SUMMARY OF THE KEY FINDINGS & RECOMMENDATIONS MADE BY THE FARLAM COMMISSION

Causes of the massacre and events leading up the massacre

The events which lead to the Marikana massacre were caused by violent, unprotected strikes at neighbouring mines.

In these strikes, miners managed to secure higher pay outside of the established collective bargaining system. This encouraged Lonmin miners to also strike.

It was the decision of the miners to go on an unprotected strike, and their violent behaviour during that strike, which led to the events that happened between 12 and 16 August.

Recommendations:
- the Director of Public Prosecutions in the North West Province should investigate Offences by the strikers in terms of the Gatherings Act and the Possession of Dangerous Weapons Act.
- There should be strict enforcement of the laws which prohibit carrying sharp weapons and guns during strikes and service delivery protests.

10 August – 15 August

Recommendations:
The following matters should be taken up by the Director of Public Prosecutions in the North West Province. The Director of Public Prosecutions should investigate further and determine whether there are grounds for prosecution.

1. The attempted murder of Mr Mutengwane and Mr Dlomo which happened on 10 August. These two miners say that they were shot at by Lonmin Security officers. It is not clear whether rubber bullets or live ammunition were used.
2. The shooting of Mr Mabuyakhulu and Mr Ngema by NUM officials, as well as the further attack on Mr Mabuyakhulu by NUM officials. These attacks happened on 11 August when strikers marched to NUM office.
3. The following events which happened on 12 August when Lonmin called on its employees to go to work during the strike, even though it knew that it was not safe. Lonmin knew that it was unable to protect its workers and did not warn its workers about the danger.
   - 3.1 The assaults on Mr Louw and Mr Vorster and the deaths of Mr Fundi and Mr Mabelane (all Lonmin Security officers) in confrontations with the strikers.
   - 3.2 The death of Mr Mabebe (a Murray and Roberts employee) at K4 Shaft.
   - 3.3 The assaults on Mr Janse Van Vuuren (a Murray and Roberts employee), Mr Andries (?) and Mr Keyser at K4 Shaft.

4. The following events which happened on 13 August:
   4.1 The killing of Mr Langa by strikers on his way to work early in the morning.
   4.2 The killing of Mr Sokanyile while running away from police. It is not clear whether this was in self-defense or not because the police claim that they were shot at by the group that was running away across the stream.
   4.3 The killing of Mr Mati who was found dead in the informal settlement. It is unclear how and why he died.
   4.4 The killing of Warrant Officer Lepaaku and Warrant Officer Monene and the assault on Lieutenant Baloyi.
5. The killing of Mr Twala which happened on 14 August. He was a Lonmin supervisor accused of being an informer.

Scene 1

The Commission finds that those police officers who shot at scene 1 had reasonable grounds to believe that their lives and those of their colleagues were under threat. This justified them in defending themselves and their colleagues. It is legally irrelevant whether they were actually under attack or not.

Barbed wire, neutral zone – The commission does not find that SAPS acted with at least *dolus eventualis*.

The intention was not to expose the strikers to a barrage of machine gun fire but to keep the strikers at bay.

Briagadier Calitz is criticised for failing to order the use of teargas before ordering the shooting and failing to give strikers the opportunity to surrender or issuing a warning before opening fire. This is in violation of the Gathering Act 205 of 1993.

The police claim that they decided to enter the "tactical phase" because of an escalation of violence on 16 August. The commission finds that this is untrue. It was decided at a meeting (between who and who) on 15 August that the next day would be "D-Day". This was chosen instead of an "encirclement" plan and a "cordon and search" plan.

The decision taking at this meeting was "was the decisive cause of the 34 deaths on 16 August".

Scene 2

The commission is not able to make any individual findings about the 17 deaths at scene 2 because of a lack of clarity about what exactly happened.

Major General Naidoo is criticised for his failure to exercise command and control at Scene 2 – allowing it to turn into "chaotic free for all". He commission agrees that as most senior

officer at Scene 2, he did nothing to stop the firing of two hundred and ninety five rounds of ammunition at the strikers in the koppie.

Recommendations:
It is recommended that the Director of Public Prosecutions of the North West Province set up a team of experts and carry out a special investigation into the events which happened at scene 1 and scene 2 on 16 August. The purpose of this is to investigate members of the South African Police Service involved in the shootings and determine whether or not they are guilty of criminal activity. The investigation should look at:
- Whether the police used excessive force at scene 1.
- The delay in allowing the injured to receive medical care.
- The failure to stop the operation after the shooting at scene 1.
- The shooting of strikers at scene 2.
- Command and control, and the possibility that senior SAPS officers are to blame for allowing the events at scene 2 to happen.

Findings about the South African Police Service
In the days following the massacre the National Commissioner, Riya Piega, and the Minister of Police, Nathi Mtethwa, and Brig Calitz poured praise on the police… "successful", "professional" and "responsible" "we did nothing wrong"

These comment were inappropriate and were made with the intention of encouraging the police to protect each other ("close ranks") by denying mistakes, withholding information from the commission and lying.

The police intentionally hid evidence from the commission.

These comments made it more difficult for the commission to do its work of investigating the police. The police's attempts to hide evidence caused delays and wasted the time of the Commission

The police intentionally misled the public about the events of 16 August. They only reported the shooting at scene 1 to the public, and covered up the shooting at scene 2.

The police claim that they moved to the 'tactical phase' of the operation because of an escalation of violence but, in actual fact, the decision had already been taken in a meeting on 15 August.

The evidence does not show that on 13 August the strikers changed direction towards the informal settlement, which is the excuse given by the police for attacking the strikers on that day.

Public Order Policing in South Africa is inadequate for dealing with armed crowds. They are inadequately trained and cannot handle such situations without shedding blood.

Recommendations:
The Commission made the following findings and recommendations regarding Public Order Policing in South Africa

1. Automatic, military assault rifles like the R5 rifle should not be a part of the arsenal of the Public Order police. These weapons should be immediately withdrawn (as recommended by Mr White during the Commission).
2. Public Order Policing in South Africa is inadequate for dealing with armed crowds. They are inadequately trained and cannot handle such situations without shedding blood.
3. Therefore, a panel of experts should urgently be formed as soon as possible to:
   3.1 Revise and amend Standing Order 262 (the Public Order Policing rules and procedures for dealing with crowd management during gatherings and demonstrations) and other relevant documents.
   3.2 Find out what the world's best best public order policing methods are.
   3.3 Implement a training programme for public order police, using these methods.
   3.4 Consider and advise on the recommendations made by Mr Robert David Bruce and Amnesty International during the Commission. The panel should have the power to authorise and implement the recommendations if they think they are appropriate to the South African context.
   3.5 Make sure that roles and lines of command are clear between different police units.

C) Implementation of the National Development Plan (NDP)

The NDP states that the police need to be demilitarised and professionalised. This is official government policy and must be implemented urgently.

D) Control over operational decisions (decisions about what happens on the ground in a public order policing situation)

1. The executive should not make any operational decisions for the police. If they give guidance (which is sometimes necessary), this should be properly recorded.
2. Operational decisions should only be made by an officer that has the necessary training, skills and experience in public order policing.

E) Police equipment

1. All radio communications should be recorded and saved.
2. For big operations, where radio may be inadequate, there should be a back-up method of communication, and protocols should be developed.
3. SAPS must make sure that everyone using specialised equipment (like water cannons and video equipment) is properly trained.

4. All SAPS helicopters should have working video cameras.
5. Some expensive equipment bought by SAPS cannot be used by members of the police force. This means that procurement, servicing and training must be reviewed.

F) First Aid

1. In operations where blood will probably be shed, the plan should consider first aid, making sure that decent first aid is speedily available to the injured.
2. There should be a clear rule that forces police with first aid training to give first aid to injured citizens if they need it.
3. All police officers should be trained in basic first aid and some police should receive special first aid training for gunshot wounds.

G) Accountability

1. After a police operation, the Minister of Police and the National Commissioner should not say things that encourage police officers to protect each other by being dishonest and withholding information ("closing the ranks").
2. Police rules and procedures must make sure that there are proper records for all operations.
3. The police must recognise that they serve all South African citizens. They have a duty to tell the truth.
4. The Independent Police Investigative Directorate (IPID) must have the staff and resources that it needs to be able to do its work properly.
5. People giving statement to IPID are legally protected, even if they say something that incriminates them. This means that they can speak freely without getting themselves into trouble. IPID should change the forms that it uses to take statements to make this very clear to people giving statements.

<u>Findings about the Executive</u>

Mr Cyril Ramaphosa

The accusation: [culpable homicide?]
Cyril Ramaphosa had no reason to believe that the SAPS would launch the "precipitate, ill planned and poorly commanded" operations, which caused the deaths of 34 strikers on 16 August.

There is no basis for the Commission to find even on a prima facie basis that Mr Ramaphosa is guilty of [the crimes he is alleged to have committed] – triggering the string of events that led up to the massacre.

The Commission agrees with the submissions by Mr Ramaphosa's lawyers that the accusations made against him are groundless.

Minister Nathi Mthethwa
The accusation: murder

Counsel for the Injured and Arrested Persons submitted that the Commission should recommend to the National Director of Public Prosecutions that he should consider prosecuting Minister Mthethwa for the murder of the 34 strikers who were killed on 16 August at Marikana.

The fourth possible reason, pressure or guidance from the executive, was suggested in the course of his evidence by Mr De Rover, the expert called by the SAPS.

„ „One thing I do know is that in no democratic country an incident that doesn't only have national security ramifications but definitely serious economical dimensions, does a police force decide that it is time for whoever is there to go. That decision comes and originates from somewhere else… Now if you call that meeting, and with what I have said about police forces in a democratic society, I would be very surprised that SAPS would have been permitted to make that decision on its own alone and not guided or would not have actively sought the guidance of the executive on this prior to doing it ...

The Commission is satisfied that those who attended the extraordinary session of the NMF should have been able to tell the Commission the reason or the reasons why the decision to implement the tactical option on 16 August if the strikers did not lay down their arms was taken and the only reasonable inference to be drawn from their failure to do so is that they are hiding something. This inference is fortified to some extent at least by the evidence relating to the missing memory stick.

The Commission is not able to find that the fourth possible reason for the decision to „endorse" Lieutenant General Mbombo"s alleged proposal, namely what Mr de Rover called „the guidance of the executive", was not one at least of the factors on which the decision was based. If guidance of the executive played a role, then it is probable that such guidance was conveyed to the NMF by Minister Mthethwa.

The Commission wishes to emphasise that it is not finding that such „guidance" was given. It is, however, unable in the light of what has been said above to find positively in Minister Mthethwa"s favour on the point.

Minister Susan Shabangu
The accusation: corruption and perjury

The commission finds that Shabangu would not have been able to pass on the message from Ramaphosa [what message] to President Zuma, Nathi Mthethwa or the Cabinet.

Findings about Lonmin

Lonmins protection of its workers

Lonmin called on its employees to go to work during the strike, even though it knew that it was not safe. Lonmin knew that it was unable to protect its workers and did not warn its workers about the danger.

Lonmin did not use the intelligence available, did not properly formulate plans for dealing with the strikers, did not ensure that there were adequate security resources at its disposal and did not properly brief members [of their private security team?]

Lonmin had a duty to ensure that it had adequate security arrangements in place at Saffy, K4, and other shafts to protect workers. Their failure to insist on and ensure heightened security arrangements in view of the intelligence information available to them at the time is inexcusable.

Lonmin's reckless actions in urging employees to come to work in circumstances where they were aware of the potential dangers to them and in the full knowledge that they could not protect them, falls to be condemned in the strongest terms.

Lonmin must, in the Commission's view, bear a measure of responsibility for the injuries and deaths of it's employees and those of its sub-contractors.

Lonmin and the police

It is submitted by the Evidence Leaders that adequate deployment of visible policing might have prevented the situation at Marikana from spiralling out of control. They submit that the failure to attend to ensuring that the information was communicated and that the looming threats were attended to is a matter that merits further investigation with a view to holding disciplinary procedures.

It was argued by the lawyers for [the injured and arrested] that there was collusion between Lonmin and the police, and that this collusion was toxic and illegal because it "was intended and did result in the massacre/tragedy".

The commission found that it made sense for Lonmin and the police to collude and share resources. The commission found that there was no toxic collusion between Lonmin and the police.

Lonmin's housing obligations

The Commission found that Lonmin's failure to fulfil its housing obligations did create "an environment conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct."

Lonmin did not provide the houses which it had promised. They say that they could not afford to build the houses but the commission found this to be a lie.

Recommendations:
The Department of Mineral Resources should force Lonmin to meet its obligation to provide housing for its employees.

The Department of Mineral Resources should be investigated [by who?] for failing to keep track of Lonmin's fulfilment of its housing obligations.

Findings about NUM

The Commission is not able to make a finding about whether NUM could have prevented the strike by securing higher wages for Lonmin miners through the collective bargaining system.

On 9 August 2012, NUM held a mass meeting at the Wonderkop Hostel where NUM told its members that NUM did not support the unprotected strike, and that workers should report for work.

Very much like Lonmin, NUM encouraged employees to report to work with the full knowledge of the intimidation and violence that prevailed during that period. Members of NUM were present at many of the briefings by Lonmin Security, as appears from the Log Book, and could not have been unaware of the seriousness of the incidents of intimidation being reported. Whilst they did attempt to protect and convey some of the employees to and from work, it must have been abundantly clear to them that they did not have the capacity to protect all the employees. Their actions, were, in the circumstances, reckless and ill considered.

The commission found that the group of 2000-3000 strikers who went to the NUM office on 11 August went there with intent to cause violence.

Game changers

1) Counsel for the Injured and Arrested Persons contended that 3 events during the period from 11 August 2012 onwards were what he called „game changers", which had a decisive influence on what followed. They were:
(a) The shooting of strikers by the NUM members at the NUM offices on 11 August;
(b) The confrontation between strikers and the SAPS members near the railway line on 13 August and what he called „the resultant revenge motive on the part of members of SAPS"; and
(c) „the impact of political pressure".

The Commission is of the view that the first „game changer" was another decision by the strikers, to enforce the unprotected strike by violence and intimidation. As far as the second „game changer" is concerned, the important factor there was their refusal to comply with Major General Mpembe"s request that they lay down their weapons, weapons which were clearly required for the enforcement of the unprotected strike.

It was their determination to hold on to their weapons and to continue congregating on the koppie which set in motion the series of events which culminated in the tragedy of 16 August. The Commission has dealt elsewhere in this report with the actions and omissions of some of the other participants which also contributed to the tragedy but there can be no escape from the conclusion that if the strikers had not decided to resort to violence, no-one would have been injured and no property would have been damaged.

Misc:
10 August: Given the climate of intimidation of striking workers that prevailed at the time, it is very probable that Lonmin Security shot rubber rounds in an attempt to protect working employees being intimidated.