

Shot while surrendering

Strikers describe Marikana Scene 2

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This article is concerned with the events of 16 August 2012 at the Lonmin Marikana mine in the North West province, when members of the South African Police Service killed 34 people, most of whom were striking mineworkers. These killings, now widely referred to as the Marikana massacre, are regarded not only as a tragedy but also as an event of great significance in South Africa's contemporary history. A commission of inquiry was held into the killings, but it did not reach any conclusions about what had happened at the second massacre site, commonly referred to as Scene 2, at which 17 of the fatal shootings took place. While these events are now the subject of an investigation by police oversight and criminal justice agencies, we cannot assume that this will reveal the truth about the killings at Scene 2. To add to our understanding of the events at Marikana, this article analyses statements from the injured and arrested strikers taken by the Independent Police Investigative Directorate in the five days immediately after the massacre. This article examines data from the statements, and the circumstances in which these statements were taken, in order to interrogate the assertion that 'strikers were shot by police while surrendering or injured at Scene 2'.¹ It concludes that, taken as a whole, the statements are a reliable source of information that some of the strikers at Scene 2 were indeed shot while surrendering.

On 16 August 2012, 34 men, most of them mineworkers² who were on strike for higher wages at the Lonmin Marikana platinum mine in North West province, were killed by members of the South African Police Service (SAPS). This incident, which has come to be known as the Marikana massacre,³ followed a week of conflict at the Lonmin mine. At the time of the

massacre there had already been 10 deaths in strike-related conflict. Two SAPS members and three strikers were killed in a confrontation between police and strikers on Monday 13 August. In other incidents between Sunday 12 and Tuesday 14 August, two Lonmin security guards, one striker and two other mineworkers were also killed. Altogether seven of these people – including the two SAPS members and five others – are known to have been, or are likely to have been, killed by strikers.⁴

The massacre on 16 August took place during two distinct shooting episodes. One of these

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occurred just before 4 pm (15h54). The other, at a location 500 m away from the first, started 15 minutes later, at about 16h09. In each of these episodes 17 people were killed – 34 people in total. These two episodes have come to be known as (crime) Scene 1 and Scene 2. This article focuses on aspects of the evidence regarding the killings at Scene 2, provided in statements taken by the Independent Police Investigative Directorate (IPID)⁵ from injured and arrested strikers in the days immediately after the massacre. Some of these statements contain allegations that some of the people shot at Scene 2 were shot while surrendering. This article assesses the reliability of these allegations.

The official response to the strike

The strike was an unprotected one that took place outside of the formal collective bargaining process. Although the strikers were acting as an autonomous group,⁶ the strike occurred amid conflict between the National Union of Mineworkers (NUM), then the dominant labour union in mining and one of the biggest unions in South Africa, and an emergent union, the Association of Mineworkers and Construction Union (AMCU), over supremacy within the platinum industry. In the aftermath of the commodities boom, Lonmin itself was in financial trouble⁷ and therefore strongly resistant to the possibility of a pay increase, particularly one that was being demanded by an informally constituted group of workers.

A complex mix of factors combined in shaping the official response to the strike. On the one hand the violent nature of the strike itself, particularly the killing of the two police officers on the 13th, appears to have hardened attitudes towards the strikers. The position and influence of Cyril Ramaphosa, then a non-executive director of Lonmin and senior member of the ruling African National Congress's National Executive Committee, also contributed to the sense of urgency about responding to the

matter. The strike was seen as a threat to the interests of the NUM itself, at the time one of the largest members of the Congress of South African Trade Unions and therefore an integral and important member of the ruling political and labour 'tripartite'⁸ alliance. There was additional anxiety in official quarters that the strike might be exploited by a charismatic political leader, Julius Malema. Malema had previously been president of the ruling party's Youth League, but at the time of the strike had recently been expelled from the party and had started to position himself as an adversary of both the ruling party and its president, Jacob Zuma. Earlier in 2012 he had intervened during a strike at the Impala platinum mine and was regarded by some as having defused the situation.⁹ There was concern that he might also obtain credit for resolving the situation at Marikana. The combined consequence of these factors was not only that the strikers were regarded with a degree of antipathy but also that bringing an end to the strike, if necessary by force, was treated as an urgent matter.

Understanding the Marikana massacre

After the massacre, a commission of inquiry was appointed by Zuma. The report of the Marikana Commission of Inquiry was submitted to the president at the end of March 2015 and released to the public in June 2015. Notwithstanding the findings of the commission, the Marikana massacre and the series of confrontations that preceded it remain a source of controversy.

The killings by police that occurred on 16 August have been justified by some commentators with reference to the killings and other violence perpetrated by people who were involved with the strike over the preceding days. For instance, during a public address the day before he released the report of the Marikana Commission, Zuma had said that 'the Marikana

miners were shot after killing people'.¹⁰ The report of the Marikana Commission itself refers to the violence on the part of the strikers as a major contributing factor to the subsequent events.¹¹ The tendency to allocate responsibility for the massacre to the strikers is reinforced by the fact that, for many people, their understanding of what took place at Marikana has primarily been shaped by the television footage of the shooting at Scene 1. Viewers of this footage are likely to believe that it shows police shooting strikers who are attacking them. It is not widely known, for instance, that the strikers ran towards the line of armed SAPS members only after teargas, stun grenades and rubber bullets had been fired behind, and into the side of, the group of strikers.¹² This is likely to have propelled them towards police lines.

On the other hand, many people have expressed anger about the massacre, calling for those responsible to be held accountable.¹³ Considerable attention has been drawn to the political influences, including the likely role of political leaders, on the decision that police should disarm the strikers.¹⁴ The massacre has also been characterised as a product of reckless decisions made by the senior leadership of the SAPS, a breakdown in the senior command structure of the police at Marikana,¹⁵ and 'toxic collusion' between the SAPS and Lonmin.¹⁶ Others see the massacre as a product of deficiencies of public order policing, or other aspects of the policing system in South Africa.¹⁷ At the broadest level, the massacre has been depicted not simply as the result of human agency but as a result of 'the structural violence of apartheid ... [which] remains a feature of the migrant labour system on which the mining industry, including platinum producers like Lonmin, continues to depend'.¹⁸

Many of these perspectives are relevant to understanding the events at Marikana in August 2012. At the same time, key questions remain

unanswered, and there is no broadly accepted explanation for what happened at Scene 2. Acts of violence can never purely be understood in terms of structural factors, and the actions of subordinates can also not be understood simply in terms of the decisions of their leaders.¹⁹ This is especially pertinent to the killings at Scene 2. The evidence indicates that this part of the police operation was unplanned, with an absence of any significant command and control.²⁰

The shootings at Scene 1 and Scene 2

All of the people who were killed at Scene 1 were shot in a single 12-second-long volley of simultaneous gunfire by 49 or more SAPS members, including 47 members of the SAPS Tactical Response Team, one Public Order Policing unit member and at least one SAPS member whose identity is unknown.²¹ Almost all of the police shooters were standing in a single line facing the oncoming strikers.²² Although Scene 1 was the subject of extensive scrutiny at the Marikana Commission, it did not come to any conclusions about whether the strikers had been attacking the police when the police opened fire on them. The Commission did, however, conclude that SAPS members who fired their weapons at the strikers during Scene 1 'had reasonable grounds for believing they were under attack',²³ although some of them may have exceeded the bounds of reasonable private defence.²⁴ A number of news agencies' television crews captured footage of the incident, including from just behind the police line, which not only helped to clearly establish the basic facts of the shooting but also greatly improved the commission's ability to analyse the incident.

The second shooting episode is entirely different. At Scene 2, the strikers who were shot were not concentrated in a single group or procession, and the police shooters fired at the strikers from a number of different positions.²⁵ Although a similar number of rounds were used by police

at both incidents,²⁶ the shootings at Scene 2 extended over a period of 11 minutes compared to just over 12 seconds at Scene 1.²⁷ There is also only evidence about the location from which 29% of these rounds were fired.²⁸

The shootings at Scene 2 started close to 15 minutes after the shooting at Scene 1. Many of the strikers fled in a westerly direction after the first shooting. Some of their statements indicate that they tried to flee towards the informal settlements on the far west side, but went to hide instead in the Scene 2 area when they saw police approaching from that direction.²⁹ Two other groups of police were approaching at the same time from the east and south.³⁰ While this aspect of the police operation was unplanned it meant that strikers at Scene 2 were effectively surrounded, although the police who were involved themselves did not know this.

The Scene 2 area is roughly circular, with a diameter of about 200 m. A formation of large rocks lying north to south ('the high rocks') stands in a fairly central position and is identified by some people as a koppie (it was referred to as 'Koppie 3' or the 'small koppie' at the commission). Other parts are covered in grass. To the west of the southern end of the high rocks is an area that is strewn with large boulders. This part of the Scene 2 area was overgrown by thick bushes and small trees at the time of the massacre. It is referred to by some as the 'killing zone'.³¹

Analysis of the events of Scene 2 has identified a number of distinct groups of victims.³² The largest of these groups is comprised of 11 of the 17 deceased, all of whom were fatally injured in the 'killing zone' area.³³ As described in the report of the Marikana Commission, this group was 'killed in what can be described as a crevice in a rocky area ... where they appear to have sought refuge during the operation'.³⁴ Some of the photographs that were taken from police helicopters during the Scene 2 shootings

show striking workers huddled in this area, apparently trying to take cover from the water cannons and police gunfire.³⁵ The statements about strikers who were shot while surrendering appear to originate from strikers who were in or near to the killing zone.

The SAPS failure to account for the Scene 2 killings

The Marikana Commission made no findings about the reasonableness or legality of the police shootings at Scene 2. The commission did, however, remark that the SAPS 'provided no details of what happened with regard to the deaths of most of the deceased' and that where it had provided evidence this 'did not bear scrutiny when weighed up against the objective evidence'.³⁶ In effect, therefore, the commission found that the SAPS had not managed to provide a coherent account for any of the deaths at Scene 2.

The commission's inability to reach any conclusive findings about the circumstances of the killings at Scene 2 was owing not only to the lack of coherence of the SAPS account but also to the fact that SAPS members (at various levels) made a concerted effort to conceal the facts of what had occurred. This obfuscation started shortly after the shootings at Scene 2, when SAPS members planted weapons on the bodies of six of the deceased strikers.³⁷

The day after the massacre, SAPS National Commissioner Riah Phiyega issued a press statement that was a modified version of an account of the events that had been provided to her by police commanders. The initial written account that Phiyega had received made it clear that the killings by police had taken place in two separate incidents. However, the statement issued by the National Commissioner created the impression that the killings had taken place in one continuous flow of events and concealed the fact that there were two distinct shooting

locations.³⁸ After the initial confrontation (identifiable as Scene 1), the press statement describes the strikers storming towards the police while ‘firing shots and wielding dangerous weapons’.³⁹ The initial written account that Phiyega had received from the SAPS commanders did not describe the strikers attacking police in the second incident.⁴⁰

Over the following months, the SAPS generated a more detailed account of the events at Scene 2, which formed part of its opening presentation to the commission in early November 2012.⁴¹ The commission roundly rejected this version, because it was inconsistent with other objective evidence.⁴² Analysis of the statements provided by many of the SAPS members also casts doubt on whether these can be regarded as an accurate account of the events at Scene 2.⁴³

In light of the absence of clear evidence that the shootings at Scene 2 had been lawful, the commission referred the entire matter for an investigation, to be supervised by the North West Director of Public Prosecutions, to ascertain the criminal liability of all SAPS members who were involved in the shooting.⁴⁴ In August 2017, IPID reported that it had submitted all dockets pertaining to the massacre to the National Prosecution Authority. However, owing to budgetary constraints, IPID had not been able to carry out a reconstruction of the events of Scene 2, despite the fact that this had been recommended by the Marikana Commission.⁴⁵

The time of writing – August 2018 – marks six years since the massacre. Despite the Marikana massacre’s being designated as a watershed moment in South Africa’s post-apartheid history,⁴⁶ there is still no detailed information in the public domain about what happened at Scene 2. The official process for investigating the massacre has now moved from fact finding to criminal investigation and prosecution. No police have, however, been prosecuted for the killings at either Scene 1 or 2⁴⁷ and it remains

unclear whether there is adequate evidence to prosecute any of those involved. This may be related to the difficulty in securing the necessary evidence to ensure a successful prosecution.

Virtually all of those who were killed were shot with R5 rounds. These rounds splinter on impact, which means that it has thus far not been possible to link any of the deaths to specific firearms using forensic techniques. The ballistics evidence shows that most of the victims were fatally wounded by shots fired from some distance away, which means that few, if any, of the survivors are likely to be able to identify the police officers who shot strikers.⁴⁸ Up to this point, SAPS members have largely closed ranks to protect themselves and their colleagues against being incriminated for the killings. Even if prosecutions are instituted, they may not necessarily provide greater clarity about the killings.

Shot while surrendering?

The Marikana Commission had access to a variety of evidence about the events at Scene 2. This included ballistic and forensic evidence, photographs (taken intermittently from police helicopters), recordings from the police radio⁴⁹ and video evidence (although not of any of the actual shootings). Beyond this, the evidence files from the commission provide other sources of information, including statements by strikers and SAPS members.

A sentence in the final submission to the Marikana Commission by the lawyers for the South African Human Rights Commission (SAHRC) states that ‘[f]orty strikers who were injured and/or arrested on 16 August allege that strikers were shot by police while surrendering or injured at Scene 2’.⁵⁰ These allegations are contained in statements taken by IPID personnel from strikers who were injured and hospitalised, or who had been arrested and

were in the holding cells at a number of different police stations in the vicinity of Marikana.

During the research on which this article is based, 57 statements were identified that asserted that strikers had been 'shot while surrendering' (SWS) at Scene 2. This article aims to deepen the process of fact-finding initiated by the Marikana Commission by evaluating the credibility of this assertion. In doing so it also aims to contribute to research about violence and the use of force by police, and to support the victims' families (and the public) in their quest to get closer to the truth about the killings at Marikana.

The approach taken in this article is not to focus on the testimony of specific individuals but to examine collectively a group of narratives recorded in the five days immediately following the massacre. Analysis of this body of information as a whole was never presented to the commission, and it has not as yet been used to establish the facts about what happened at Scene 2.

Identifying statements from strikers who were at Scene 2

The line in the SAHRC final submission referring to the allegations that strikers were shot while surrendering is based on the summaries of statements of injured and arrested strikers that are contained in Annexure G to the SAHRC submission.⁵¹ In Annexure G, 138 of the 279 summarised statements are classified as statements that deal with the events at Scene 2. Copies of all of the statements, collated into a number of large PDF files, were provided to the researcher by the Marikana Commission evidence leaders. Analysis of the statements formed part of a larger project focused on understanding the events at Scene 2,⁵² and data analysis for this article started with the reading of these 138 statements. In addition, roughly 50 other statements were read. These

were selected on an ad hoc basis by referring to the summary provided in Annexure G.

One of the initial challenges was differentiating statements with information about Scene 2 from other statements. In statements that dealt with Scene 2 the arrested or injured strikers generally described themselves as fleeing after a first shooting incident (Scene 1) and going to hide at another place. It was self-evident that a statement could be classified as related to Scene 2 where it described a second shooting incident at a place where a number of people were also killed. Statements were also included if the person described themselves as hiding at a place with geographical or physical features consistent with Scene 2. For example, many of the statements described hiding among 'rocks' or 'stones', referred to the place as a 'koppie' or 'mountain', or identified it by the bushes or trees covering the area.⁵³

Altogether 153 statements were deemed as likely to have originated from strikers who had been present at Scene 2. This number includes 134 of the 138 statements classified by the SAHRC lawyers as Scene 2 statements, and 19 others. The 153 statements include 148 from arrested strikers who were being held in custody at police stations,⁵⁴ as well as five statements from strikers in hospital.

Evidence of possible unreliability

Twenty-nine of the 153 statements (19%) were eventually excluded from the analysis because they had features indicating that they might be unreliable. Some of these statements contained assertions that were inconsistent with the evidence before the commission. For example, nine statements contained the obviously untrue assertion that strikers were unarmed or (for instance) had sticks but no spears. Another example of this type of inconsistency was statements that held that police in armoured vehicles (deliberately) drove over strikers fleeing from Scene 1. No deceased or injured strikers

had injuries that were consistent with this allegation. These statements were removed because the assertions that they contained raised questions about the reliability of the witness's overall account.

Not all of the statements with factually incorrect assertions were removed from the sample. For example, 20 of the 153 statements alleged that soldiers had been involved in the police operation at Marikana. No South African National Defence Force (SANDF) members were involved in the ground operation, but one of the SAPS units that were deployed, the Special Task Force (STF), wears military type camouflage uniforms and uses vehicles that are painted similarly to military vehicles. These personnel could reasonably be mistakenly identified as military personnel.

The review of statements also took into account the possibility that the strikers had collaborated in preparing their statements to ensure that they corroborated each other (known as homogenisation).⁵⁵ Homogenisation is identifiable when very similar language is used in different statements. However, no evidence of collaboration was identified. A series of four statements, taken by a single statement taker on 19 August 2012, showed a high level of similarity in terms of language and structure, although not in relation to all of the allegations that they contained.⁵⁶ The degree of uniformity between these statements may have originated

from the statement taker (see the discussion below). Nevertheless, it raised doubts about the degree to which these statements represented the experience of specific individuals, and they were consequently excluded.

Table 1 summarises the final sample of 153 statements, showing how these were classified in one of four categories based on the type of Scene 2 shooting description (or absence of shooting description) that they provide.

Descriptions of the shootings in the statements

Reframed, absent or truncated information

Virtually all (259 out of 271) of the people arrested by the SAPS at Marikana were arrested at Scene 2.⁵⁷ Police used 295 rounds of live ammunition at Scene 2, making it hard to imagine that anyone at Scene 2 would not have been aware of the shootings. It is reasonable to expect, therefore, that almost all of the statements from arrested miners should provide information about Scene 2. Yet only 153 of the statements were identifiable as originating from strikers who were at Scene 2. Of these statements more than a quarter (39) contained no description of any shooting (see Table 1). This raises the question as to why there were not more statements that were identifiable as originating from strikers who were at Scene 2 and that provided clear information about the Scene 2 shootings.

Table 1: Classification of statements included and excluded by type of shooting description

Type of shooting description at Scene 2	Present at Scene 2	Excluded due to possible unreliability	Final sample of statements	% of final sample
No Scene 2 shooting described	39	7	32	26%
Scene 2 shot while surrendering	57	11	46	37%
Other Scene 2 shooting description	52	9	43	35%
Shot while surrendering described but unclear if at Scene 1 or Scene 2	5	2	3	2%
Total	153	29	124	100%

A general feature of most of the statements is that they provide an extremely abbreviated account of the events of 16 August 2012, and there is no clear differentiation between the events at Scene 1 and Scene 2. This is consistent with existing knowledge of police statement taking, where statement takers tend to truncate the account provided by victims or witnesses.⁵⁸ Statement takers also frequently reframe the verbal account provided to them in order to capture what they regard as the key salient information. In so doing they decide 'what to include, what to exclude and what precise formulations to use'.⁵⁹ It is worth recalling that the statements were taken as part of an IPID investigation into the events at Marikana. IPID performs an investigative function that resembles police investigation, and many IPID personnel are former SAPS members.⁶⁰ IPID statements are thus likely to have similar characteristics to statements taken by police.

IPID investigators were deployed to the two Marikana crime scenes (i.e. Scene 1 and 2), arriving some hours after the shootings on the 16th.⁶¹ However, it is not clear whether IPID personnel who were involved in statement taking had been informed about the fact that there were two crime scenes (in two distinct places) where shootings had taken place. Many of the statement takers would likely have seen the television footage of the shootings at Scene 1, which created the impression that the massacre had taken place entirely at Scene 1. It was only in the week after the massacre, when the IPID statement taking process was largely complete, that the first media report emerged indicating that there had been two massacre scenes.⁶² Scene 2 was only exposed in the mainstream media two weeks after the massacre.⁶³

Apart from the television coverage, at the time when the statements were taken from the

strikers by IPID personnel there was only one formal account of the massacre in the public domain. This was the statement issued by Phiyega on the day after the massacre, Friday 17 August.⁶⁴ As noted above, this statement had been modified in such a way as to create the impression that the killings had taken place in one continuous flow of events. The fact that many of the statements taken by IPID staff also describe the shootings in this way, may reflect that the statement takers interpreted the narrative accounts provided to them by strikers in terms of the television footage and media statements that they had been exposed to.

These factors are not only relevant to understanding why such a small proportion of statements appear to relate to the events at Scene 2, but may also explain why, even among those statements that do deal with the events at Scene 2, roughly a quarter provide no indication that there were any shootings there. The statement of Mr Mtshamba,⁶⁵ the most widely known of the people who survived the killings at Scene 2, starkly illustrates these issues. Mtshamba was not only the principal small koppie survivor to give evidence before the Marikana Commission⁶⁶ but was also a principal interviewee in the most widely read book about the massacre, and has been featured in television coverage and news articles about Scene 2.⁶⁷ It is, however, not apparent from his IPID statement that he was present at Scene 2. In fact, in the SAHRC Annexure G his statement is classified as one that deals with Scene 1 but not with Scene 2.⁶⁸

Indiscriminate shootings by police

Some statements describe what appears to be indiscriminate shooting by the police, but do not include information about anyone being shot while surrendering. For example, statement A366 describes:

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 [they] instructed me to lie down. I did as instructed. I noticed that in front of me there were ± 10 people lying on the ground shot dead.⁶⁹

Statements in this category also include some in which the Scene 2 shooting is described in a few words, for example: 'The police continued to shoot at us even at where we were hiding and some were killed.'⁷⁰

These statements are of course not inconsistent with the assertion that some strikers were shot while surrendering. Considering the perfunctory nature of some statements it is possible that some strikers in this group were witnesses to shootings during surrender but that this was not captured in their statements. Alternatively, they may have been present at Scene 2, but may themselves not have witnessed incidents of this kind. Given the fact that the shootings took place in different parts of the Scene 2 area, all of the strikers at Scene 2 would not have witnessed exactly the same events.

Allegations of executions

The issue of executions is relevant in relation to Scene 2 partly because two SAPS members provided written statements which said that, while police were searching the Scene 2 area after the shootings, a police officer had shot one of the strikers (neither statement confirms whether the shooting was fatal).⁷¹

The statements were examined in order to establish whether there was evidence in the statements to support these claims, or other evidence of executions. In this process executions were defined as incidents where people who had already been subdued, or who were immobilised by injury, and were 'under the control' of the police, were then killed. By this definition, evidence of shooting

while surrendering is not equivalent to alleged executions. In general, the descriptions that are provided in the statements indicate that, when strikers were shot while surrendering, the police had not as yet established control over them.

There are various confusing aspects about the allegations by the two SAPS members. They emerged more than a month after the massacre. The second SAPS member to make these allegations indicated that it was the SAPS member who had first made the allegations who had admitted to shooting one of the strikers, apparently while the police were arresting strikers after most of the shootings were over. None of the strikers' statements clearly corroborates the account provided by either of these SAPS members. The statements also do not provide consistent evidence of other executions.

Credibility of 'shot while surrendering' allegations

More than a third (46) of the statements contained descriptions of strikers being shot while surrendering. For example, statement A238 indicates that:

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.⁷²

Another example is 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 not 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 \pm 50 m distance.⁷³

Roughly 37 of these statements gave some indication of the number of people they had seen being shot while surrendering. Of these, eight statements clearly referred to one person who they saw being shot while surrendering, three referred to two people, two referred to three people and one referred to four people. Twenty-three statements used terms like ‘many’ or ‘few’ to refer to the number of people who were shot. For instance, statement A245 says:

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 \pm 20 minutes. I saw one black male raising his hand but the police shot him.⁷⁴

There is evidence that at least one of the men who was shot at Scene 1 tried to raise his hands during the shooting,⁷⁵ and so the fact that a person describes someone being shot while surrendering does not in itself demonstrate that this is a description of events at Scene 2. There are three such statements that originate from people who describe being present at Scene 2, but are unclear whether the SWS incident that is alleged took place at Scene 2. Nevertheless, most of the statements that provide descriptions of people being shot while surrendering are referring to events at Scene 2 and not at Scene 1.

The 124 statements that were retained in the sample for analysis were, at face value, not obviously unreliable. A concern may, however, still exist that the allegations of people being shot while surrendering were themselves not based on the direct experience of strikers, but emerged as a result of ‘rumours’ that spread among the strikers. It is conceivable that these allegations may have been influenced by a hostile disposition towards the police, or even have been the product of collusion to misrepresent the events at Scene 2 in order to hold police culpable for the killings. After the initial process of excluding statements that had features indicating that they might be unreliable, the research process therefore focused on whether there was reason to suspect that the SWS allegations were the product of collusion between the strikers, or whether there was evidence that the statements were a misrepresentation of the real experiences of the strikers who made them.

Table 2 shows that 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 Police Station,⁷⁶ 13 at Jericho Police Station and 21 at Phokeng Police Station. In four cases the locations were not specified. Of the 103 statements taken in the first three days, 32 (31%) contained allegations of shooting while surrendering.

Only one of the 124 statements was taken on Friday the 17th and this did not refer to anyone being SWS. Statement taking got under way more fully, at the Bethanie and Jericho police stations, on Saturday 18 August. At Jericho Police Station seven of the statements that were taken on the 18th provided shooting descriptions and three of these included SWS allegations. Likewise at Jericho three of the seven

Table 2: Dates on which statements were taken

	Date unclear	17 th	18 th	19 th	20 th	21 st	Total
Statements taken	8	1	0	63	0	18	124
Scene 2 SWS	5	0	7	20	2	12	46
% SWS	63%	0%	23%	32%	67%	67%	37%
Location	All Bethanie therefore assumed to be 18 th or 19 th	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

statements that were taken on the 18th and that provided shooting descriptions included SWS allegations.

Of the statements taken at both stations on that day from strikers who were apparently at Scene 2, a large number contain no shooting description. This is likely to have been a consequence of the factors discussed above. The available information shows that virtually all of the arrested strikers were arrested at Scene 2 and that it is highly unlikely that people who were present at Scene 2 would not have been aware of the shootings.

More than half of the statements in the sample (52%) were taken from strikers at Bethanie Police Station. It is therefore unsurprising that 50% of the statements that specifically

mentioned shooting while surrendering (23 of 46) were made by strikers at Bethanie Police Station. Nevertheless, SWS allegations emerged from strikers at all four police stations as well as from one of the three strikers in the sample who were in hospital when their statements were taken. Therefore, in the five days after the strike, SWS allegations emerged from strikers at five independent locations (Table 3).

It is also worth noting that 29 different statement takers were involved in taking the 124 statements, and that most of them only took statements at one location. The allegations that strikers were shot while surrendering were therefore recorded by at least 18 of the 29 statement takers (62%), indicating that the evidence of people being shot while

Table 3: 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	0	17	23	3 ⁷⁷	4	124
Scene 2 SWS	23	3	12	6	1	1	46
% of all 124 statements	52%	10%	14%	19%	2%	3%	100%
% SWS allegations in statements from this location	36%	23%	71%	22%	33%	25%	37%

surrendering did not originate from a small group of IPID staff who misinterpreted the verbal accounts provided by the strikers or deliberately introduced misleading evidence.

Many of the statements also contained allegations of assaults or other vindictive conduct by police against strikers after the shooting. Sixty-nine of the 124 strikers made allegations of this kind, the vast majority of whom asserted that strikers were assaulted at Scene 2 after the shootings were over and they were being rounded up and arrested. Strikers who made allegations of being shot while surrendering were not more likely to allege that they or others had been assaulted (Table 4). This suggests that allegations of being shot while surrendering do not indicate a bias towards making allegations against the police.

Finally, it is worth noting that there were two police officers who claimed in their statements that they had called on other police to stop shooting at the strikers at Scene 2.⁷⁸ Altogether, 14 of the strikers' statements also described police officers calling for other police to stop shooting.⁷⁹ Of these, seven (50%) were statements by strikers who also made allegations of shooting while surrendering. This is a further indication that the SWS allegations represent objective descriptions of the events at Scene 2, and are not evidence of a tendency

towards making unjustified accusations against the police.

Conclusion

This article does not provide a full account of the events at Scene 2, but focuses on the statements taken from injured and arrested strikers, in particular statements indicating that strikers were shot while surrendering.

The analysis shows that these allegations emerged at diverse locations, and from an early stage in the process of recording statements. Ultimately, such allegations would be recorded by 18 different IPID personnel from strikers at five distinct locations in the five days immediately after the massacre. The statements have other features that indicate that those making the allegations were not biased against the police; for example, not over-representing allegations of assault and presenting information that portrayed police in a positive manner.

This analysis supports the SAHRC's assertion that the allegations of being shot while surrendering are not based on collusion 'to produce a false account'.⁸⁰ Considering the circumstances in which these accounts emerged, it is implausible that they reflect an attempt to falsely incriminate the police and suppress alternative information. Taken collectively, these statements can therefore be regarded as a reliable source of information that

Table 4: Percentage of arrested strikers who allegedly experienced or witnessed assaults – classified by type of Scene 2 shooting description

Type of shooting description at Scene 2	No assault	Assault or other vindictive action	Total	% alleging assault or other vindictive action
No Scene 2 shooting described	11	21	32	66%
Scene 2 SWS	23	23	46	50%
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	56	68	124	55%

some of the strikers at Scene 2 were indeed shot while surrendering.

It is also worth noting that there is not a single reference in any of the statements to strikers shooting at or attacking SAPS members with dangerous weapons at Scene 2, despite such allegations by the police.⁸¹ This supports other evidence that suggests that police claims that they were acting in self-defence when they shot the strikers were false.⁸²

But if they were not attacking the police, why were they shot in this way? Existing analyses of the massacre have focused on political influences, and some have alleged collusion between Lonmin and the police to kill the strikers.⁸³ The evidence presented to the commission does not support the view that this is what motivated the police shootings at Scene 2.⁸⁴ What characterised the leadership of the operation was not any explicitly formed lethal intention, but the recognition of the potential for substantial loss of life and the absence of any significant will or intention to prevent it.⁸⁵

Although it made no findings about the reasonableness or legality of the police shootings, the Marikana Commission did reach at least one significant set of conclusions about the events at Scene 2, namely that there was no effective command and control of the police.⁸⁶ Factors that contributed to the absence of command and control included the neglect of planning and briefing owing to the hasty manner in which the operation was launched,⁸⁷ and blurred lines of command at senior level.⁸⁸ An additional factor that profoundly shaped the manner in which the operation was planned and conducted was that it took place during a period in which Public Order Policing units had fallen into neglect, while the status of the SAPS's militarised 'tactical' units had been elevated and they were being used more frequently in crowd management.⁸⁹

The implication is that the shootings at Scene 2 need to be understood against the backdrop of an absence of command and control of SAPS units that were not well trained in crowd management. At one point during the commission process, the SAPS argued that its members at Scene 2 shot some of the strikers because, having heard gunfire from other SAPS units, they mistakenly believed that they were being fired at by the strikers.⁹⁰ However, given that there were a large number of people gathered in the Scene 2 area, it was reckless to fire without identifying the source of the gunfire and ensuring that innocent people were not endangered. The police could also have withdrawn and taken cover, making such retaliatory fire unnecessary. This strategy, which would have provided police with the time to identify where gunfire was coming from,⁹¹ should have been familiar to the tactical units that were responsible for much of the gunfire at Scene 2.⁹²

One key detail that is not addressed by the statements is whether the strikers who were shot while surrendering were visible to the police who shot them. There is evidence that some of the SAPS shooters fired into the Scene 2 area from locations on the south side.⁹³ It is not clear if the strikers that they were shooting at would have been clearly visible, as they may have been concealed by foliage. However, the evidence also shows that some of the police who fired into the killing zone area were positioned on top of the high rocks.⁹⁴ These police are likely to have been able to see the strikers at whom they were shooting. They would likely have been aware that some strikers had their hands raised while others were taking shelter behind rocks and other available cover. If these police members fired at the surrendering strikers, it raises the possibility that the killings at Scene 2 involved the 'intentional unlawful killing of strikers by SAPS members'.⁹⁵

The motivations of some police for shooting at the strikers likely went beyond believing that they were being fired at. The statements provide evidence that many of the strikers were assaulted after the shootings, which indicates that there was a strong element of vindictive hostility towards the strikers. The shootings by some of the police at Scene 2 were likely strongly influenced by their emotions, which were shaped by the events that had occurred at Marikana on that day and over the preceding week.⁹⁶ This article shows that whether or not anyone is eventually convicted for these acts, the evidence from the strikers' statements points to the fact that a serious crime was committed by police at Scene 2.



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Notes

- 1 Marikana Commission of Inquiry, Written submissions of the South African Human Rights Commission [SAHRC] regarding 'phase one', 29 October 2014, 474.
- 2 Thembinkosi Gwelani, who was killed at Scene 1, was an unemployed man who had come to Marikana looking for work. See 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, 261–262.
- 3 South African History Online, Marikana massacre 16 August 2012, <http://www.sahistory.org.za/article/marikana-massacre-16-august-2012> (accessed 9 September 2017).
- 4 Marikana Commission, Report, 110–175.
- 5 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. See Independent Police Investigative Directorate Act 2011 (Act 1 of 2011), section 28(1)(b).
- 6 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 27 October 2014, 41–44, 92, 665–668.
- 7 G Marinovich, *Murder at the small koppie*, Cape Town: Penguin, 2016, 40, 51.
- 8 The members of the tripartite alliance are the African National Congress, the Congress of South African Trade Unions and the South African Communist Party.
- 9 Marikana Commission, Heads of argument of evidence leaders, 546–547.
- 10 N Makhbu, Marikana miners were killers – Zuma, *Pretoria News*, 24 June 2015, <https://www.iol.co.za/news/crime-courts/marikana-miners-were-killers---zuma-1875560> (accessed 24 October 2017).
- 11 Marikana Commission, Report, 42; D Bruce, Summary and analysis of the report of the Marikana Commission of Inquiry, Council for the Advancement of the South African Constitution, 2015, 19–20, <https://www.casac.org.za/wp-content/uploads/2015/02/Summary-and-Analysis-of-the-Report-of-the-Marikana-Commission-of-Inquiry.pdf> (accessed 11 September 2018).
- 12 See the following Marikana Commission of Inquiry exhibits: Exhibit UUUU10.3, Annexure V2 – Video presentation on the movement of strikers from koppie to the kraal [FINAL]; Exhibit UUUU10.4, Annexure V3 – Video presentation on the use of water canon before Scene 1 [FINAL]; Exhibit UUUU10.5, Annexure V4 – Video presentation on the use of tear gas and stun grenades at and around Scene 1 [FINAL]; Exhibit UUUU10.6, Annexure V5 – Video presentation on the shots fired at Scene 1 [FINAL].
- 13 S Mabena, Marikana massacre: cry for justice, five years on, *Times Live*, 15 August 2017, <https://www.timeslive.co.za/politics/2017-08-15-marikana-massacre-cry-for-justice-five-years-on/> (accessed 24 October 2017).
- 14 *News 24*, Phiyega can't be Marikana scapegoat – Cope, 4 December 2016, <http://www.news24.com/SouthAfrica/News/phiyege-cant-be-marikana-scapegoat-cope-20161204> (accessed 24 October 2017).
- 15 Marikana Commission, Report, 367, 520–21; D Bruce, *Commissioners and commanders: police leadership and the Marikana massacre*, Pretoria: Institute for Security Studies (ISS), 2016.
- 16 Marikana Commission of Inquiry, Report, 505–510; Marikana Commission of Inquiry, Heads of argument on behalf of injured and arrested person, 219–221.
- 17 G White, Supplementary statement of Gary White MBE, Marikana Commission of Inquiry, Exhibit BBBB4, 21 June 2014.
- 18 B Dixon, A violent legacy: policing insurrection in South Africa from Sharpeville to Marikana, *The British Journal of Criminology*, 55:6, 2015, 1131–1148, 1144.
- 19 R Collins, *Violence: a micro-sociological theory*, Princeton: Princeton University Press, 2008.
- 20 Marikana Commission, Report, 309–312.
- 21 There are 48 identified SAPS shooters, but this figure excludes the SAPS members who fired buckshot pellets at the strikers. See Marikana Commission, Report, 259–261.
- 22 The police who fired buckshot at the strikers appear to have fired from a slightly different location. See *ibid.*
- 23 *Ibid.*, 248.
- 24 *Ibid.*, 257.
- 25 S Naidoo and J Steyl, Final report: Marikana mining incident 16th August 2012: integration of scene, ballistic & medical evidence at Scene Two, 26 May 2014, Annexure E.
- 26 Roughly 305 live rounds were fired during the fatal barrage of gunfire at Scene 1. At Scene 2, 295 live rounds were fired.
- 27 Mr Mkhonjwa, who was the first to be shot, was shot at approximately 16h09 (See Marikana Commission of Inquiry, Families' heads of argument, 3 November 2014, 378); Mr Mpumza, who was the last to be killed, was killed at 16h19:29 (Marikana Commission of Inquiry, Heads of argument of evidence leaders, 483).
- 28 The evidence leaders' heads of argument say that 121 cartridges out of the 295 allegedly fired (41%) were found (See Marikana Commission, Heads of argument of evidence leaders, 488). Annexure C of the report of the independent ballistic and medical experts, however, only deals with data on the location at which 85 cartridges (29%) were found.
- 29 See, for example, Independent Police Investigative Directorate (IPID) statement A245, Bethanie Police Station, 18 August 2012.
- 30 Marikana Commission, Report, 271.
- 31 Marikana Commission, Heads of argument of evidence leaders, 447–449.

- 32 See Marikana Commission, Families' heads of argument, 320–411; Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 463–472.
- 33 The commission refers to 10 people being killed in this area. The figure of 11 is based on the inclusion of Mr Xalabile in this group. The location at which two of the people who died later had been shot is not known.
- 34 Marikana Commission, Report, 271.
- 35 Marikana Commission of Inquiry, Exhibit JJJ6, Capt. Nel photos 1234–1242, 16 August 2012.
- 36 Marikana Commission, Report, 316.
- 37 Marikana Commission, Heads of argument of evidence leaders, 601–606.
- 38 Claassen Board of Inquiry, Report of the Board of Inquiry into allegations of misconduct against the National Commissioner: Mangwashi Victoria Phiyega, 21 October 2016, 66–67.
- 39 Marikana Commission of Inquiry, Exhibit FFF5, General Phiyega pronounces on mine unrest, media statement from the South African Police Service, 17 August 2012.
- 40 Marikana Commission of Inquiry, Exhibit FF4, Undated two page PDF file with title 'Internal unrest incident: Lonmin mine: North West Province: Internal brief'.
- 41 Marikana Commission of Inquiry, Exhibit L, South African Police Service: Mine unrest at Lonmin, Marikana – history and build-up, 231–233.
- 42 Marikana Commission, Report, 316.
- 43 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 59–119; G White, Final statement of Gary White MBE, Marikana Commission of Inquiry, Exhibit JJJ178, 4 October 2013, 75.
- 44 Marikana Commission, Report, 327–328. The investigation is also supposed to look into the possibility that some shootings at Scene 1 had 'exceeded the bounds of private defence' (*ibid.*, 545–6).
- 45 ANA Reporter, Ipid submits last Marikana docket to NPA, *IOL News*, 22 August 2017, <https://www.iol.co.za/news/south-africa/repid-submits-last-marikana-docket-to-npa-10898093> (accessed 21 July 2018); Marikana Commission, Report, 327, 546.
- 46 Dixon, A violent legacy, 1–2.
- 47 The only prosecution of police that has been implemented for the 16th is for failing to disclose the fact that one of those who had died, had died in a police vehicle. See M Thamm, Marikana massacre: IPID investigates massacred miners' deaths, and SAPS' lies, without the promised funding, *Daily Maverick*, 30 August 2018.
- 48 Naidoo and Steyl, Final report.
- 49 This was not available for Scene 1.
- 50 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 474. Some testimony about strikers being shot while surrendering was presented to the commission by one of the witnesses, but no reference is made to this evidence in the report of the commission, possibly owing to concerns about its reliability.
- 51 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', Annexure G.
- 52 D Bruce, *The sound of gunfire: the police shootings at Marikana Scene 2*, 16 August 2012, Pretoria: ISS, August 2018.
- 53 On the latter point see, for instance, IPID statements A30 and A269.
- 54 The location at which four statements were taken was not recorded. These statements were, however, part of the group of statements that were taken at police stations.
- 55 The Law Horse, I can't accept the police's disproportionate influence in court, *Legal Cheek*, 24 May 2012, <https://www.legalcheek.com/2012/05/criminal-barrister-i-cant-accept-the-polices-disproportionate-influence-in-court/> (accessed 21 July 2018).
- 56 IPID statements A343–A346, Phokeng Police Station, 19 August 2012.
- 57 Marikana Commission, Exhibit L, 2 and 263. Exhibit L appears to indicate that no one was arrested at Scene 1.
- 58 C 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.
- 59 FE Rock, The genesis of a witness statement, *International Journal of Speech, Language and the Law*, 8:2, 2001, 44–72, 60.
- 60 D Bruce, Strengthening the independence of the Independent Police Investigative Directorate, African Policing Civilian Oversight Forum (APCOF), Policy Paper, 16 February 2017, <http://apcof.org/wp-content/uploads/2017/03/016-strengthening-the-independence-of-the-independent-police-investigative-directorate.pdf> (accessed 30 August 2018).
- 61 Marikana Commission, Heads of argument of evidence leaders, 621.
- 62 T Lekgowa, B Mmope and P Alexander, How police planned and carried out the massacre at Marikana, *Socialist Worker*, 2317, 21 August 2012, <https://socialistworker.co.uk/art/28868/How+police+planned+and+carried+out+the+massacre+at+Marikana> (accessed 17 April 2017).
- 63 G Marinovich, The murder fields of Marikana. The cold murder fields of Marikana, *Daily Maverick*, 30 August 2012.
- 64 Marikana Commission of Inquiry, Exhibit FFF5.
- 65 Marikana Commission of Inquiry, Exhibit MMMM3, IPID statement A249, Bethanie police station, 19 August 2012.
- 66 Mr Phatsha, who gave evidence in February 2013, also described events at Scene 2. See Marikana Commission, Transcript Day 50 (20 February 2013, Phatsha), 2013, 5440–5442, 5676–5677.
- 67 Marinovich, *Murder at the small koppie*; Marikana Commission of Inquiry, Exhibit MMMM2; *Carte Blanche*, Interview with Mr Mtshamba, video, part one and part two, undated; N 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> (accessed 9 September 2017).
- 68 His statement is IPID statement A249, Bethanie Police Station, 19 August 2012. See Marikana Commission, Written submissions of the SAHRC regarding 'phase one', Annexure G, 46.
- 69 IPID statement A366, Phokeng Police Station, 19 August 2012.
- 70 IPID statement A153, Mogwase Police Station, 21 August 2012.
- 71 Warrant Officer H Myburgh, Statement, Marikana Commission of Inquiry, Exhibit KKK7, 15 October 2012; Warrant Officer J Swart, Supplementary statement, Marikana Commission of Inquiry, Exhibit LLL14, undated; Marikana Commission, Heads of argument of evidence leaders, 597–601.
- 72 IPID statement A238, Bethanie Police Station, 18 August 2012.
- 73 IPID statement A22, Bethanie Police Station, 19 August 2012.
- 74 IPID statement A245, Bethanie Police Station, 18 August 2012.
- 75 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 378.

- 76 This figure includes the eight statements that were not dated. Because they were taken at Bethanie Police Station it was assumed that they had been taken on the 18th or 19th.
- 77 According to Annexure G, statements 2–21 were all taken in hospitals. The locations given in the three statements that are identified as dealing with events at Scene 2 are Pelgerae (statement A5), Wonderkop (A17) and 'Marikana' (A12). The Wonderkop Hospital is located at the Lonmin mine and is also referred to as the Marikana Hospital.
- 78 Lieutenant Colonel 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.
- 79 Examples of this can be found in the quotes from statements A238 and A22 above in this article.
- 80 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 474.
- 81 Marikana Commission, Exhibit FFF5; Marikana Commission, Exhibit L, 231–233.
- 82 Bruce, *The sound of gunfire*, 37–38, 84, 85.
- 83 Marikana Commission, Heads of argument on behalf of injured and arrested person, 221.
- 84 Marikana Commission, Report, 510.
- 85 Bruce, *Commissioners and commanders*, 41–47.
- 86 Marikana Commission, Report, 309–312.
- 87 *Ibid.*, 329–387.
- 88 Bruce, *Commissioners and commanders*, 41–47.
- 89 M Marks and D Bruce, Groundhog Day? Public order policing twenty years into democracy, *South African Journal of Criminal Justice*, 27:3, 2014.
- 90 Marikana Commission of Inquiry, Opening statement on behalf of the South African Police Service, Exhibit FFF9, undated (2012), 19 para 45.5.
- 91 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 399–401.
- 92 SAPS units that discharged their weapons at Scene 2 included members of the National Intervention Unit, Tactical Response Team, dog (K9) units from the North West province, and members of Public Order Policing (See Bruce, *The sound of gunfire*, 28).
- 93 These are positions 13, 14 and 15 in the independent forensic and ballistic report (Naidoo and Steyl, Final report). In the report they describe these positions as being on the east side (*ibid.*, 16).
- 94 Naidoo and Steyl, Final report.
- 95 Marikana Commission, Written submissions of the SAHRC regarding 'phase one', 474–475.
- 96 Bruce, *The sound of gunfire*, 90–91.