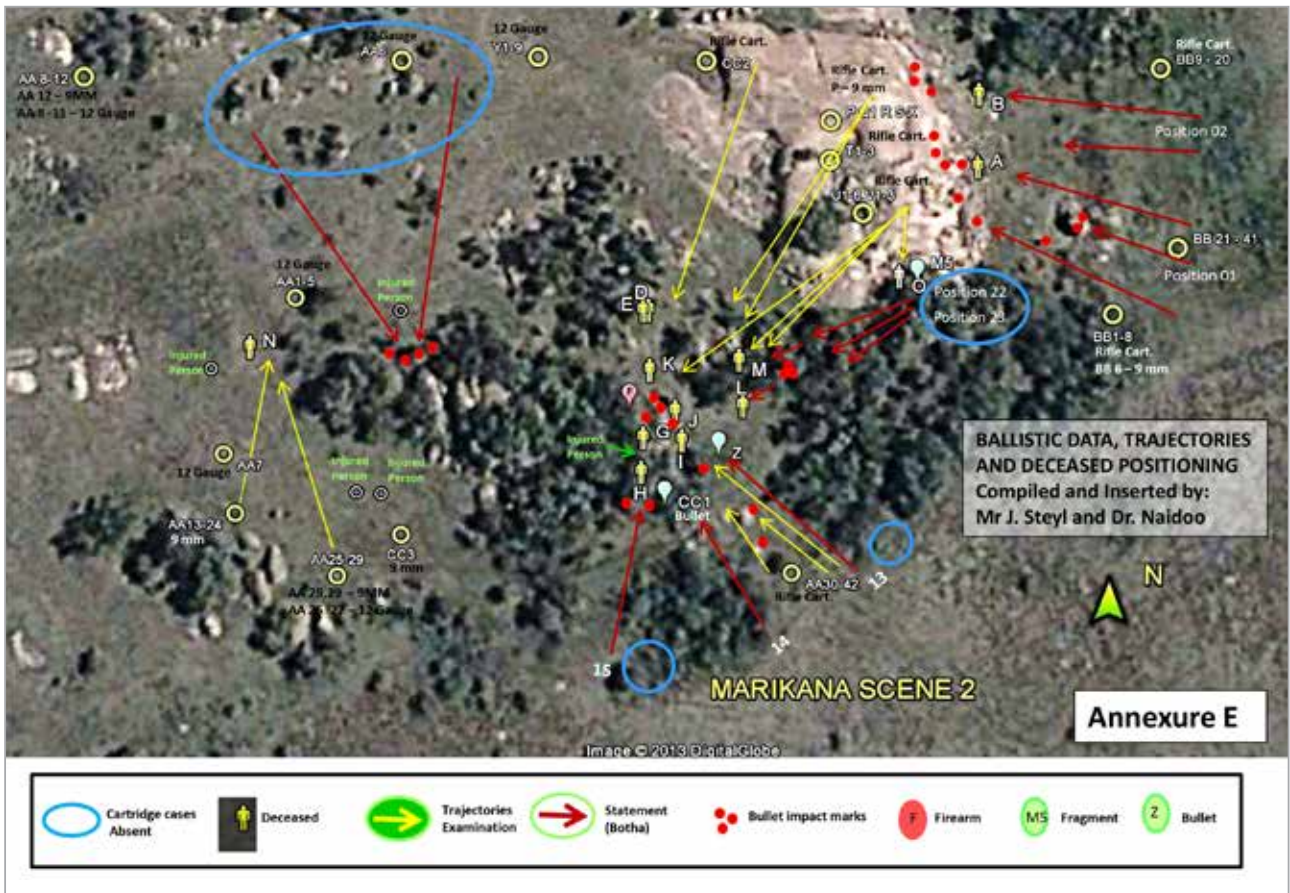
D



BALLISTIC DATA, DECEASED POSITIONING AND DISTANCES
 Compiled and Inserted by:
 Mr J. Steyl and Dr. Naidoo

- Cartridge cases
- Deceased
- Cartridge cases - Absent
- Firearm
- Fragment
- Bullet

Annexure D



Notes

- 1 One of the victims in the first shooting was not a striker but an unemployed man. Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West province, 31 March 2015, 261–2. Available at: <https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>
- 2 Ibid., 263–320 [Note 1].
- 3 Ibid., 276 [Note 1].
- 4 Greg Marinovich, The Murder Fields of Marikana. The Cold Murder Fields of Marikana, *Daily Maverick*, 30 August 2012, www.dailymaverick.co.za/article/2012-08-30-the-murder-fields-of-marikana-the-cold-murder-fields-of-marikana#.WMqPxYF97cc; G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016; Niren Tolsi and Paul Botes, 'Marikana Scene 2 – No Refuge', in Marikana: The blame game, *Mail & Guardian*, 2015, <https://laura-7.atavist.com/mgmarikanablamegame>; see also P Alexander, T Lekgowa, B Mmope, L Sinwell and B Xezwi, *Marikana: A View from the Mountain and a Case to Answer*, Johannesburg: Jacana Media, 2012, 43, where the term 'klein koppie' [small koppie] is used.
- 5 See, however, G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, 175 [Note 4], which indicates that one of the police officers at the first press conference did in fact explain that there were two separate sites where miners died.
- 6 Thapelo Lekgowa, Botsang Mmope and Peter Alexander, How police planned and carried out the massacre at Marikana, *Socialist Worker* (online), 21 August 2012, <https://socialistworker.co.uk/art/28868/How+police+planned+and+carried+out+the+massacre+at+Marikana>.
- 7 Greg Marinovich, The Murder Fields of Marikana. [Note 4].
- 8 Marikana Commission of Inquiry, Report, [Note 1].
- 9 Ibid., 248.
- 10 Ibid., 316.
- 11 Ibid., 326.
- 12 Ibid., 327–8.
- 13 Ibid., 327.
- 14 Marikana Commission of Inquiry, Report [Note 1].
- 15 Claassen Board of Inquiry, Report of the Board of Inquiry into allegations of misconduct against the National Commissioner: Mangwashi Victoria Phiyega, 21 October 2016.
- 16 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 27 October 2014, www.marikanacomm.org.za/docs/201411-HoA-EvidenceLeaders.pdf.
- 17 Marikana Commission of Inquiry, Families' heads of argument, 3 November 2014, www.marikanacomm.org.za/docs/201411-HoA-Families.pdf; representing the families of the three strikers who were killed on 13 August 2012 and the families of 33 of the 34 men who were killed on 16 August 2012 at Marikana.
- 18 Transcripts are referenced when cited in this report. All transcripts are available on the website of the Marikana Commission on the page <http://www.justice.gov.za/comm-mrk/transcripts.html> as well as on the Marikana related website maintained by the Socio-Economic Institute of South Africa at <http://www.marikana-conference.com/index.php/commission-transcripts>
- 19 These include: 1) A video from the Lonmin helicopter: Marikana Commission of Inquiry, Exhibit CC22, MP4 file with title 'Aerial video Lonmin strike', 16 August 2012, www.youtube.com/watch?v=IKIFJPzWGpg; 2) Seven video recordings taken by Capt. Ryland of the Honeydew TRT from his cellphone camera: Marikana Commission of Inquiry, Exhibit I, 7 3GP videos in folder with title 'Exhibit I (Ryland videos)', 16 August 2012 (of particular significance in relation to events at Scene 2 is the video with file name 'VID 00026-20120816-1618'); 3) Video recordings taken from the SAPS Squirrel helicopter by two of the SAPS members. The helicopter took off after the Scene 1 shooting but most of the time that it was in the air it was some distance away from Scene 2 shooting. Consequently, these videos are of very little value in understanding the events at Scene 2. In effect, there is little more than a few seconds of video footage of the events at Scene 2 from either Lt Col. Botha or Capt. Nel. See, for instance: Marikana Commission of Inquiry, Exhibit WWW3, MPG file with title 'Exh WWW3 BOTHA VIDEO', 16 August 2012, www.youtube.com/watch?v=9d6ZsTSx_Og&feature=youtu.be.
- 20 The photographs taken by Capt. Nel (in the SAPS Squirrel) are Exhibit JJJ6 and those by Lt Col. Botha (also in the Squirrel) are Exhibit KKK16 [Note 163]. Those taken by Lt Col. Vermaak (in the Robinson helicopter) are Exhibit JJJ10 [Note 108] and Exhibit JJJ11. Some of these photographs capture aspects of the events at Scene 2. Overall these photographs are more useful than the SAPS helicopter video footage in understanding the events at Scene 2.
- 21 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 16th August 2012 – Integration of Scene, Ballistic & Medical Evidence at Scene 2, Marikana Commission of Inquiry Exhibit ZZZ5, 26 May 2014. Report, excluding annexures, available at http://www.marikana-conference.com/images/1_Integrated_Report_Cobus__Steve_stage_3_final.pdf

- 22 Marikana Commission of Inquiry, Exhibit L, South African Police Service: Mine unrest at Lonmin, Marikana – history and build-up.
- 23 Marikana Commission of Inquiry, Exhibit FFF8, two-sheet Microsoft Excel spreadsheet in file named ‘FFF8 DISCHARGE 16 AUGUST 2012 CORRECTED VERSION a’ (last saved 26 March 2013).
- 24 Marikana Commission of Inquiry, Exhibit ZZZZ3, single sheet Microsoft Excel spreadsheet in file named ‘Statements_16_August_2012_2_Autosaved.xlsx’ (created 15 April 2014).
- 25 Marikana Commission of Inquiry, Exhibit MMM26, Untitled 9-page Microsoft PowerPoint presentation with blank first page in file named ‘MMM26 NIU and K9 at Scene 2’; Marikana Commission of Inquiry, Exhibit MMM26 (last saved 22 May 2014).
- 26 David Stefanus Landsberg Pieterse, Affidavit in terms of Section 212 of the Criminal Procedure Act 1977 (Act 51 of 1977), Marikana Commission of Inquiry, Exhibit MMM31, 21 January 2013, www.marikana-conference.com/images/Exhibit_MMM31_Item_147_-_Statement_of_DSL_Pieterse_readable.pdf
- 27 Marikana Commission of Inquiry, Exhibit MMM45, CALS Analysis: The movement of K9 and NIU members on foot at Koppie 3, (PDF last saved 2 March 2014).
- 28 Marikana Commission of Inquiry, Exhibit MMM47, The deaths of Victims A, B, M and O, (last saved 11 March 2014).
- 29 Marikana Commission of Inquiry, Exhibit UUU5, CALS Analysis: AVL records of Capt. Kidd and Maj. Gen. Naidoo, (PDF last saved 23 May 2014).
- 30 This is to correct for the fact that the ‘clocks’ on the various recording devices were not standardised. Excel spreadsheet with file name ‘Lonmin chopper transcript coded and synchronised 141112 with exhibit numbers’ (last saved 13 November 2014).
- 31 Thapelo Legkowa, Botsang Mmope and Peter Alexander, How police planned and carried out the massacre at Marikana, *Socialist Worker* (online), 21 August 2012, <https://socialistworker.co.uk/art/28868/How+police+planned+and+carried+out+the+massacre+at+Marikana>, [Note 6]; Greg Marinovich, The Murder Fields of Marikana [Note 4] [Marikana Commission of Inquiry, Exhibit MMMM2, Carte Blanche video part one and part two featuring interview with Mr Mtshamba; Niren Tolsi and Paul Botes, ‘Marikana Scene 2 – No Refuge’, in Marikana: The blame game, *Mail & Guardian*, 2015, <https://laura-7.atavist.com/mgmarikanablamegame> [Note 4]; G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, [Note 4]; Peter Alexander, Marikana Commission of Inquiry: From Narratives Towards History, *Journal of Southern African Studies*, 42(5) (2016); Niren Tolsi, Marikana then and now – a tragedy that keeps unfolding, *Mail & Guardian*, 18 August 2017, <https://mg.co.za/article/2017-08-18-00-marikana-then-and-now-a-tragedy-that-keeps-unfolding>.
- 32 This refers to the death of Mr Julius Langa in the early hours of Monday 13th August 2012. (Marikana Commission of Inquiry, Report, 128-132 [Note 1]).
- 33 ANA, Case against Marikana miners postponed, *The Citizen* (online), 20 February 2017, <https://citizen.co.za/news/south-africa/1434137/marikana-mineworkers-court-2012-incidents/>.
- 34 D Bruce, Summary and analysis of the report of the Marikana Commission of Inquiry, Council for the Advancement of the South African Constitution, 12 August 2015, 23, www.casac.org.za/wp-content/uploads/2015/02/Summary-and-Analysis-of-the-Report-of-the-Marikana-Commission-of-Inquiry.pdf.
- 35 G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, [Note 4].
- 36 Marikana Commission of Inquiry, Report, 98–99, especially at paragraph 8 [Note 1].
- 37 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 39–142, 253 [Note 16].
- 38 Lt Col. Salmon Vermaak, Statement, Marikana Commission of Inquiry, Exhibit LLL8, 21 January 2014, www.marikana-conference.com/images/Exhibit_LLL8_Statement_Lt_Col_SJ_Vermaak_21_January_2014_.pdf.
- 39 Marikana Commission of Inquiry, Exhibit [Note 22].
- 40 D Scott, Consolidated statement of Duncan Scott, Marikana Commission of Inquiry, Exhibit HHH20, 10 July 2013, 21, paragraph 6.12, www.marikanacomm.org.za/exhibits/Exhibit-HHH-20.pdf.
- 41 D Bruce, 2016, Commissioners and Commanders – Police leadership and the Marikana massacre, Pretoria: Institute for Security Studies, 21 <https://issafrica.s3.amazonaws.com/site/uploads/mono194-2.pdf>.
- 42 G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, 92 [Note 4]. See also: Marikana Commission of Inquiry, Written submissions of the South African Human Rights Commission regarding ‘phase one’, 29 October 2014, 155 www.marikanacomm.org.za/docs/201411-HoA-SAHRC.pdf.
- 43 Marikana Commission of Inquiry, Final statement of Gary White MBE, Exhibit JJJ178, 4 October 2013, 75, www.marikana-conference.com/images/Exhibit_JJJ178_Final_Statement_of_Gary_White_MBE_FINAL.pdf.
- 44 Marikana Commission of Inquiry, Heads of argument of the South African Police Service (SAPS), undated (October 2014), 43, paragraph 103, www.justice.gov.za/comm-mrk/docs/201411-HoA-SAPS.pdf.
- 45 Marikana Commission of Inquiry, Exhibit L, 261 and 263 [Note 22]. These weapons are said to have been recovered at Scene 1 and Scene 2, but because Scene 2 was tampered with, it may be that some of the weapons said to have been recovered there were recovered elsewhere at Marikana.
- 46 Marikana Commission of Inquiry, Report, 233–234, 242–243 [Note 1]. Regarding belligerent statements by Mr Noki on the Wednesday morning, see also Marikana Commission of Inquiry, Exhibit TTT1, S McIntosh, Further statement of Lt Colonel McIntosh, 13 May 2014, 3-4, available at: http://www.marikana-conference.com/images/Exhibit_TTT1_Further_statement_of_Lt_Col_SJ_McIntosh_13.05.14.pdf.
- 47 Marikana Commission of Inquiry, Report, 234-235 [Note 1]. This evidence is reviewed in detail in the SAHRC heads of argument; Marikana Commission of Inquiry, Written submissions of the SAHRC regarding ‘phase one’, 142–150 [Note 42].
- 48 MP Mamabolo, Supplementary affidavit, Marikana Commission of Inquiry, Exhibit KKK60, 20 January 2014, paragraph 11. There is an apparently hurriedly compiled

discussion of statements that allegedly pertain to this attack over pages 214–222 of the Marikana Commission report. Some of the statements quoted appear to be relevant to the alleged attack, but some of them appear to be from police who were in vehicles positioned well away from where the attack is alleged to have taken place. Also, the passage does not identify any of the dates on which the statements were written or submitted, which is significant in assessing their reliability. Unfortunately, no one has carried out a more careful and systematic analysis of these statements.

- 49 See also the statement of Lt Col. Gaffley (paragraph 8): ‘at this stage rocks and objects were thrown at the Casspir’ (Lieutenant Colonel C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012, www.marikana-conference.com/images/Exhibit_FFF10_Gaffley_Lt_Col.pdf.
- 50 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 383 [Note 16].
- 51 Ibid.
- 52 Ibid, 383–387.
- 53 Ibid, 383.
- 54 Marikana Commission of Inquiry, Exhibit UUUU10.3, Annexure V2 – Video presentation on the movement of strikers from koppie to the kraal [FINAL]; Marikana Commission of Inquiry, Exhibit UUUU10.4, Annexure V3 – Video presentation on the use of water canon before Scene 1 [FINAL]; Marikana Commission of Inquiry, Exhibit UUUU10.5, Annexure V4 – Video presentation on the use of tear gas and stun grenades at and around Scene 1 [FINAL]; Marikana Commission of Inquiry, Exhibit UUUU10.6, Annexure V5 – Video presentation on the shots fired at Scene 1 [FINAL].
- 55 See the video exhibit UUUU10.3 at 22:27; Marikana Commission of Inquiry, Exhibit UUUU10.3, Annexure V2 – Video presentation on the movement of strikers from koppie to the kraal [FINAL].
- 56 Apparently, Papa 2 and the SAPS Casspir.
- 57 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 391 [Note 16].
- 58 Scott, Consolidated statement, 22 [Note 40].
- 59 Marikana Commission of Inquiry, Report, 279, paragraph 23 [Note 1]. This may have been a report from Papa 1; see Marikana Commission of Inquiry, Written submissions of the SAHRC regarding ‘phase one’, 403–4 [Note 42].
- 60 Marikana Commission of Inquiry, Report, 279, 292–3 [Note 1]
- 61 Ibid., 289, paragraph 53.
- 62 According to the supplementary statement of Cees de Rover, the NIU approaching Scene 2 had just witnessed events at Scene 1; C de Rover, Supplementary Statement, Marikana Commission of Inquiry, Exhibit FFF11A, undated (last saved 9 September 2014), paragraph 42, www.marikana-conference.com/images/Exhibit_FFF11A_Rover_supplementary_statement.pdf.
- 63 Various sources were consulted on the issue of the age of the deceased including: Marikana Commission of Inquiry, Families’ heads of argument, 44–71 [Note 17]; Marikana Commission of Inquiry, Exhibit A, Electronic folder headed ‘Exhibit A (IPID. Post Mortem Reports)’; Marikana Commission of Inquiry, Exhibit KKK10, 36-page document with title ‘Deceased: 16 August’ on first page (last saved 2 December 2013). There are discrepancies between the sources. Where these occur, or where no figure is provided by the Families, the figure from KKK10 is provided in brackets.
- 64 Date of birth 20 February 1983; Marikana Commission of Inquiry, Exhibit A, 97–8.
- 65 Date of birth 6 Feb 1983;
- 66 Date of birth 30 October 1955; Marikana Commission of Inquiry, Exhibit A, 48.
- 67 Date of birth is 30 March 1951; *ibid.*, 108.
- 68 Date of birth is 14 September 1967; *ibid.*, 134–5). However, according to the Families heads of argument he was 47; Marikana Commission of Inquiry, Families’ heads of argument, 50 [Note 17].
- 69 Date of birth as 7 February 1963; Marikana Commission of Inquiry, Exhibit A, 154.
- 70 Date of birth 20 November 1983; *ibid.*, 172–3.
- 71 Date of birth 24 December 1988; *ibid.*, 225.
- 72 Date of birth 22 June 1974; *ibid.*, 262.
- 73 Mr Mohai died in or while being transported to hospital but is understood to have been fatally shot next to where the body of Mr Ngxande (Victim K) was found. See: Marikana Commission of Inquiry, Families’ heads of argument, 368 [Note 17]; Marikana Commission of Inquiry, Report, Annexure J, 654 [Note 1].
- 74 Date of birth 6 October 1975; Marikana Commission of Inquiry, Exhibit A, 691,693.
- 75 Date of birth 2 July 1952; *ibid.*, 703.
- 76 Marikana Commission of Inquiry, Families’ Heads of argument, 319 [Note 17].
- 77 Date of birth 1 March 1972; Marikana Commission of Inquiry, Exhibit A, 731–733.
- 78 Regarding the identity of those at Koppie 3, see: Marikana Commission of Inquiry, Written submissions of the SAHRC regarding ‘phase one’, 453–454 [Note 42].
- 79 The Marikana Commission indicates that seven of the strikers at Scene 1 were hit by SSG pellets. Four of these strikers were among those who were fatally shot at Scene 1 and the three others were injured. Note, however, that as reflected in Table 2, only one of the strikers at Scene 1 – Mr Yona – is believed to have died as a result of wounds inflicted by SSG pellets. SSG pellets are a type of ammunition used in shotguns. Shotgun pellets are broadly differentiated as being either ‘birdshot’ or ‘buckshot’. SSG is a type of buckshot; the abbreviation stands for ‘special small game’. Shotguns are also used to shoot rubber bullets.
- 80 However, they were drawn from at least five different TRT units, based in Katilehong, Soweto, Brits, Klerksdorp and Rustenburg.
- 81 Acoustic analysis suggests that guns continued firing for up to a minute after the first bullets were fired, though this evidence is not discussed in the Marikana Commission report. See Marikana Commission of Inquiry, Written submissions of the SAHRC regarding ‘phase one’, 380 [Note 42].
- 82 Marikana Commission of Inquiry, Exhibit UUUU10.6, Annexure V5 – Video presentation on the shots fired at Scene 1 [FINAL]. The first SAPS member calling for

a ceasefire can be seen at 10:28 in the video. This is 4 seconds after the start of the shootings. There are further calls to cease fire following this, but the shootings continue for up to 12 seconds.

- 83 Mr Yawa; Marikana Commission of Inquiry, Families' heads of argument, 270–271 [Note 17].
- 84 Mr Yona; Marikana Commission of Inquiry, Exhibit A, 376. According to the Families' heads of argument, Mr Mdze died from shotgun wounds but, although he sustained gunshot wounds, this opinion appears to be incorrect; see Marikana Commission of Inquiry, Families' heads of argument, 271–272 [Note 17].
- 85 Mr Mkhonjwa, Marikana Commission of Inquiry, Families' heads of argument, 382–3 [Note 17]; Mr Liau, *ibid.*, 352–353; and SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 17 and Annexure J, 5 [Note 21]. The initial Medico-Legal report (FFF20), dated 22 October 2012, records the injuries sustained by Mr Saphendu (Victim J) as 'possibly handgun'; this description is reflected in the Families' account of his death; Marikana Commission of Inquiry, Families' heads of argument, 365–6. However, in the final medico-legal report, Mr Saphendu's death is linked to an R5 gunshot injury (SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 19 and Annexure J, 9 [Note 21].
- 86 Exhibit L has 13 wounded at Scene 1 and 15 at Scene 2 (slides 261 and 263), but this is incompatible with the figure of 78 on page 268; Marikana Commission of Inquiry, Exhibit L, [Note 22].
- 87 See also Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 380–1 [Note 42], regarding evidence that further shots were fired after the initial volley.
- 88 Simthembile Khwati, IPID statement A85, location not specified, 19 August 2012.
- 89 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 24 [Note 21].
- 90 See: Marikana Commission of Inquiry, Exhibit VVV9, single-page PDF with title 'Position of the shotgun victims' (last saved 3 June 2014); and Marikana Commission of Inquiry, Exhibit VVV10, 18-page PDF with title 'Possible evidence of the shotgun and the position of the shooter' (last saved 2 June 2014), 18.
- 91 Marikana Commission of Inquiry, Exhibit FFF8 [Note 23]. Earlier information provided to the Commission by the SAPS is somewhat different and clearly unreliable in certain respects; Marikana Commission of Inquiry, Exhibit L, 211 [Note 22].
- 92 G Marinovich, The Murder Fields of Marikana [Note 4].
- 93 Following terminology used in SR Naidoo and J Steyl, Final Report: Marikana Mining Incident [Note 21].
- 94 *Ibid.*
- 95 *Ibid.*, Annexures B–G [Note 21].
- 96 See for instance Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 363.
- 97 See: Marikana Commission of Inquiry, Exhibit UUU5, CALS Analysis: AVL records of Capt. Kidd and Maj. Gen. Naidoo, 2, [Note 25], which shows the position of Kidd's vehicle during the period 15:49 to 16:48.
- 98 Wayne Kidd, Further Statement, 14 November, Marikana Commission of Inquiry, Exhibit HHH 12; Marikana Commission of Inquiry, Report, 278 [Note 1].
- 99 *Ibid.*, 281.
- 100 For images, see Marikana Commission of Inquiry, Exhibit L, 215, 222 and 249 [Note 22].
- 101 *Ibid.*, 214 [Note 22]; see also C de Rover, Supplementary Statement, 17–19 and 28 [Note 57].
- 102 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 453 [Note 42].
- 103 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 439 [Note 16].
- 104 There are 18 statements about this.
- 105 Wayne Kidd, Further Statement, 14 November, Marikana Commission, Exhibit HHH12 [Note 98].
- 106 Cst Mabe contradicts Kidd's statement that people were allowed to pass through, saying that he managed to arrest six strikers with weapons (Ezekiel Ramotheo Mabe, Additional statement, undated, (File name: 152. ER Mabe - 614, PDF last saved 19 October 2012), Marikana Commission Exhibit WWW5). Some of these strikers allege that the police approaching on the west side shot at them. It is possible that the strikers who made these statements tried to flee to the west side during the incident in which Mr Mkhonjwa was killed (see: Mbolekezi Ziwela, IPID statement A152, Mogwase, 21 August 2012; Siyabulela Sokotshe (IPID statement A276, Bethanie, 19 August 2012). The killing of Mr Mkhonjwa is discussed in Chapter 5.
- 107 Marikana Commission of Inquiry, Families' heads of argument, 375 [Note 17].
- 108 See Lt Col. Vermaak's Pentax photographs: Marikana Commission of Inquiry, Exhibit JJJ10, IMGP4546 (estimated time 16:07:18) and IMGP4547 (estimated time 16:07:24) in folder titled 'Col. Vermaak Pentax Photos of 16 August'.
- 109 Marikana Commission of Inquiry, Exhibit CC22 [Note 16].
- 110 KT Modiba, Further statement, 3 November (file name: 202A. KT Modiba – 281). See also page 69 of the 2 October 2012 draft of Exhibit L: Marikana Commission of Inquiry, Exhibit JJJ157, 93-page Microsoft PowerPoint presentation titled 'Lonmin mine unrest: Marikana THURSDAY 16th August 2012, 69 (last saved 2 October 2012).
- 111 Marikana Commission of Inquiry, Exhibit MMM26 [Note 21]; Marikana Commission of Inquiry, Heads of argument of evidence leaders, 467–468 [Note 16].
- 112 Marikana Commission of Inquiry, Report, 309 [Note 1]./ Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West province, 31 March 2015, 309 [Note 1].
- 113 *Ibid.*, 309
- 114 The report refers to 16 people, but this is clearly incorrect as the number killed was 17.
- 115 Marikana Commission of Inquiry, Report, 456–458 [Note 1]; Marikana Commission of Inquiry, Heads of argument of evidence leaders, 456–458 [Note 16].
- 116 Marikana Commission of Inquiry, Report, 311–312 [Note 1].
- 117 *Ibid.*, 262–268, 311–12.
- 118 *Ibid.*, 311.

- 119 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 395–6 [Note 42], quoting Transcript Day 125, 12964, per Maj. Gen. Mpembe; and Transcript Day 165, 19095–19097, per Brig. Calitz.
- 120 Marikana Commission of Inquiry, Report, 311 [Note 1].
- 121 *Ibid.*, 308.
- 122 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 76 [Note 16].
- 123 Marikana Commission of Inquiry, Report, 318–319 [Note 1].
- 124 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 470–474 [Note 16].
- 125 Marikana Commission of Inquiry, Exhibit KKK10 [Note 58].
- 126 Times for Shooting 3 are not provided, as information on the times at which they may have occurred is more complex than in other cases.
- 127 Mr Mohai died in or while being transported to hospital, but he is understood to have been fatally shot next to where the body of Mr Ngxande (Victim K) was found; Marikana Commission of Inquiry, Families' heads of argument, 368 [Note 17]; Marikana Commission of Inquiry, Report, Annexure J, 654 [Note 1].
- 128 Marikana Commission of Inquiry, Families' heads of argument, 319 [Note 17].
- 129 *Ibid.*
- 130 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 465–467 [Note 42].
- 131 Marikana Commission of Inquiry, Exhibit L, 231–233 [Note 22].
- 132 This was one of the locations in which no cartridge cases were found; see below.
- 133 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident [Note 21].
- 134 *Ibid.*
- 135 *Ibid.*, 24 [Note 21]; note, however, the remark in the Families' heads of argument: 'The 14 victims who were shot and killed at the kraal, were all shot numerous times, including to their upper heads and/or upper bodies.'; Marikana Commission of Inquiry, Families' heads of argument, 247 [Note 17].
- 136 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 25 [Note 21].
- 137 Niren Tolsi and Paul Botes, 'Marikana Scene 2 – No Refuge', in Marikana: The blame game, *Mail & Guardian*, 2015, <https://laura-7.atavist.com/mgmarikanablamegame> [Note 4].
- 138 Marikana Commission of Inquiry, Families' heads of argument, 327–328 [Note 17].
- 139 *Ibid.*, 356–358 [Note 17].
- 140 *Ibid.*, 359–361 [Note 17].
- 141 *Ibid.*, 331 [Note 17].
- 142 *Ibid.*, 335 [Note 17].
- 143 A distance of roughly 3 metres; Marikana Commission of Inquiry, Families' heads of argument, 332 [Note 17].
- 144 Marikana Commission of Inquiry, Exhibit L, 261 and 263 [Note 22]. The same figures are provided in the initial report sent by Commissioner Phiyega to President Zuma in the early hours of 17 August 2012: Marikana Commission of Inquiry, Exhibit FFF4, Undated two-page PDF file with title 'Internal unrest incident: Lonmin mine: North West Province: Internal brief', www.marikana-conference.com/images/Exhibit_FFF4.internal_brief.pdf; and Marikana Commission of Inquiry, Heads of argument of the SAPS, 74, 78 [Note 39].
- 145 An email from Moses Dlamini to Greg Nicolson, March 2017. 1), IPID file 2 reduc (PDF page 121) has a list of about 55 people with injuries but no indication on whether the received their injuries at Scene 1 or Scene 2; this appears consistent with the Moses Dlamini email: 'Fifty nine (59) miners sustained gunshot injuries and were transported to various hospitals for medical treatment. Three (3) miners died at the hospital and one (1) died in the police canter at the detention Centre. Bringing the total number of deceased miners to thirty four (34).' [i.e. 59 minus 4 = 55]
- 146 Marikana Commission of Inquiry, Exhibit FF5, PDF file with title 'General Phiyega pronounces on mine unrest', 17 August 2012, www.marikana-conference.com/images/Exhibit_FFF5_media_statement_17_Aug.pdf
- 147 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 452 [Note 42].
- 148 *Ibid.*
- 149 Marikana Commission of Inquiry, Exhibit FFF8 [Note 23]. Note that the total for live ammunition is 296 here and 295 elsewhere.
- 150 There were 61 members who discharged weapons including 57 who used live ammunition. One K9 member used two types of weapons (a 9mm pistol and stun grenades).
- 151 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident [Note 21].
- 152 *Ibid.*; the report of the independent forensic and ballistic experts describes this last position as the south side, but it seems more reasonable to describe it as south-west.
- 153 *Ibid.*; see also: Marikana Commission of Inquiry, Transcript Day 204 (18 March 2014, Naidoo), 25093–25102.
- 154 Includes Maj. Gen. Naidoo, who was not a K9 member.
- 155 Based on Marikana Commission of Inquiry, Exhibit FFF8 [Note 23].
- 156 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 488 [Note 16].
- 157 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 11 [Note 21].
- 158 *Ibid.*, Annexure C [Note 21]; these are AA1–5, AA6, AA7 (2 cartridge casings), AA8–11, AA25–27 and Y1–9.
- 159 From the cross-examination of Maj. Gen. Naidoo it appears that the sketch plan compiled by Capt. Mohlaki did not identify the specific location at which the SSG casings were found. See also: Marikana Commission of Inquiry, Transcript Day 204 (18 March 2014, Naidoo), 25093–25102.
- 160 Note that there appear to be errors in Annexure C: according to Lt Col. Pieterse's report, BB20 was also fired by Sergeant Sefanyetso's R5 (firearm 14.15) while BB22 was only fired by Cst Ngonyama (firearm 14.3) and not Cst Sefanyetso; see: Pieterse, Affidavit, Marikana Commission Exhibit MMM31, 9 [Note 26].
- 161 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 12 [Note 21].
- 162 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 487 [Note 16]. The final report of the

- independent forensic and ballistic experts states that no firearm appears to have been submitted for ballistic testing for 9mm cartridges AA28 and AA29; SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 25 [Note 21].
- 163** See, for instance: Marikana Commission of Inquiry, Exhibit KKK16, in folder titled 'Exhibit KKK16 Col. Botha Photos', images 5128 and 5129.
- 164** BB1 (SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 11 [Note 21].
- 165** Ibid. 18–19 [Note 21].
- 166** These are labelled in *ibid.*, Annexure C and referred to in page 15, para 29 of Col. Pieterse's affidavit; Pieterse, Affidavit, [Note 26].
- 167** SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 11–12 [Note 21].
- 168** Heckler and Koch UMP9. For unknown reasons the shooter linked to this weapon is identified as having fired an R5 in Exhibit FFF8 [Note 23]. The NIU uses the Heckler and Koch UMP9; see https://en.wikipedia.org/wiki/National_Intervention_Unit#Equipment.
- 169** SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 11 [Note 21].
- 170** Ibid.
- 171** Includes Maj. Gen. Naidoo who was not a K9 member.
- 172** SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 4 and Annexures D, E, F and G. [Note 21].
- 173** Ibid.
- 174** In the supplement to his initial statement, he admits to firing five shots and only in a third statement, of uncertain date, admits to firing 25. [see further note 365]
- 175** His statement is exhibit ZZZ6 (TG Mokhele, Statement, 31 October 2012, Marikana Commission of Inquiry, Exhibit ZZZ6) is discussed further below.
- 176** In SR Naidoo and J Steyl, Final Report: Marikana Mining Incident [Note 21], Cst Nyatela's weapon is described as sub-machine gun (9mm Para UMP Sub) and not an R5 (see also [Note 161]).
- 177** See: Marikana Commission of Inquiry, Exhibit KKK16, images DSC5137–DSC 5142 [Note 163].
- 178** SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, Annexures C [Note 21].
- 179** These photographs are Marikana Commission of Inquiry, JJJ6, Folder titled 'JJJ6. 1169 etc. Capt. Nel Photos 16th', images 1242–1251; images 1237 (at 16:13:16) and 1238 (at 16:13:18) may also be relevant.
- 180** David Mutsi, Additional statement, undated (File name: 119. Mutsi – 514, PDF last saved 19 October 2012), Marikana Commission Exhibit MMM7 and Exhibit MMM39.24B, available at: http://www.marikana-conference.com/images/Exhibit_MMM7_MUTSI.pdf
- 181** Marikana Commission of Inquiry, Exhibit KKK16, images DSC5137–DSC5142 [Note 163].
- 182** His supplementary statement uses the words 'Ek het dekking ingenerm op die grond tussen die gras' (after which I took cover on the ground between the grass) while in his original statement of 23 August 2012 he states merely that 'waarna ek dekking ingeneem het op die grond' (after which I took cover on the ground). His statements are: Pieter Visser, IPID Statement A405, 23 August 2012; Pieter Visser, Aanvullende Verklaring, undated, Marikana Commission Exhibit MMM39.31) (File name: 121B. PJ Visser – 522, PDF last saved on 6 November 2012).
- 183** Ezekiel Ramotheo Mabe, Additional statement, undated, paragraph 7 [Note 106].
- 184** Zama Buthelezi, Additional statement, undated, (File name: 155. ZA Buthelezi - 622, PDF last saved 19 October 2012), Marikana Commission Exhibit WWW6.2.
- 185** Cst Mokgetla's statement is Edward Mokgetla, Additional statement, undated, (File name: 153. ET Mokgotla - 616, PDF last saved 19 October 2012), Marikana Commission Exhibit UUU10). It is spelt as Mokgatla in Marikana Commission of Inquiry, Exhibit ZZZZ3, single sheet Microsoft Excel spreadsheet in file named 'Statements_16_August_2012_2_Autosaved.xlsx' (created 15 April 2014) [Note 20].
- 186** See statement of Mboleli Ziwela (IPID statement A152, Mogwase, 21 August 2012) and Siyabulela Sokotshe (IPID statement A276, Bethanie, 19 August 2012). It is possible that these strikers were part of a group trying to flee from the west side of Koppie 3 when Mr Mkhonjwa was shot. The evidence appears to show that this happened when a number of strikers were trying to flee from the west side of the small koppie area (See for instance Marikana Commission of Inquiry, Families' heads of argument, 374–389 [Note 17].
- 187** Marikana Commission of Inquiry, Report, 98–99, especially at paragraph 8 [Note 1]
- 188** See for instance: The statements of Cst Mutsi in particular his initial statement to IPID (David Mutsi, IPID Statement A411, 24 August 2012, Marikana Commission Exhibit MMM39.24A); both statements of WO Visser [Note 182]; Lukas Breedt, IPID Statement A401, 23 August 2012, Marikana Commission Exhibit MMM39.2; De Frederik de Beer, Statement, 24 August 2012, Marikana Commission Exhibit MMM39.3; George Mashishi, IPID Statement A383, 23 August 2012; Thembane Mlombo, IPID Statement A374, 23 August 2012; Lesiba Thoka, IPID Statement A451, 24 August 2012; Mbhalati Simon Kita, Statement, undated (File name: 48A. MS Kita – 217, last saved 5 November 2012); Khazamula Makhubela, IPID statement A420, 23 August 2012; Maj. Gen. G Naidoo, Consolidated affidavit, Marikana Commission of Inquiry, Exhibit JJJ108, 6 September 2013, paragraph 75; Kaizer Modiba, IPID statement A407, 23 August 2012.
- 189** Maj. Gen. G Naidoo, Consolidated affidavit, 71 [Note 188].
- 190** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 454 [Note 42].
- 191** Compare for instance: the initial statement of Cst Mutsi [Note 188] with his later additional statement [Note 180]; the two statements of WO Visser [Note 182]; the statements of Cst Mentesh as discussed in, Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 482 [Note 42]; For another example of inconsistency see Cst Dintwe. In his first statement he says that he fired when the strikers were physically attacking while in the second he says he fired in response to gunfire. (Jerry Dintwe, Statement, 6 September 2012, Marikana Commission Exhibit MMM39.4A; Jerry Dintwe, Additional statement, October 2012, Marikana Commission Exhibit MMM39.4B).

- 192 Marikana Commission of Inquiry, Report, 313 [Note 1].
- 193 Based on SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, [Note 21].
- 194 Ibid.
- 195 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 455 [Note 42].
- 196 Marikana Commission of Inquiry, Report, 313 [Note 1].
- 197 Also discussed in more detail in D Bruce, Shot while surrendering: Statements of Marikana strikers regarding Scene 2 journal article submitted for publication [Note 189].
- 198 Marikana Commission of Inquiry, Report, 316 [Note 1].
- 199 Scene 2 is discussed in Marikana Commission of Inquiry, Exhibit L, 230–257 [Note 22].
- 200 Marikana Commission of Inquiry, Transcript Day 9 (6 November 2012), 1091.
- 201 Marikana Commission of Inquiry, Transcript Day 3 Transcript (22 October 2012), 117.
- 202 Marikana Commission of Inquiry, Report, 316, paragraph 8 [Note 1].
- 203 Ibid., 392; Claassen Board of Inquiry, Report of the Board of Inquiry into allegations of misconduct against the National Commissioner: Mangwashi Victoria Phiyega, 21 October 2016, 65.
- 204 Ibid., 68 [Note 191].
- 205 Marikana Commission of Inquiry, Exhibit FFF4, [Note 144]
- 206 Ibid.
- 207 Claassen Board of Inquiry, Report, 68 [Note 191].
- 208 Marikana Commission of Inquiry, Exhibit FF5, General Phiyega pronounces on mine unrest' [Note 146].
- 209 Ibid.
- 210 Claassen Board of Inquiry, Report, 66–67 [Note 191].
- 211 Ibid., 67–68 [Note 191].
- 212 Marikana Commission of Inquiry, Exhibit JJJ82, Video transcript: Brigadier Calitz Briefing to Troops. The video itself is Marikana Commission of Inquiry, Exhibit GGG30, AVI file titled 'GGG30 00022_xvid – Video Brig Calitz', file dated 20 August 2012.
- 213 Claassen Board of Inquiry, Report, 67–68 [Note 191]; Marikana Commission of Inquiry, Report, 397 [Note 1].
- 214 Marikana Commission of Inquiry, Report, 401 [Note 1].
- 215 Marikana Commission of Inquiry, Exhibit FF5, 'General Phiyega pronounces on mine unrest' [Note 146].
- 216 Khazamula Makhubela, Statement, 17 August 2012, (File name: 148. KP Makhubela - 601).
- 217 Marikana Commission of Inquiry, Families' heads of argument, 378 and 380 [Note 17].
- 218 Ibid., 380 [Note 17]. With respect to the statement of the Nyala driver see also paragraph 222 in Chapter 5 of this report.
- 219 See, for instance, excerpts from the statements of WO Batsi, Sgt Mahlatsi and Cst Pelaelo in Marikana Commission of Inquiry, Families' Heads of argument, 377–378 [Note 17].
- 220 'Ons het te voet na die tweede koppie beweeg, waarna daar van die stakende mynwerkers [mynwerkers in orig] op ons afgestorm het met gevaarlike vuurwapens en ook op ons begin skiet het met vuurwapens. Ons het geen skuiling gehad nie en daar was ook geensins gehoor gegee nadat daar met rubber koeëls op hulle gevuur het'; (Lukas Breedt, IPID Statement A401, 23 August 2012, Marikana Commission Exhibit MMM39.2)
- 221 'omgevoer 10m na 12m vanuit die koppie het 'n groot groep mynwerkers wat gewapend was met tradisionele wapens [unclear: op ---] begin te storm'(Pieter Visser, IPID Statement A405, 23 August 2012., italics added).
- 222 Lukas Breedt, IPID Statement A401, 23 August 2012, Marikana Commission Exhibit MMM39.2.
- 223 Pieter Visser, IPID Statement A405, 23 August 2012, italics added.
- 224 David Mutsi, IPID Statement A411, 24 August 2012 [Note 188].
- 225 David Mutsi, Additional statement, undated (File name: 119. Mutsi – 514, PDF last saved 19 October 2012), Note 180]. He also has another additional statement which is Exhibit MMM39.24C which is likely to have been written before the statement cited in Note 180.
- 226 The Merriam-Webster dictionary defines 'script' as 'the written text of a stage play, screenplay, or broadcast; specifically: the one used in production or performance', www.merriam-webster.com/dictionary/script. The word is used here in a metaphorical sense. Rather than being a script for a stage play, screenplay or broadcast, the implication is that the SAPS media statement was used as the basis for the account provided by SAPS members in their statements.
- 227 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 3 [Note 21].
- 228 Marikana Commission of Inquiry, Report, 308 [Note 1].
- 229 See, inter alia: Marikana Commission of Inquiry, Heads of argument of evidence leaders, 601–607, 608, 625–633 and 689–691 [Note 16]; Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 59–119 [Note 42].
- 230 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 76 [Note 16].
- 231 Exhibit GGG3, which contains the attendance registers for the event, appears to indicate that the last day may have been Thursday 6 September. (Marikana Commission of Inquiry, Exhibit GGG3, 41 page of scanned documents in PDF file including call ups and attendance registers for Potchefstroom meeting, 3-7 September 2012, 1-5.)
- 232 Ibid, 1-5.
- 233 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 76 [Note 16].
- 234 Ibid., 511 [Note 16].
- 235 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 73 [Note 42].
- 236 Ibid., 76 [Note 42]; see also, Marikana Commission of Inquiry, Report, 403, paragraph 5 [Note 1].
- 237 Ibid., 406, paragraph 12.
- 238 Ibid., 403, paragraph 5.
- 239 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 75–76 [Note 42].
- 240 Marikana Commission of Inquiry, Report, 318-9 [Note 1].
- 241 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 458–467 [Note 16].

- 242 Kaizer Modiba, IPID statement A407, 23 August 2012, Marikana Commission Exhibit ZZZ2.
- 243 Ibid
- 244 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 476–477 [Note 42], quoting Marikana Commission of Inquiry, Transcript Day 244 (12 June 2014, Modiba), 30842–30849.
- 245 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 464 [Note 42].
- 246 Wayne Kidd, signed undated typed statement (File name: 84. WP Kidd - 349; last saved 14 September 2012).
- 247 Wayne Kidd, signed undated handwritten statement (File name: 84A. WP Kidd - 355; last saved 5 November 2012).
- 248 Marikana Commission of Inquiry, Exhibit JJJ118, 79-page Microsoft PowerPoint presentation titled 'Lonmin mine unrest: Marikana THURSDAY 16th August 2012' (last saved 1 September 2012), www.marikana-conference.com/index.php/marikana-exhibits.
- 249 Marikana Commission of Inquiry, Exhibit JJJ189, document titled 'Drafts that developed into the SAPS presentation' (last saved 23 October 2013).
- 250 Marikana Commission of Inquiry, Exhibit JJJ118, 79-page Microsoft PowerPoint presentation titled 'Lonmin mine unrest: Marikana THURSDAY 16th August 2012' (last saved 1 September 2012), www.marikana-conference.com/index.php/marikana-exhibits, 54–68. [Note 232]
- 251 Wayne Kidd, signed undated typed statement (File name: 84. WP Kidd - 349; last saved 14 September 2012).
- 252 Wayne Kidd, Consolidated statement of Capt. Wayne Peter Kidd, 12 May 2014, Marikana Commission of Inquiry, Exhibit UUU2.
- 253 Marikana Commission of Inquiry, Exhibit JJJ32, 169-page Microsoft PowerPoint presentation titled 'MINE UNREST: LONMIN MARIKANA – HISTORY AND BUILD UP', 133–154 (last saved 10 September 2012).
- 254 Marikana Commission of Inquiry, Exhibit JJJ157, 57–72 [Note 104].
- 255 Ibid., 60
- 256 Ibid 63.
- 257 Ibid, 64.
- 258 Ibid, 67.
- 259 Velesari Ndlela, Additional statement, corrections initialled 16 October 2012, (file with name: 124. VR Ndlela – 530, last saved 6 November 2012).
- 260 Marikana Commission of Inquiry, Exhibit JJJ157, 69 [Note 238].
- 261 Ibid, 71.
- 262 Marikana Commission of Inquiry, Exhibit JJJ158, 93-page Microsoft PowerPoint presentation titled 'Lonmin mine unrest: Marikana THURSDAY 16th August 2012', 190–194 (last saved 15 October 2012).
- 263 Ibid., 191–199 (last saved 18 October 2012).
- 264 Ibid, 198–206 (dated 18 October, last saved 23 October 2012).
- 265 Ibid, 214.
- 266 Marikana Commission of Inquiry, Exhibit L, 231–233 [Note 22].
- 267 Marikana Commission of Inquiry, Exhibit L, 231, 236–7 [Note 22].
- 268 Marikana Commission of Inquiry, Exhibit L, 232 [Note 22].
- 269 Marikana Commission of Inquiry, Exhibit L, 241–242 [Note 22].
- 270 There is also a slightly longer account provided, as well as a photograph with directional arrows inserted over pages 246 to 247 of exhibit L.
- 271 Marikana Commission of Inquiry, Exhibit L, 233 [Note 22].
- 272 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 484–5 [Note 16].
- 273 Marikana Commission of Inquiry, Exhibit L, 232 [Note 22].
- 274 Col. V Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1, 3 September 2013, 24, www.marikana-conference.com/images/Exhibit_JJJ3.1.pdf.
- 275 Ganasen Naidoo, Statement, 7 November 2012.
- 276 Mogapi Sefanyetso, Additional statement, undated (File name: 131A. ME Sefanyetso - 554; last saved on 6 November 2012).
- 277 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 3 (Note 18).
- 278 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 81 (and more generally 81 and 83) [Note 42].
- 279 Col. V. Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1 [Note 274].
- 280 Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the South African Police Service (last saved 2 June 2014), www.marikana-conference.com/index.php/marikana-exhibits.
- 281 Ibid, 20, paragraph 45.8.1.
- 282 Ibid, 21, paragraph 45.8.2.
- 283 Ibid, 22, paragraph 45.8.4.
- 284 Ibid, 22, paragraph 45.8.5.
- 285 Ibid, 22, paragraph 45.8.3; note that there was no 'victim F' at Scene 2.
- 286 Marikana Commission of Inquiry, Heads of argument of the SAPS, 78 [Note 39].
- 287 Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the SAPS, 19–20 [Note 280].
- 288 Ibid., 19, paragraph 45.5 [Note 280].
- 289 Ibid., Exhibit FFF9, 19, paragraph 45.5 [Note 280].
- 290 Marikana Commission of Inquiry, Heads of argument of the SAPS, 82 [Note 39].
- 291 Ibid., 83 [Note 39].
- 292 Ibid., 86–89 [Note 39].
- 293 Ibid., 89–90 and 95 [Note 39].
- 294 Messrs Thabiso Mosebetsane (Victim G); Mafolisi Mabiya (Victim H); Tokoti Mancotywa (Victim D); Raphael Janeveke Liau (Victim E); Mpumzeni Ngxande (Victim K); Stelega Meric Gadlela (Victim L); Henry Mvuyisi Pato (Victim N); Fezile David Saphendu (Victim J); and Ntandazo Nokamba (Victim I).
- 295 Marikana Commission of Inquiry, Heads of argument of the SAPS, 91 paragraph 218 [Note 39].
- 296 Ibid., 96 [Note 39].

- 297 Marikana Commission of Inquiry, Transcript Day 285 (4th September 2014, de Rover), 36938.
- 298 Marikana Commission of Inquiry, Heads of argument of the SAPS, 93, paragraph 223 [Note 39].
- 299 Marikana Commission of Inquiry, Families' heads of argument, 384 [Note 17]. Note, however, the concerns raised by the Families regarding the numerous inconsistencies between the two statements Cst Letswalo provided.
- 300 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 22 [Note 21].
- 301 Ibid, Annexure C.
- 302 See Marikana Commission of Inquiry, Report, 318-319 [Note 1]; and in more detail, Marikana Commission of Inquiry, Heads of argument of evidence leaders, 458-467 [Note 16].
- 303 Marikana Commission of Inquiry, Heads of argument of the SAPS, 90 [Note 39].
- 304 The killing of Mr Mkhonjwa is discussed in detail in: Marikana Commission of Inquiry, Families' heads of argument, 374-389 [Note 17]; Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 467-472 [Note 42]; and Marikana Commission of Inquiry, Heads of argument of evidence leaders, 476-480 [Note 16]. This section refers to many points from these texts, especially that of the Families.
- 305 Col. V. Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1, 24 [Note 274].
- 306 Wayne Kidd, signed undated typed statement (File name: 84. WP Kidd - 349; last saved 14 September 2012).
- 307 The typed version says 20 min. later but this appears to be an incorrect transcription of the handwritten version.
- 308 Marikana Commission of Inquiry, Families' heads of argument, 374-389 [Note 17]. Compare also the two statements of Cst Pelaelo. The later statement has features that suggest that the account provided in the earlier statement has been modified to align it with the Kidd narrative. (Motalefa Pelaelo, IPID statement A431, 24 August 2012; Motalefa Pelaelo, Statement, undated, (File name: 145. MD Pelaelo – 593, last saved 19 October 2012)).
- 309 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 470-474 [Note 16].
- 310 Marikana Commission of Inquiry, Exhibit JJJ10, Image IMG4547 in folder titled 'Col. Vermaak Pentax Photos of 16 August' [Note 108]
- 311 There are a number of statements on this. See for instance: Cst Mogodi of the Pretoria TRT (Michael Mogodi, Statement, unsigned an undated (File name: 35A. M Magodi- 149, typed statement prepared for signature in September, PDF last saved 19 October 2012); Edward Mokgetla, Additional statement, undated [Note 185]; George Mashishi, IPID Statement A383, 23 August 2012; Samuel Mabasa, IPID Statement A460, 24 August 2012.
- 312 Marikana Commission of Inquiry, Exhibit CC22, MP4 file with title 'Aerial video Lonmin strike', 16 August 2012, 9.59-1018 (in terms of the synchronised time this translates into 16:07:29-16:07:48) www.youtube.com/watch?v=IKIFJPzWGpg;
- 313 Motalefa Pelaelo, IPID statement A431, 24 August 2012, paragraph 4; Motalefa Pelaelo, Statement, undated, (File name: 145. MD Pelaelo – 593, last saved 19 October 2012), paragraph 3.
- 314 Marikana Commission of Inquiry, Exhibit L, 232 [Note 22].
- 315 Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the SAPS, 20-21 [Note 280].
- 316 Col. V. Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1, 24 [Note 274].
- 317 The SAPS heads of argument also refer to the cross examination of Mr de Rover and Col. Modiba as a source of reference but neither of these witnesses said they had first-hand knowledge of the circumstances in which Mr Mdizeni and Mr Thelejane were killed; Marikana Commission of Inquiry, Heads of argument of the SAPS, 86-89 [Note 39].
- 318 Marikana Commission of Inquiry, Transcript: Day 242, Modiba (10 June 2014, Modiba) 30593/15-30618/5. See also: Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 464 [Note 42].
- 319 Ikawyeng Plaatjie, statement, unsigned, (File name: 130. IJ Plaatjie – 550, last saved 19 October 2012), Marikana Commission Exhibit HHH57. No statement for Sergeant Chauke was located during the research for this report. In the transcript of Col. Modiba's appearance before the Marikana Commission, Col. Modiba's revised statement (of 19 December 2013) is misquoted as saying, 'Just before we entered Koppie 3 three armed miners emerged from behind rocks and charged at our basic line' (Marikana Commission of Inquiry, Transcript: Day 242, Modiba (10 June 2014, Modiba) 30495, lines 6-9). This appears to indicate that Col. Modiba's statement says that he was charged by three strikers. In fact, the statement says, 'Just before we enter Koppie 3 armed miners emerged from behind rocks and charged at our basic line. It was about 15 to 20 of them.' (KT Modiba, Further statement, 19 December 2013, Marikana Commission Exhibit ZZZ4.).
- 320 Marikana Commission of Inquiry, Exhibit MMM47 [Note 24].
- 321 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 13-15 [Note 21].
- 322 Simphiwe Mandla, IPID statement A403, 23 August 2012
- 323 Marikana Commission of Inquiry, Exhibit MMM47 [Note 24]; Marikana Commission of Inquiry, Families' heads of argument, 330 [Note 17].
- 324 Marikana Commission of Inquiry, Exhibit L, 232 [Note 22].
- 325 Col. V. Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1 [Note 274].
- 326 Ibid., 24.
- 327 Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the South African Police Service (last saved 2 June 2014), 22-23, www.marikana-conference.com/index.php/marikana-exhibits.
- 328 Marikana Commission of Inquiry, Heads of argument of the SAPS, 89 [Note 39].
- 329 Ibid., 95 [Note 39].
- 330 Ibid., 90 [Note 39].
- 331 Ibid., paragraph 216 [Note 39].
- 332 Marikana Commission of Inquiry, Families' heads of argument, 334-337 [Note 17].
- 333 Ibid., 334 [Note 17].
- 334 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, [Note 21].

- 335** Alwyn Harmse, Statement, undated, (File name: 114. AL Harmse – 497, last saved 19 October 2012).
- 336** 'Ons het verder inbeweeg in die koppie in. ek het opgemerk dat daar 'n man van links af uit die bosse uitkom na ons rigting toe lede van NIU het vir die man gese he moet op die grond le maar die man het nie gaan le nie, waarna daar op die man geskiet is van my regter kant af maar kan nie see wie nie.' (Ibid.)
- 337** Ibid., 1
- 338** Maj. Gen. G Naidoo, Consolidated affidavit, 11, paragraph 71 [Note 188].
- 339** Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the SAPS, 19, paragraph 45.5 [Note 280].
- 340** Marikana Commission of Inquiry, Heads of argument of the SAPS, 90 [Note 39].
- 341** Ibid., 91 [Note 39].
- 342** Ibid.
- 343** Ibid.
- 344** SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, Annexure D [Note 21].
- 345** Marikana Commission of Inquiry, Heads of argument of the SAPS, 93 [Note 39].
- 346** See Cartridges AA 30–42 in SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, Annexures C, D and E [Note 21]. Note also the point made in the report to the effect that: 'It is well documented that semi-automatic firearms will typically eject their cartridge cases in a certain direction and distance forming a specific distribution pattern. This knowledge enables an analyst to determine the most likely firing positions based upon the position of cartridge cases as found on the scene. It is important to note that some factors which may influence and modify this pattern include, inter alia, the height of the firearm when discharged, the topography of terrain, nature of the ground surface and obstructions.' (Ibid., 12).
- 347** Marikana Commission of Inquiry, Heads of argument of the SAPS, 92 [Note 39].
- 348** Ibid., 91, paragraph 219 [Note 39].
- 349** Nkone Somo, IPID Statement A377, 23 August 2012.
- 350** Thembane Mlombo, IPID Statement A374, 23 August 2012.
- 351** Samuel Mabasa, IPID Statement A460, 24 August 2012.
- 352** Gowang Motloheloa, IPID Statement A375, 23 August 2012.
- 353** Compare also the statements of Cst Mashishi (George Mashishi, IPID Statement A383, 23 August 2012) and Cst Thoka Lesiba Thoka, IPID Statement A451, 24 August 2012).
- 354** Marikana Commission of Inquiry, Heads of argument of the SAPS, 91, paragraph 219 [Note 39]. The full phrase reads 'shot from the bushes into the koppie', but it would appear that this is an error as the argument being made is that they were shot from the bushes towards the police.
- 355** Marikana Commission of Inquiry, Heads of argument of the SAPS, 91, paragraph 219 [Note 39].
- 356** In relation to shots fired by Cst Sefanyetso, see also Note 160 above.
- 357** The three statements are; Velesari Ndlela, Statement, 31 October 2012, (pages 4-6 of file with name: 124. VR Ndlela – 530, last saved 6 November 2012); : Velesari Ndlela, IPID statement A397, 23 August 2012 (this is also to be found in pages 1-3 of file with name: 124. VR Ndlela – 530, last saved 6 November 2012); Velesari Ndlela, Additional statement, corrections initialled 16 October 2012, (file with name: 124. VR Ndlela – 530, last saved 6 November 2012).
- 358** Marikana Commission of Inquiry, Exhibit JJJ157, 69 [Note 238].
- 359** V1, V2 and V3. The SAHRC incorrectly state that four of Cst Mokhele's cartridges were found on top of the high rocks; Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 466 [Note 42]. His other six cartridge cases were all numbered between 4 and 32 indicating that they were found on the east side.
- 360** TG Mokhele, IPID Statement, A416, 23 August 2012.
- 361** TG Mokhele, Statement, 31 October 2012, Marikana Commission of Inquiry, Exhibit ZZZ6 (file name: 194. TG Mokhele – 738), available at: http://www.marikana-conference.com/images/Exhibit_ZZZ6_statement_of_CST_TG_Mokhele_.pdf
- 362** Velesari Ndlela, IPID statement A397, 23 August 2012
- 363** Velesari Ndlela, Additional statement, corrections initialled 16 October 2012, (file with name: 124. VR Ndlela – 530, last saved 6 November 2012).
- 364** See also Note 359.
- 365** Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 465-466 [Note 42]. The SAHRC only refer to two statements but this appears to be incorrect. The three statements are: (1) V Ngwaleni, IPID statement A378, 23 August 2012 (This is pages 1-4 of Marikana Commission Exhibit ZZZ7.1 http://www.marikana-conference.com/images/Exhibit_ZZZ7.1_Ipid_Statement_of_CST_NGWALENI_original_statement_.pdf); (2) V Ngwaleni, Additional statement, undated (File name: 128. V Ngwaleni – 546; last saved on 19 October 2012. This page is also included as page 5 of Marikana Commission Exhibit ZZZ7.1 http://www.marikana-conference.com/images/Exhibit_ZZZ7.1_Ipid_Statement_of_CST_NGWALENI_original_statement_.pdf); (3) V Ngwaleni, Further statement, undated, Marikana Commission Exhibit ZZZ7.2 (last saved 17 June 2014), http://www.marikana-conference.com/images/Exhibit_ZZZ7.2_Further_statement_of_CST_Ngwaleni_.pdf.
- 366** TD Molangoanyane, Additional statement (single page), undated, (File name: 117B. TD Molangoanyane – 510; last saved 6 November 2012).
- 367** Col. V. Visser, Further statement, Marikana Commission of Inquiry, Exhibit JJJ3.1, 24 [Note 274]. The statement cited is not named but may be the first additional statement as the initial statement does not refer to him entering the bushes.
- 368** Marikana Commission of Inquiry, Exhibit L, 231, 233 [Note 22].
- 369** TD Molangoanyane, Additional statement (two pages), undated, Marikana Commission Exhibit MMM6, (File name: 117A. TD Molangoanyane – 508; last saved 6 November 2012). TD Molangoanyane, Additional statement (single page), undated, (File name: 117B. TD Molangoanyane – 510; last saved 6 November 2012) is another one page statement also additional. Statement 117A appears to be a slightly expanded version of 117B.

- 370** Marikana Commission of Inquiry, Heads of argument of the SAPS, 96, paragraph 234 [Note 39].
- 371** All three of his statements are undated and last saved on 6 November 2012.
- 372** TD Molangoanyane, Statement (single page), undated, (File name: 117. TD Molangoanyane – 507; last saved 6 November 2012) is presumably the original written one, which is only one page and dated 1 November according to Marikana Commission of Inquiry, Exhibit ZZZZ3 [Note 20].
- 373** TD Molangoanyane, Additional statement (two pages), undated, Marikana Commission Exhibit MMM6, (File name: 117A. TD Molangoanyane – 508; last saved 6 November 2012).
- 374** This is one detail in respect of which what is apparently his first additional statement (117B. TD Molangoanyane – 510) is different from his second one (117A. TD Molangoanyane – 508 (Exhibit MMM 6)). His first additional statement merely says 'I shot him in the head. He fell down'. His second additional statement says 'I shot him in a head, then he fell down, but still alive'.
- 375** See, for instance, the report for post mortem 571 on Mr Mosebetsane by Dr Lukhosi, Marikana Commission of Inquiry, Exhibit A, 148 [Note 58]; and that for post mortem 572 by Dr Hlase on Mr Mabiya, *ibid.*, 166.
- 376** Pieter Visser, IPID Statement A405, 23 August 2012: 8. Daar is toe vanaf die skare op ons (Polisie) lede geskiet met vuurwapens, waarna ek dekking ingeneem het op die grond aangesien talle skote op my gevuur is, om my te dood of ernstig te beseer. 9. Ek het toe terug gevuur met R5 no 347518 vanwaar die persone op my gevuur het. Ek het altesaam sewentien (17) rondtes afgevuur tydens die skermutseling [skirmish].
- 377** Pieter Visser, Aanvullende Verklaring, undated, Marikana Commission Exhibit MMM39.31 (File name: 121B. PJ Visser – 522, PDF last saved on 6 November 2012): 24. Ek en die res van die Polisie lede het ook vorentoe beweeg waar ek ongeveer 30 na 40 meter vanaf die koppie gesien hoe man vanaf die skare op my en ander polisie lede geskiet. 25. Ek het dekking ingeneem op die grond tussen die gras, aangesien, daar op my geskiet is vanaf die koppie, deur van die stakers, om my te dood of ernstig te beseer. 26. Ek het toe terug geskiet met R5 met no 347518 op die persoon vanwaar daar op my geskiet word, vanaf die koppie wat hy bos en klipperig was. Ek het altesaam sewentien (17) rondtes afgevuur tydens die skermutseling [Skirmish].
- 378** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 482 [Note 42].
- 379** Marikana Commission of Inquiry, Exhibit FFF9, Opening statement on behalf of the SAPS, 21 [Note 280].
- 380** Marikana Commission of Inquiry, Heads of argument of the SAPS, 83–84 [Note 39].
- 381** Marikana Commission of Inquiry, Report, 303 [Note 1]; Marikana Commission of Inquiry, Families' heads of argument, 390 [Note 17].
- 382** *Ibid.*, 303.
- 383** *Ibid.*
- 384** Marikana Commission of Inquiry, Families' heads of argument, 390–394 [Note 17].
- 385** Marikana Commission of Inquiry, Exhibit L, 246–247 [Note 22].
- 386** Marikana Commission of Inquiry, Families' heads of argument, 396–398 [Note 17].
- 387** *Ibid.*, 398–399 [Note 17].
- 388** Johannes Greyling, Statement, signed but undated, Marikana Commission Exhibit TTT9, quoted in Marikana Commission of Inquiry, Families' heads of argument, 400–401 [Note 17].
- 389** Marikana Commission of Inquiry, Families' heads of argument, 402 [Note 17].
- 390** *Ibid.*, 400 [Note 17].
- 391** *Ibid.*, 403–405 [Note 17].
- 392** *Ibid.*, 407–408 [Note 17]; Marikana Commission of Inquiry, Exhibit WWW4, 'Screenshots from exhibit I2' (last saved 23 September 2013) and Marikana Commission of Inquiry, Exhibit WWW8, single-page PDF file with 'Exhibit WWW8 Additional slide' (last saved 30 May 2014) are attempts to identify the positions that SAPS members were in when Mr Mpumza was shot based on video and photographic evidence.
- 393** Statement Capt. Greyling, signed but undated (File name: Statement Capt Greyling CCF20131203_00000, last saved 23 May 2015), Marikana Commission Exhibit TTT9.
- 394** Marikana Commission of Inquiry, Exhibit JJJ10, IMGP4546 (estimated time 16:07:18) in folder titled 'Col. Vermaak Pentax Photos of 16 August'.
- 395** Marikana Commission of Inquiry, Exhibit KKK16, images DSC5139 [Note 163].
- 396** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012.
- 397** Marikana Commission of Inquiry, Exhibit L, 239 [Note 22].
- 398** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012.
- 399** Marikana Commission of Inquiry, Heads of argument of evidence leaders, 456 [Note 16].
- 400** *Ibid.*, 491–492 [Note 16].
- 401** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012.
- 402** Marikana Commission of Inquiry, Exhibit MMM45, The movement of K9 and NIU members on foot at Koppie 3, 13–21 [Note 23].
- 403** *Ibid.*, 10–24.
- 404** Warrant Officer MP Mamabolo, Supplementary statement, Marikana Commission of Inquiry, Exhibit KKK60, 20 January 2014.
- 405** His original, which alleges the attack on the Nyala at Scene 1, is: Patrick Mathavha, Statement, 29 August 2012. His supplementary (MMM29) is: Patrick Mathavha, Supplementary statement, 20 January 2014, Marikana Commission Exhibit MMM29. Evidence leaders sometimes refer to him as Mathabha (for example, Marikana Commission of Inquiry, Heads of argument of evidence leaders, 450 [Note 16]).
- 406** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 99 [Note 42].
- 407** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 99 [Note 42].

- 408** See also the statement of Cst Kwele of the K9 unit, quoted in Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 480 [Note 42].
- 409** Marikana Commission of Inquiry, Exhibit FF5, General Phiyega pronounces on mine unrest' [Note 146].
- 410** Note that the incident involving Mr Mpumza (Victim C) took place on the north side.
- 411** Compare what appears to be Sgt Molangoanyane's first statement with other initial statements from shooters on the south side (117 TD Molangoanyane 507 is presumably the original one, which is a single page. It is dated 1 November in Marikana Commission of Inquiry, Exhibit ZZZZ3, single sheet Microsoft Excel spreadsheet in file named 'Statements_16_August_2012_2_Autosaved.xlsx' (created 15 April 2014) [Note 20]).
- 412** One of the documents examined also referred to inconsistencies in different statements provided by Cst Dubeni (NIU): 'inconsistent statements – shot 3 warning shots; shot 2 and then 1 warning shot. Alleges charging crowd; supports view that uncoordinated – hears shots from other side, so fires.' (tabulation of statements in file titled: Scene I shooter analysis_Final)
- 413** There is no apparent evidence, for instance, that Lt Ndelela, Cst Mokhele or Sgt Molangoanyane provided statements relating to shootings inside Scene 2 before October. None of Sgt Molangoanyane's cartridge cases were actually found inside the koppie, but his additional statements nevertheless alleged that he had shot at strikers from positions inside the koppie.
- 414** White, Final statement, Exhibit JJJ178, 32-33 [Note 43].
- 415** Marikana Commission of Inquiry, Transcript Day 286 (5 September 2014, de Rover) 37122; quoted in Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 127 [Note 42].
- 416** See Chapter 5 in relation to similarities between the statements of members of the TRT on the south side of the small koppie and those between the later statements of Lt Ndelela and Cst Mokhele.
- 417** V Ngwaleni, Additional statement, undated (File name: 128. V Ngwaleni – 546; last saved on 19 October 2012, last page of Exhibit ZZZ7.1 [Note 365]; Kaizer Modiba, IPID statement A407, 23 August 2012, Marikana Commission Exhibit ZZZ2.; Siandile Mvunge, IPID statement 402, 23 August 2012; Bongani Poswa, IPID statement A396, 23 August 2012; Sibongile Dubeni, Statement, 31 October 2012, (File name: 195. S Dubeni – 743), 31 October 2012. See also Cst Sefanyetso, who says that he shot to clear bushes but checked and there was no one there (Mogapi Sefanyetso, Additional statement, undated (File name: 131A. ME Sefanyetso - 554; last saved on 6 November 2012)).
- 418** Marikana Commission of Inquiry, Exhibit UUUU10.6, Annexure V5 – Video presentation on the shots fired at Scene 1 [FINAL].
- 419** Siandile Mvunge, IPID statement 402, 23 August 2012; Sibongile Dubeni, Statement, 31 October 2012, (File name: 195. S Dubeni – 743), 31 October 2012.
- 420** Bongani Poswa, IPID statement A396, 23 August 2012; Mokgetla [Note 185].
- 421** Lt Ndelela, Cst Mokhele, Cst Sefanyetso
- 422** TD Molangoanyane, Additional statement (two pages), undated, Marikana Commission Exhibit MMM6, (File name: 117A. TD Molangoanyane – 508; last saved 6 November 2012).
- 423** See for instance: A Letswalo, Statement, signed but undated (File name: 196. Const Letswalo – 747, last saved 6 November 2012). See also the statements by other POP members who were with Cst Letswalo.
- 424** Plaatjie (NIU, Pretoria; 4 discharged, non found) – identifies a group of three people who he says he shot after they charged ('discharged') towards me raising their weapons and says 'some of them went down and other runaway' (Ikawyeng Plaatjie, statement, unsigned, (File name: 130. IJ Plaatjie – 550, last saved 19 October 2012), Marikana Commission Exhibit HHH57).
- 425** Sgt Molangoanyane provides a description of himself shooting two men in his additional statement. It describes virtual hand-to-hand combat with strikers, including with one man he says he shot in the head though the man was still alive and another man he shot in the hand went down after being shot by another SAPS member (TD Molangoanyane, Additional statement (two pages), undated, Marikana Commission Exhibit MMM6, (File name: 117A. TD Molangoanyane – 508; last saved 6 November 2012)). . In his initial statement, this alleged incident is described as: 'Getting closer there were other two miners with pangas, I said in Sesotho, Zulu and [English] put it down, the man keep coming to chop me, I then shoot him.' (TD Molangoanyane, Statement (single page), undated, (File name: 117. TD Molangoanyane – 507; last saved 6 November 2012)). According to this statement he shoots one man, whereas in the additional statement he shoots both men.
- 426** In Lt Ndelela's initial statement after he fired at them 'one of them fell' (Vesari Ndelela, IPID statement A397, 23 August 2012); according to WO Makubela's first statement, he fired shots at people at Scene 2 and one fell down. In his subsequent statement, he says that he only fired warning shots into the ground at Scene 2 (Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 482 [Note 42]); See also Note 374 regarding discrepancies of this kind between the statements of Sgt Molangoanyane; TG Mokhele, IPID Statement, A416, undated (In his warning statement, dated 23 August 2012, he says he will submit statement on 24th August);
- 427** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 96 [Note 42].
- 428** *Ibid.*, 98 [Note 42].
- 429** *Ibid.*, 98 [Note 42].
- 430** *Ibid.*, 98 [Note 42].
- 431** The IPID statement of Kholofelo Johnson Mokoena (Kholofelo Johnson Mokoena, IPID statement A418, 23 August 2012. Same statement as Marikana Commission Exhibit KKK22.) doesn't even make it clear that he was driving Papa 9 and does not refer to the fact that they were present at Scene 2. The additional statement (Johnson Kholofelo Mokoena, Additional statement, undated (File name: 142. JL Mokoena – 586; last saved 19 October 2012)) is more substantial – including making more detailed allegations regarding the reported attack by strikers on the Nyala at S1 – but says nothing regarding the incident on the west side of the small koppie.

- 432** A couple of examples (there are very many others) are: TG Mokhele, Statement, 31 October 2012, Marikana Commission of Inquiry, Exhibit ZZZ6 [Note 361]; the various statements of Lt Ndlela cited above [Note 357].
- 433** Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 100–102 [Note 42].
- 434** *Ibid.*, 474 paragraph 3.1.1 [Note 42].
- 435** Independent Police Investigative Directorate Act, 1 of 2011, Section 28(1)(b).
- 436** The figure reflects the number of statements listed in Annexure G, excluding statements A572 and A573, which are not from arrested persons (Marikana Commission of Inquiry, Annexure G to the written submissions of the SAHRC regarding 'phase one', undated.) The figures for the total number of strikers who were held in custody, and initially charged with murder, is generally given as 270 (Bauer, Deshnee Subramany, Nickolaus Bauer, Murder Charges against Marikana Miners Withdrawn, *The M&G Online*, 2 September 2012. Accessed August 4, 2018. <https://mg.co.za/article/2012-09-02-murder-charges-against-marikana-miners-withdrawn/>). In their opening presentation to the Commission in early November 2012, the SAPS indicated that 271 were arrested at Marikana, of whom 259 were arrested at Scene 2 (Marikana Commission of Inquiry, Exhibit L, 2 and 263 [Note 22]. In their heads of argument the SAPS says 279 were arrested at Scene 2 (Marikana Commission, Heads of argument of the SAPS, 78 [Note 39]). As reflected above [Note 145] excluding the four strikers who died after being arrested (three of whom died in hospital), there appear to have been 55 strikers who were hospitalised. It is possible that the SAPS included figures for those hospitalised in their figures for arrests.
- 437** D Bruce, Shot while surrendering: Statements of Marikana strikers regarding Scene 2, journal article submitted for publication [Note 197].
- 438** Marikana Commission of Inquiry, Annexure G to the written submissions of the SAHRC regarding 'phase one', undated. [Note 436].
- 439** Marikana Commission of Inquiry, Exhibit L, 2 and 263 [Note 22]. The exhibit appears to indicate that no-one was arrested at Scene 1; *ibid.*, 261.
- 440** Carla van Veenendal, I never said that – current problems in statement taking from a juridical point of view. Institute for Human Rights & Criminal Justice Studies, Technikon SA, 1998.
- 441** Claassen Board of Inquiry, Report, 66–67 [Note 191].
- 442** According to Annexure G statements 2–21 were all taken in hospitals. The locations given in the statements are Pelgerae (5), Wonderkop (17) and 'Marikana' (12). The first two are known to be the names of hospitals and Marikana may be a reference to Wonderkop hospital; Marikana Commission, Annexure G to the written submissions of the SAHRC regarding 'phase one', [Note 436].
- 443** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012; Warrant Officer MP Mamabolo, Supplementary statement, Marikana Commission of Inquiry, Exhibit KKK60, 20 January 2014.
- 444** Thabang Sediadia, IPID statement A245, Bethanie Police Station, 18 August 2012.
- 445** This appears to be a reference to SSG shotgun pellets. The use of SSG at Scene 2 is also indicated in the report of the independent forensic and ballistic experts; SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 25 [Note 21]; more generally on SSG see [Note 74].
- 446** See, for instance: Marikana Commission of Inquiry, Families' heads of argument, 351, 354, 358, 361, 364, 367, 371 and 374 [Note 17]. Other uses of the term are in: Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 83 [Note 42]; Marikana Commission of Inquiry, Heads of argument on behalf of injured and arrested persons, 222, www.justice.gov.za/comm-mrk/docs/201411-HoA-InjuredArrested.pdf.
- 447** G Marinovich, The Murder Fields of Marikana [Note 4].
- 448** Warrant Officer H Myburgh, Statement, Marikana Commission of Inquiry, Exhibit KKK7, 15 October 2012, available at: http://www.marikana-conference.com/images/Exhibit_FFF7_Statement_of_HW_Myburgh_-_758.pdf; Warrant Officer J Swart, Supplementary statement, Marikana Commission of Inquiry, Exhibit LLL14, undated, available at: http://www.marikana-conference.com/images/Exhibit_LLL14_Supplementary_statement_WO_JJ_Swarts.pdf; Marikana Commission of Inquiry, Heads of argument of Evidence Leaders, 27 October 2014, 597-601 as well as Marikana Commission, Heads of argument of evidence leaders, 597–601 [Note 16].
- 449** Warrant Officer J Swart, Supplementary statement [Note 448].
- 450** Statements A128 (L Mokwena, IPID statement A128, Mogwase, 21 August 2012) and A136 (Simthembile Nomquphu IPID statement A136, Mogwase, 21 August 2012.) might be used to argue the point that the distinction between SWS and executions is unjustified.
- 451** Simthembile Nomquphu IPID statement A136, Mogwase, 21 August 2012.
- 452** See, for instance: SR Naidoo and J Steyl, Final Report: Marikana Mining, Annexure J [Note 21].
- 453** Phomotso Motema, IPID statement A95, Bethanie, 19 August 2012.
- 454** Aaron Njobe, IPID statement A154, Mogwase, 21 August 2012.
- 455** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012; Warrant Officer MP Mamabolo, Supplementary statement, Marikana Commission of Inquiry, Exhibit KKK60, 20 January 2014.
- 456** This is one of the 29 statements excluded because of their possible unreliability.
- 457** Bonginkosi Ntolo, IPID statement A22, Bethanie, 19 August 2012; Defu Molalam, IPID statement A30, Bethanie, 19 August 2012; Lungisa Mzolisa, IPID statement A238, Bethanie, 18 August 2012; Pumose Nhonyama, IPID statement A306, Bethanie, 19 August 2012; Edwin Masunya, IPID statement A326, Bethanie, 19 August 2012; M Mbotyo, IPID statement A350, Phokeng, 19 August 2012.
- 458** Norman Ngwenya, IPID statement A96, Bethanie, 19 August 2012.
- 459** Thandikaya Fono, IPID statement A98, Bethanie, 19 August 2012; Matata Joni, IPID statement A307, location and date not specified.
- 460** Christopher Mvikelwa, IPID statement A250, Bethanie, 19 August 2012.

- 461 Nkugulethu Mpungwa, IPID statement A239, Bethanie, 18 August 2012; Fumanekile Dabalele, IPID statement A242, Bethanie, 18 August 2012; Mzimasa Make, IPID statement A244, Bethanie, 18 August 2012; Vabasa Ngcisini, IPID statement A247, Bethanie, 18 August 2012; Mbongeni Jezile, IPID statement A260, Jericho, 18 August 2012; Lungisile Lutshetu, IPID statement A271, Jericho, 18 August 2012; Koli Maxhego, IPID statement A280, Jericho, 18 August 2012; Samuel Molise, IPID statement A293, Bethanie, 19 August 2012; Msebenzi Nogwayi, IPID statement A309, Bethanie, 19 August 2012; Sandulele Ndunguza, IPID statement A321, Bethanie, 19 August 2012; Sibusiso Mitumbeza, IPID statement A331, Bethanie, 19 August 2012; Monwabis Jumba, IPID statement A349, Phokeng, 19 August 2012.
- 462 As it used here, this is probably the Afrikaans word for 'stomped on' or 'kicked'.
- 463 Marikana Commission of Inquiry, Report, 270 [Note 1].
- 464 Brett Nicolson, Marikana Massacre: 'He is fine, let him die', *Daily Maverick*, 20 March 2017.
- 465 SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, Annexure J [Note 21]. The post-mortem report records more extensive injuries including two chest wounds and a wound to the left shoulder, among others. In both cases, the principal wounds include chest wounds; Marikana Commission of Inquiry, Exhibit A, 'POST MORTEM REPORT (PG 681-784)', 703' (last saved 28 November 2012).
- 466 Note that statement A335 (Lungile Futyane, IPID statement A335, Phokeng, 19 August 2012) is one of the 29 identified as possibly unreliable.
- 467 Onke Sobhudula, IPID statement A336, Phokeng, 19 August 2012.
- 468 Nkosi Nqwaga, IPID statement A342, Phokeng, 19 August 2012.
- 469 T Seleke, IPID statement A354, Phokeng, 19 August 2012.
- 470 See, for instance: Marikana Commission of Inquiry, Report, 360–364 and 552 [Note 1; Marikana Commission of Inquiry, Families' heads of argument, 286–299 [Note 17].
- 471 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 474 [Note 42].
- 472 There are multiple references to strikers not being informed of the reason for their arrest that also may indicate that the arrests were punitive in nature. The typed statement of Shadrack Mtshamba also makes explicit that the manner in which they were held after arrest (during the night of 16 August) was also punitive; [Shadrack Zondisile Mtshamba, Witness Statement of Shadrack Zondisile Mtshamba, unsigned statement (last saved 4 February 2013).
- 473 Capt. Kidd mentioned that Mr Mpumza 'had a rope fastened around his upper arms and knees and that someone said that he should not touch it because it was some form of muti used by sangomas'; Marikana Commission of Inquiry, Report, 286 [Note 1].
- 474 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 99 [Note 42].
- 475 WO Mvunge appears to have been one of the TRT members who fired during this incident.
- 476 See for instance the statement of Cst Mokhele (TG Mokhele, Statement, 31 October 2012, Marikana Commission of Inquiry, Exhibit ZZZ6 [Note 361]) who indicates that they could not see who was discharging shots from the other side because of the bushes (bottom of page 4); Samuel Mabasa, IPID Statement A460, 24 August 2012; George Mashishi, IPID Statement A383, 23 August 2012. The latter two statements are both from members of the TRT who were on the south side of the small koppie. Similarities between the statements of members of this group are discussed Chapter 5 of the report.
- 477 Marikana Commission, Heads of argument of the SAPS, 90 and 99 [Note 39].
- 478 Marikana Commission, Exhibit FFF9, Opening statement on behalf of the SAPS 19, paragraph 45.5 [Note 280].
- 479 Marikana Commission, Heads of argument of the SAPS, 91, paragraph 218 [Note 39].
- 480 C de Rover, Supplementary Statement, 27-28 [Note 57].
- 481 *Ibid.*, 28. [Note 57]. See also the remarks by C de Rover during his testimony that 'the worst part of it is that in that centre area of Koppie eventually you have shots from four directions travelling through', etc. Quoted in Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 461 [Note 42].
- 482 Marikana Commission of Inquiry, Families' heads of argument, 351 [Note 17].
- 483 Other uses of the term are in Marikana Commission of Inquiry, Families' heads of argument, 354, 358, 361, 364, 367, 371 and 374 [Note 17].
- 484 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 83 [Note 42], 401 and 445.
- 485 Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 476 [Note 42].
- 486 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 492 [Note 16].
- 487 Marikana Commission, Exhibit FFF9, Opening statement on behalf of the SAPS 19, paragraph 45.5 [Note 280].
- 488 Maj. Heinrich Holtzhausen, Statement, 2 (under covering letter dated 23 April 2013).
- 489 Marikana Commission of Inquiry, Exhibit FF5, General Phiyega pronounces on mine unrest' [Note 146].
- 490 David Mutsi, Additional statement, undated [Note 180].
- 491 Moagi Motsemme, Statement, initialled 30 August 2012, Marikana Commission Exhibit MMM8 (File name: 79A. MD Motsemme – 334; last saved 5 Nov)
- 492 In particular, the report of the independent forensic and ballistics experts indicates that Mr Mancotywa (Victim D), Mr Liau (Victim E) and Mr Xalabile (Victim O) had been shot from the top of the high rocks, though this was also a possibility in relation to some of the others; see their remarks regarding Victims I, J and K. See Table 4 above and SR Naidoo and J Steyl, Final Report: Marikana Mining Incident, 13–23 [Note 21].
- 493 Marikana Commission of Inquiry, Report, [Note 1].
- 494 See, for instance, statements by TRT members who were positioned on the south side of Scene 2; though note also the evidence of homogenisation by these TRT members in compiling their statements.
- 495 Various police groups on the west and south sides are visible still taking cover in Marikana Commission of Inquiry, Exhibit KKK16, in folder titled 'Exhibit KKK16 Col. Botha

- Photos', image 5127 [Note 163], which is estimated to have been taken at 16:14:27.
- 496** For instance, at 16:15:01 they are still positioned in a line that would have made an easy target; Marikana Commission of Inquiry, Exhibit KKK16, in folder titled 'Exhibit KKK16 Col. Botha Photos', image 5130 [Note 163].
- 497** Lt Col. C Gaffley, Statement, Marikana Commission of Inquiry, Exhibit FFF10, 16 October 2012.
- 498** Mr Myburgh is referred to as Sgt and WO in different documents. For example, he is referred to as WO in Marikana Commission, Heads of argument of evidence leaders, 597 [Note 16]; and as Sgt in the SAHRC heads of argument: Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 33 [Note 42] and in Marikana Commission of Inquiry, Exhibit ZZZZ3, single-sheet Microsoft Excel spreadsheet in file named 'Statements_16_August_2012_2_Autosaved.xlsx' (created 15 April 2014) [Note 20].
- 499** Deaths that could be shown to be the result of gunfire from a specific individual in these circumstances would possibly qualify as murder in terms of the *dolus eventualis* principle and not just culpable homicide.
- 500** The SAHRC makes this point in relation to the statements of Sgt Molangoanyane, Cst Mutsi and Cst Dintwe (Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 477-479 [Note 42]), in addition to Cst Kwele (*ibid.*, 480).
- 501** See, for instance, Masego Rahlaga, Alexandra Community Leader Shot Dead, Eyewitness News, 28 September 2017, <http://ewn.co.za/2017/09/28/alexandra-community-leader-shot-dead>.
- 502** On the issue of the legality of the shootings, see also the SAHRC argument that: 'Mr de Rover's evidence was that SAPS firearms training does not include judgment training, which trains members to differentiate between threats and non-threats. The SAHRC submits that the absence of such training may have played itself out at Scene 2, where SAPS members fired their weapons in response to fear, rather than in response to identified threats. That may be understandable on a human level, but it remains unlawful'; Marikana Commission of Inquiry, Written submissions of the SAHRC regarding 'phase one', 477, paragraph 4.1.4 [Note 42]).
- 503** Thembinkosi Mtyho, IPID statement A269, Jericho, 18 August 2012.
- 504** Randall Collins, *Violence – A micro-sociological theory*, Princeton: Princeton University Press, 2008, 83–132.
- 505** PAJ Waddington, *The Strong Arm of the Law*, Oxford: Clarendon Press, 1991, 177.
- 506** Marikana Commission of Inquiry, Report, 282 [Note 1].
- 507** *Ibid.*, 290.

About this report

This report focuses on a part of the Marikana massacre, an incident on Thursday 16 August 2012 in which 34 striking mineworkers were killed by members of the South African Police Service. It relies on information made available in the public domain as a result of the Marikana Commission process. The report aims to deepen understanding of the events at Scene 2 and to contribute towards developing an explanation for the killings that took place there.

About the author

David Bruce is an independent researcher on policing, crime and criminal justice. His work focuses on the use of force by police, and police accountability. In 2016 he was appointed to the panel of experts on policing established on the recommendation of the Marikana Commission. He has a Master's degree in management from the University of the Witwatersrand.

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Image credit: Greg Marinovich/South Photos/Africa Media Online

Family members gather at Scene 2 to mourn one of the Marikana massacre victims. In the background on the left is the area that is referred to as the killing zone in which eleven of the strikers were fatally shot. The picture gives a sense of the view from the top of the high rocks from which members of the National Intervention Unit fired at strikers who were taking shelter amongst the rocks and bushes.

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