SOUTH AFRICA’S MOMENT OF TRUTH

The Marikana Commission of Inquiry: implications for PGMs and mining

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The Marikana Commission of Inquiry

Much more to it than meets the eye

Expectations had been raised that the publication of Judge Farlam’s Report of the Marikana Commission of Inquiry on the Marikana tragedy would constitute South Africa’s moment of truth in the post-Apartheid era. However it left many big questions unanswered, creating further uncertainty for an already beleaguered mining sector, and a sense of injustice for the broader community. Delivered to President Zuma at the end of March 2015 it was released to an impatient public on 25 June 2015, the eve of the 60th anniversary of the adoption of the Freedom Charter. After receiving six extensions to its original deadline for reporting when the Marikana Commission was appointed on 23 August 2012, expectations were perhaps unrealistically high that the report would make decisive findings in relation to police, trade union and corporate responsibility, and thereby hold to account the key protagonists in what is widely considered to be one of democratic South Africa’s darkest times. But on many of the key issues, the Marikana report is commonly regarded as having either ‘pulled its punches’ or else been hopelessly indecisive. While it is true that in the case of, for example, the responsibility of the Minister of Police, the report is disappointingly inconclusive, there is a lot more to the report as a whole than meets the eye. As a consequence there is much for Corporate South Africa as well as the wider investor world to chew on, and once again, the mainstream media have done a poor job at unpacking those issues in terms of what they mean for the future of the South African economy, and for the mining sector especially.

Forty-four people died in the tumultuous period between 10-16 August 2012, over thirty shot dead by the SA Police Service, shaming democratic South Africa and shocking a watching world. The Marikana tragedy was a ‘perfect storm’, in which various socio-economic factors colluded with important shifts in the political landscape, such as fragmentation in the labour union movement, and the police’s self-evident inability to securely police a volatile labour dispute in which criminality had begun to play a dangerous part. Thus, Marikana shone a spotlight on the structural defects in the economy as well as exposing new weaknesses in the political establishment’s capacity to absorb and navigate social and labour conflict. In the immediate aftermath of the tragedy, President Jacob Zuma appointed the Marikana Commission of Inquiry chaired by retired Judge Ian Farlam, to investigate the events leading up to and including the 16 August 2012. The other members of the Commission were Advocates Pingsla Hemraj and Bantubonke Tokota, both senior counsel at the South African bar. The core elements of the Marikana Commission’s Terms of Reference (ToRs) were to consider responsibility and accountability in relation to the conduct of the government (in particular, the police), the unions (specifically, the National Union of Mineworkers [NUM], and breakaway union, AMCU) and Lonmin PLC, the mining company involved in the labour dispute. The ToRs were subsequently revised to exclude an inquiry into the role played by government, particularly the Department of Mineral Resources, and it therefore curtailed an examination of the broader socio-economic
context (see below). However this did not preclude a review of Lonmin’s housing obligations in terms of its ‘Social and Labour Plan’ (see chapter 24 of the Report).

Many questions remain unanswered, and are likely to fester. It is clear that while the evidence of the police shooting dead 34 workers on 16 August, with the horrifying moments caught by TV news crews, speaks for itself, the underlying causes of the Marikana tragedy are complex. The Marikana Commission’s report pulls its punches on executive accountability. What is clear from a careful reading of the report is that the state – in the form of the meeting of the National Management Forum (NMF) of the SAPS held on the eve of 16 August – made a decision about the strategy and tactics (what the report demurely calls the ‘tactical option’) that it would deploy the next day that was not only disastrous in its execution, but which was fundamentally flawed because it made no allowance for the conditions on the ground, and tied the hands of the officers whose job it was to lead the specialist policing teams. The tactical option was aimed at disarming the group of strikers who took residence on a ‘koppie’ (a small hill) close to Lonmin’s facilities at Marikana. It was intended to be executed early in the morning of 16 August when only a few workers would be present on the koppie. The report found that “…the decision to implement the ‘tactical option’ on [the 16 August] at a time when a large number of armed strikers were present at the koppie was unreasonable and unjustifiable” (p. 558 of the Marikana Commission of Inquiry report). The horrifying visuals that were shown on news broadcasts around the world were only half the story. Seventeen people were shot and killed by police at ‘scene 1’ as a lead group of striking workers marched towards police lines, and these are the images that were captured by television cameras. A further seventeen people were killed at ‘scene 2’, on another small koppie where some of the miners had fled after the shootings at scene 1. Many of these appear to have been shot ‘execution style’ away from prying television cameras. The report goes on to say that while the initial shootings at Scene 1 can be partly understood in relation to the likelihood that at least some of the shooters believed that they were under attack, the people killed at scene 2 cannot even be explained by the police and still less justified. Consequently, the police are facing a series of substantial civil law claims that are launched by lawyers representing the families of the victims of what commentators and media refer to as the ‘Marikana Massacre’.

While the Commission makes no findings of executive responsibility for the events that took place at Marikana, this does not constitute a clean bill of health for the government. Firstly the President adroitly side-stepped this aspect by culling from the ToRs any examination of the role of the Department of Mineral Resources, other government departments or organs of state. Secondly the credibility of some of the evidence presented by the SAPS in particular meant that the Commission was unable to make firm findings on executive involvement in operational and tactical decision making. The Commission found that the leadership of SAPS deliberately presented a false account of what happened on 16 August, tailored the minutes of a key SAPS management meeting (NMF) on the evening of 15 August to suit this narrative, and failed to provide the Commission with an audio recording of that meeting on the pretext that the memory stick on which it was recorded had been conveniently lost. The Report states “If guidance of the executive played a role, then it is probable that such guidance was conveyed to the NMF by Minister Mthethwa [then Minister of Police].”

The Report further states that the National and Provincial (North West Province) Commissioners of Police did not possess the requisite skills, training and experience to properly discharge their functions. Those who appointed
them, in particular the President must therefore bear some responsibility for the reckless decisions they took. Initially, the police plan was to surround (encircle) the large group of strikers and to then disarm them. However, the Commission found that “The decision not to implement it [the encirclement plan] was clearly dictated solely by the earlier decision that Thursday, 16 August, was to be D-Day. That decision, for which Lt Gen Mbombo [the North West Commissioner] and those present at the extraordinary session of the NMF on 15 August 2012 must accept responsibility, was the decisive cause of the 34 deaths on 16 August” (emphasis added). The Commission recommends that formal enquiries into the fitness of the National and Provincial Commissioners to hold office be conducted. Whilst President Zuma has initiated such a board of inquiry into Riah Phiyega, the National Police Commissioner, Lt Gen Mbombo has conveniently retired and escaped such a process.

**Emphasis on the effects, rather than underlying socio-economic causes, limits the analytical value of the Marikana report and demands that interested parties undertake their own analysis.** Once the President decided (in May 2014) to trim the ToRs of the Marikana Commission by removing the part that invited an inquiry into the “the role played by the Department of Mineral Resources or any other government department or agency in relation to the incident and whether this was appropriate in the circumstances and consistent with the duties and obligations according to law” (clause 1.5 of the original ToRs), the Marikana Commission’s wings were, in a sense, clipped, limiting its ability to fully explain why the Marikana tragedy happened. The Commission originally decided to separate its inquiry into 2 phases, with ‘Phase 1’ looking at the events as they unfolded in the period of 10-16 August, and ‘Phase 2’ would entail a series of public hearings/seminars to explore the underlying socio-economic causes and open them up for public debate. This would include clauses 1.5 and 1.1.3 of the ToRs with the latter covering Lonmin’s obligations in respect of the provision of housing for its workers. Instead, even though the Marikana Commission did make some important findings about the role of Lonmin and the Unions (see below, under ‘socio-economic factors’), the Marikana Commission’s core focus was very much on what happened to whom, and when, during the vital and deadly six days in August 2012, rather than how this dreadful possibility had come about. Specifically, the report traverses the events of each of the days from 10-16 August, and is structured accordingly: in the run up to 16 August, there were killings of police officers, Lonmin security personnel and members of the National Union of Mineworkers (ten fatalities in total); on 16 August itself, the killings took place in two separate locations at Marikana (referred to as sites 1 and 2 by the Marikana Commission), where a total of 34 strikers were killed by police.

**Hence, the final report deals with the outcome rather than the underlying causes of the events leading up to the ‘Marikana Massacre’.** As a result, and as former COSATU General Secretary Zwelinzima Vavi has argued, these questions will continue to be posed, and litigation and other activism is likely to continue to press for answers, with significant implications both politically and for companies eager to ensure that their community and broader social stakeholder engagement and consultation processes are up to scratch and fit for purpose. In this sense, rather than drawing a line under the terrible events of Marikana, the Report will encourage further debate and contestation in the future. In short, the ‘Fester Factor’ should not be under-estimated as people continue to pick at the scabs of the wounds of Marikana.

**There is much more to the Marikana Commission report than meets the eye.** The 660-page report may have disappointed or underwhelmed the families of the victims and some commentators, but a fine toothcomb reveals
much that deserves serious further consideration because of the strategic implications, under the following headings:

- Wage bargaining and changes in the labour union landscape;
- Public order policing and security;
- Failures in corporate public affairs and government relations;
- The impact of shifts within the ruling African National Congress (ANC);
- Socio-economic factors.

The purpose of this chapter is to identify both the key questions that Judge Farlam did answer, so far as they impact on the mining sector, on corporate stakeholder engagement, on labour relations and on understanding the broader socio-economic factors, as well as those that remain unanswered and which are likely to linger and to have an impact on politics, the economy and on the mining sector into the future.

**Wage Bargaining & Changes in the Labour Union Landscape**

**A Dangerous Game of Raising the Ante**

While much of the political analysis of South Africa has in recent years focused on President Zuma himself and weaknesses in his style of government and the accompanying culture of cronyism, the far bigger, more important story for the long-term has been the fundamental break-up in the country’s major trade union federation, COSATU. For the first fifteen years of South Africa’s new democracy, from 1994-2009, COSATU’s alliance with the ruling ANC sat at the very centre of the country’s politics, dominating the political landscape. As such, this historic Tripartite Alliance (with the SA Communist Party as the third partner) acted as a ‘sponge’, absorbing much of the socio-economic pressures and tensions that finally exploded with such powerful and painful consequences at Marikana. Slowly, however, the Alliance began to succumb to the factionalism within the ANC that Zuma has proved so singularly incapable of managing. In fact the battles between these factions in the ruling party have served the narrow, personal interests of the President, notwithstanding the fact that COSATU had played a very significant role in carrying Zuma to power at the ANC’s watershed national conference in Polokwane in late 2007 – a so-called ‘coalition of the wounded’, that had coalesced around Zuma in opposition to then president (of the ANC and South Africa), Thabo Mbeki. COSATU had invested in Zuma, believing that a government under his leadership would address the plight of workers and the poor more effectively that the ‘neo-liberal’ policies of Mbeki. However, as this hope began to fade once Zuma took power in 2009, a deep schism within COSATU emerged between the pro-Zuma faction on the one hand, led by COSATU President, S’dumo Dlamini, and the anti-Zuma camp on the other, led by Zwelinzima Vavi. Like watching a car crash in slow motion, the split has gradually gathered momentum until the time when, simply, the old COSATU was no more – with innumerable political and socio-economic implications.

The emergence of the Association of Mineworkers and Construction Union (AMCU) was one of the many consequences of the slow break-up of COSATU – with profound ramifications for labour relations in the mining sector. There are different accounts of how, and why, AMCU came into being. One, that has substantial relevance for Marikana, is that the NUM was – to put it very simply – perceived to be too close to the employers, in the case of Marikana, Lonmin. As workers struggled to cope with the modest pay historically associated with the mining sector, and compounded by the pressures of running two households (see Socio-Economic factors below) as well as an extended family in the case of most of the migrant workers, so the pressure to meet the growing
expectations and demands of the platinum sector miners became too great for the NUM to meet. Into this gap, and with the NUM leadership complacently ignoring or unaware of the threat that a breakaway would pose, came Joseph Mathunjwa, the leader of AMCU. While he has been likened to Julius Malema, the firebrand, militant ‘breakaway’ former ANC Youth League leader who now leads the anti-establishment Economic Freedom Fighters (EFF) party, Mathunjwa keeps a lower public profile, but is a no less calculating and ruthless leader.

But in 2012, Mathunjwa, and his breakaway union, AMCU, raised the stakes in a deadly fashion, by promising workers that they would secure a R12,500 (around $1,000) per month minimum wage for rock-drill operators. This was equivalent to a doubling of the basic wage and was like throwing a match into a dry tinderbox. The NUM quickly bled members and AMCU’s membership rose fast. As we note below, such fracturing has been replicated in other sectors and is likely to continue to happen for the foreseeable future, adding yet greater instability to the bargaining environment.

As the Marikana Commission found, the earlier decision of Impala Platinum to accede to AMCU’s wage demands for rock-drill operators (RDOs) had serious consequences for Lonmin and the sector generally. This had a big impact on the industry’s bargaining terrain, with immediate dire consequences for Lonmin, but with important longer-term lessons for the sector. The report speaks of the Impala decision as creating a “special situation”:

“...it is the view [of the Marikana Commission] that Lonmin should in the special situation created by Impala’s action in unilaterally raising wages of its RDOs have negotiated with its RDOs and not initially sheltered behind the two year agreement and thereafter insisted it would only negotiate with NUM in which it knew the RDOs had no confidence”. (p.556).

While it is important to recognise the impact of AMCU’s breakaway on industrial relations and wage bargaining in the run up to Marikana, it is also important to recognise that in the end Marikana was not as simple as AMCU v NUM/Lonmin & the Police. While it is clear that Lonmin, the NUM and Government believed that AMCU were responsible for the escalating violence, the Commission report does not reach this conclusion. Far from it. The ‘man in the green blanket’, strike leader Mgcineni Noki, is a now mythical figure in the terrible legend of the Marikana tragedy, yet he was not in fact acting on behalf of AMCU. Those who died were not just AMCU members; at the time of the tragedy many of the disaffected NUM members had not yet joined AMCU. However it is true that, as the Commission report finds, there were deadly tensions between AMCU and NUM that had built up over a number of months with tit-for-tat murders culminating in the occasion of 11 August, when AMCU-aligned workers marched on the NUM office at Marikana. Much of what happened during the fateful six days leading up to 16 August was organic or spontaneous uprising, rather than organised, deliberate action. Although the Marikana Commission report finds that “officials of AMCU did not exercise effective control over its members and those persons allied to it in ensuring that their conduct was lawful and did not endanger the lives of other persons.” (p. 558), it also finds that Mathunjwa “did his best before the shootings to persuade the strikers to lay down their arms and leave the koppie”. Levels of desperation and frustration by workers and poorer communities result in loss of confidence in established systems of negotiating conflict. Hence it becomes far less easy to predict and manage such spontaneous uprisings, for example, the so-called ‘service delivery protest’ syndrome that is such a feature of South Africa today, with upwards of 10,000 such protests per annum.

Did Lonmin fail to react with sufficient clarity of thought or strategic and tactical intent to what was happening to the unions? Farlam found that Lonmin did not use best endeavours to resolve the disputes with the unions that were emerging. This is a finding that, objectively, is irresistible. None of the protagonists in this unfolding tragedy
played their cards well or were without serious flaws. And it should not be forgotten that at the crucial time, Lonmin’s CEO was absent, having been hospitalised with a chronic illness. It is hard to imagine even the most capable and well-prepared employer from coping well with such a spontaneous, dynamic and inherently difficult context. As noted below, the company was cruelly exposed by the lack of adequate intelligence gathering and proper police cover.

Regardless of the acute dilemmas it faced, companies operating in South Africa ought to study the Marikana report and give careful consideration to how they would respond to such a situation, including running simulation exercises – because there is not good reason to think that they will not re-occur in the future. In July this year it took the timely intervention of Ngoako Ramatlhodi, Minister of Mineral Resources, to defuse a tense situation in Steelpoort, Sekhukhune, which could have erupted into a deadly confrontation between community members and the police. The Minister facilitated an agreement between communities, mines, SAPS, local government and traditional authorities that averted an escalation of the conflict. However, tensions remain high in mining areas and community protests are targeting mines specifically. The recent incidents at the Ampltas Mogalakwena mine are testimony to this trend.

The Union Landscape is changed forever; and will remain distinctly dynamic, unpredictable and unstable for the foreseeable future. Even though AMCU has had to adjust downwards some of its more militant and unrealistic demands, thus moderating its stance, this has not restored the pre-2009 equilibrium of a stable ANC-COSATU alliance. Things will never be the same again. Employers will continue to have to adjust to a more dynamic, more fractured and certainly more complex and volatile industrial relations landscape. The AMCU breakaway in the mining sector has been replicated across virtually the whole economy. With NUMSA already actively recruiting members from outside its traditional industrial sectors (metalworkers), there are splits and breakaway unions in many sectors with COSATU-aligned unions facing challenges from workers disenchanted with COSATU’s steadfast support for Jacob Zuma, and the failure to tackle shop-floor issues effectively. The South African Transport & Allied Workers Union (SATAWU) is another that faces deep divisions. A previous split in 2012 spawned the National Transport Movement, and current tensions between its President and General Secretary linked to alleged corruption is likely to lead to a further weakening of SATAWU. Similar divisions predicated on such corrupt activities affect the chemical workers union, CEPPAWU, as well as the South African Municipal Workers Union (SAMU). The divisions within the NUM are also evident - in its most recent congress the longstanding General Secretary of NUM, Frans Baleni, was ousted by David Sipunzi in a close election, losing by 354 votes to 345. The biggest split now is that of NUMSA from COSATU, which signals the final phase of the diminution of COSATU as the leading political formation in the country aside from the ANC. NUMSA and its allies disaffected with the leadership of COSATU are threatening to form a political party (as well as a new labour federation), which will offer an alternative to the ANC on its left flank, just as Malema’s EFF presents a nationalist alternative on the populist right.

All of the above encourages the industry to use the least possible number of unionised employees and points towards a shift to contract labour and mechanised mining at every commercially viable opportunity.

Public Order & Security

What happens when the state is incapable of maintaining order other than through brute force?
The Marikana Commission made a number of substantial findings against the SA Police Service (SAPS). Although, as noted above, the Marikana Commission failed to decisively apportion responsibility and to determine the extent of executive accountability arising from the disastrous decisions that were taken by the police on 15 and 16 August, it did find that the plan that was put together for that fateful day was “defective”. Because, again, the Marikana Commission did not receive direct evidence from the police officers who fired the deadly shots that killed over thirty people on the 16 August, the Commission was unable to make decisive findings and could offer only a qualified conclusion, namely, that:

“…It appears prima facie that some of the SAPS members who fired at the strikers at scene 1 exceeded the bounds of self and private defence. The principle that only the minimum amount of force reasonable in the circumstances should be used was not complied with.” (p. 558)

The state deployed its force in an unreasonable and unjustified way. As noted above, the Marikana Commission found that “…the decision to implement the ‘tactical option’ on [the 16 August] at a time when a large number of armed strikers were present at the koppie was unreasonable and unjustifiable”. Repeatedly in recent years, and to the shame of the country and at the expense of its international reputation, the SAPS has shown itself to be incapable of policing protests in a way that balances the need for public order with constitutionally-protected human rights.

To a large extent Lonmin was left exposed by the SA Police Service, at least until it was too late and the die was cast. On the 10th August, a crowd of around 3,000 workers marched to the Lonmin offices. Initially, there was no SAPS presence, and the local police appeared to be caught off guard. It was a failure of police intelligence of catastrophic proportions. The short point is this: despite its importance to the economy, and the strategic asset that platinum represents, or should represent, to South Africa, the government was unable or unwilling to provide the necessary security to prevent a violent momentum developing in the period from 10 August onwards. With the benefit of hindsight, it is not hard to see how events inevitably unfolded towards their deadly destination six days later. Again, because the capacity of SAPS and the SA government to learn from the mistakes made in the past appears to be limited, and because the Marikana Commission is relatively and surprisingly constrained in terms of the specifics of its findings and recommendations, there is no good reason to think that such situations could not occur again in the future. Companies and investors need to take heed and prepare accordingly.

Despite the conspicuous nature of the police’s absence, and the other failings in public order policing that were evident in Marikana in the week leading up to the 16 August 2012, serious findings were made against Lonmin. Specifically, the Marikana Commission found that Lonmin “did not respond appropriately to the threat and outbreak of violence” (p. 556). Moreover, “Lonmin also failed to employ sufficient safeguards and measures to ensure the safety of its employees. In this regard, it failed to provide its security staff with the armoured vehicles they needed for their protection despite being requested to do so. It also insisted that its employees who were not striking come to work despite the fact that it knew that it was not in a position to protect them from attacks by strikers” (p. 557). This is a most extraordinary finding, prompting myriad further questions and dilemmas for employers operating in the mining sector or, indeed, any sector in South Africa that might find itself confronted by potentially violent labour unrest or other social conflict.

In the absence of the police, Lonmin security personnel were compelled to fire rubber bullets at protesting strikers. The Marikana Commission rejected the submission made to it that the “bland references” to strikers intimidating workers were insufficient grounds to justify shooting at people. Instead, they preferred the version of the security
personnel that some employees who were making or attempting to make their way to work were being intimidated by groups of up to 30 strikers and that it was indeed appropriate to fire rubber bullets at the crowd (p. 76).

In what way was Lonmin’s response inadequate? The Marikana Commission found that the ‘Counter Industrial Action Response Procedure’ ['Response Procedure'] constituted the rules prescribed by Lonmin for how unprotected industrial action should be dealt with and was "at least perceived as binding on Lonmin security" (p. 83), but that:

"Notwithstanding the detailed provisions of [the Response Procedure], there has been little or no evidence from Lonmin of any detailed planning, briefing or debriefing in relation to the incidents of 10, 11 or 12 August 2012".

Chapter 20 of the Marikana Commission Report addresses “Lonmin’s inadequate protection of its employees” (pp456-468). The discussion of the evidence is illuminating, though it does little to satisfactorily resolve or answer a fundamental question: what exactly is the legal or contractual ambit of any responsibility that a mining company may have to secure public order and prevent criminal acts? This a question that confronts, in different forms and in different precise contextual settings, companies throughout the world where the state is weak or failed or failing, or where for whatever other reason there is a gap in public service that threatens the interests of the company. This issue has been the subject of enormous debate and discussion. At one end of the spectrum lies the argument that these are matters for which only the state should take responsibility. At the other, the more pragmatic view that where the state is incapable or incompetent or indifferent, then the company has to step in as far as is necessary to secure its own interests, even when that involves an uncomfortably long reach into what is traditionally the public space and the preserve of the state. However, the terrain is inevitably complex.

To arm(our) or not to arm(our) - that was the question. As an example of the sort of acute dilemmas that can arise, the Report discusses the choices that Lonmin made about how to equip its security personnel and how due to the shift in strategy that the company made, concerns had been raised internally that although personnel were still issued with riot helmets, bullet proof vests and riot shields, they needed armoured vehicles in order to adequately protect security personnel and employees should protestors decide to launch a full scale attack (p. 456). The year before Marikana, in 2011, the company had decided to change its approach to security “from a paramilitary approach to a softer user-friendly approach… this low key user-friend approach required that Lonmin security patrol in soft skin vehicles and not in armoured vehicles” (p. 456). There had also been a reduction in manpower. The report then sets out some of the evidence in relation to how the Lonmin security personnel, within the constraints imposed by the equipment, handled the unrest on the 12 August, when a crowd of around 3,000 strikers presented a threat. Unsurprisingly, the witness from Lonmin’s security staff pointed out that “even if there were more security officers, he did not think that they would have been effective in being able to disperse” a crowd of that size. A better question would be to ask on what basis it would appropriate in democratic, reasonably well-functioning state such as South Africa’s it would be reasonable or appropriate to expect a mining company to have the capacity to manage a violent crowd of people of such proportions? This is an issue that is unlikely to go away, mining companies will continue to have to make tough choices about how to equip and prepare its security personnel.

The Report criticises Lonmin for failing to react to the ‘game-changing’ events of 10 August. Lonmin’s security personnel gave evidence to the Marikana Commission stating that the perceived change in mood amongst the
crowd that had gathered on 10 August to be a ‘game-changer’ – and one that the Marikana Commission then found they failed to act upon when, later that day, a Joint Operations Centre (JOC) was set up to assess the implications. The witnesses accepted furthermore that in terms of engaging with the police, that they “needed to be able to tell SAPS what it is that they expected” (p. 461), in other words that they needed to share information with SAPS to enable the latter to do what was required of them.

**Marikana was a failure of intelligence as well as of public order policing.** The examination of the events of 10-12 August by the Marikana Commission reveals the inadequacy of the police’s response to the unfolding events and the apparent lack of good intelligence about the threat it posed to a range of important interests and stakeholders (see pp. 80-81). As with the issue of public order policing, the question arises: to what extent does the duty to have good intelligence fall on the employer/private sector, when the state is incapable of doing its job properly? The Response Procedure states that it “is necessary to obtain sufficient forewarning through intelligence gathering and maintaining effective channels of communication” (clause 4.3 of the Response Procedure, cited at p. 84). The purpose of good intelligence is to have the capacity to anticipate, so that an organisation can pre-empt a course of events by taking remedial or preventative action. Neither the government/police, nor Lonmin’s, intelligence-gathering was fit for purpose. Neither understood sufficiently what was happening; both were taken by surprise.

**Public Affairs & Government Relations**

Reading the political tea-leaves and building sustainable government relations

The mining industry has been ‘defensive’ in tone in its dialogue with government due to its legacy from the apartheid era. This state of affairs is even worse post-Marikana, prompting the need for an urgent re-think of the sector’s public affairs strategy and how best it can organise and re-position its government relations capability.

The absence of dialogue processes to manage conflict remains a major concern. One of the hallmarks of the Zuma years has been the breakdown of processes for negotiating and managing conflict and disputes. The recent attempts to rejuvenate NEDLAC, a consultative body comprising government, business, labour and community interests are a direct result of the failures of such stakeholder forums to prevent the Marikana tragedy. This problem is compounded by serious uncertainty as to who is really in charge; unlike Mbeki’s presidency, Zuma’s is clouded in obscurity – it is very hard to know which of his coteries of friends and business associates exercises influence on key policy and political decisions; the Presidency’s official staff has been greatly denuded of qualified advisors since the days of Mbeki. Moreover, the cabinet is itself a ‘coalition’ of often competing ideological tendencies, which often produces incoherent policy-making and mix-messaging from the top of government. As a result, it is much harder for social stakeholders, especially in the private sector, to engage in a consistent and sustainable fashion with government. This creates an environment of mistrust that has delayed and impeded critical discussions to explore creative solutions to the current crisis facing the PGM sector.

Lonmin’s government relations relied heavily on the CEO’s own relationships. Part of the perfect storm of Marikana was that by the time of the terrible events of early August 2012, Lonmin’s CEO was incapacitated. The corporate culture in South Africa tends to create a dependency on the CEO; in the circumstances of Marikana, it meant that there was an important leadership gap. While Lonmin had established sound channels with senior people in government, it would have benefited from a more sustainable, company-wide institutional government relations strategy that was not as dependent on the CEO.
The presence on the Board of the ANC leader Cyril Ramaphosa was a mixed blessing for Lonmin. Mr Ramaphosa is now Deputy President of South Africa, having built a substantial career as a captain of industry after being pushed out of public life and government by Thabo Mbeki in the late 1990s. He is highly respected for his talents, extraordinary track record (as a founder leader of COSATU in the 1980s; secretary-general of the NUM; key figure in the multi-party negotiations that paved the way for the historic 1994 elections, and head of the Constitutional Assembly from 1994-96). With Lonmin having to restructure and refinance its BEE partner, Ramaphosa’s Shanduka Group became the dominant player in the revamped entity. He was then appointed as a non-executive director of Lonmin in July 2010. Shanduka had been preferred as a BEE partner for sound business reasons and Ramaphosa added political gravitas to Lonmin’s board. Indeed, Ramaphosa was on a number of other high profile boards at that time. However, the perceived conflict of interest relating to Ramaphosa that manifested itself in events at Marikana in August 2012 cannot be ignored. At that time, Ramaphosa was a member of the ANC’s national executive committee, its highest decision-making body between its five-yearly national conferences. Within months, in December 2012, he was to be elected as the Deputy President of the ANC. While his presence on the board undoubtedly gave Lonmin the advantage of the wisdom of such an experienced, respected, connected and sage individual, it did not come without complications – complications that companies operating in South Africa would be well-advised to be mindful of.

Firstly, in the labyrinthine world of ANC politics, one person is just that: one person. However well connected the individual may be, he or she comes with their own political baggage. In Ramaphosa’s case, he comes from what can be described as the ‘sensible centre’ of the ANC – more social democrat than its nationalist right wing and its unreconstructed, socialist-leaning left. Accordingly, Ramaphosa’s power within the ANC would be constrained by suspicions from the left that he had ‘sold out’ to big business during his ten-year sojourn in the private sector; and on the more venal, free market right, that he was too pro-union, given his background in the union movement. Indeed, Ramaphosa’s own history with COSATU and, specifically, the NUM may well have made it hard for Ramaphosa to have taken an even-handed view of the breakaway union, AMCU. As with the ANC more generally, and the government, he can probably be criticised for at least failing to appreciate the full implications of what was happening in terms of shifts in the union movement and wider industrial relations landscape and/or to being somewhat in denial about it. Relying as they did on Ramaphosa to intervene with government to address the escalating violence in Marikana in the days preceding 16 August did indeed open up the opportunity for some to argue that Ramaphosa conflated his roles as a senior figure in the ANC with his role as a member of Lonmin’s Board.

Second, inevitably, a crisis or serious event such as Marikana will place the actions of a board member such as Ramaphosa under considerable scrutiny, from which reputational damage for both the individual and the company may flow. In the case of Ramaphosa and Marikana, the Commission received argument from counsel for the injured and arrested persons that sought show a causal link connection between Ramaphosa’s intervention and the killing of the strikers by the police on 16 August. In one email to the Minister of Mineral Resources, referring to the criminal acts of some of the strikers, Ramaphosa called on the government to take “concomitant action” to deal with the criminality being perpetrated by the striking workers. While no stretch of the meaning of this can encompass the deadly shooting of 34 strikers the next day, subsequently, the EFF have sought to make political capital from this by claiming in Parliament and elsewhere that Ramaphosa has “blood on his hands”. The Marikana Commission rejected this claim, but Ramaphosa’s reputation has been undermined as a result – at least in the eyes of some. It is worth noting that the legal counsel for the injured and arrested persons is Adv. Dali Mpofu, a senior figure in the EFF. Arguably, when Ramaphosa contacted and spoke with both the Minister of Police (Nathi Mthethwa) and the Minister of Mineral Resources (Susan Shabangu), he was simply doing his job as a...
board member with fiduciary responsibilities and as the person best placed to make such contact. Of course, in so doing, he was exploiting his seniority in the ANC; reading between the lines of the evidence before the Commission from the government ministers was that, in essence, they took his calls and spoke with him because of the fact that he was a senior leader of the ANC and a member of its National Executive Committee.

The Marikana Commission’s silence regarding executive responsibility plays conveniently into the hands of conspiracy theorists. As a consequence, the ANC, and Ramaphosa specifically, can expect the Marikana issue to continue to be a political bludgeon used against them for the foreseeable future.

Did the company (Lonmin) benefit from having Ramaphosa on its side at this time of crisis? The jury is still out on this. There are pros and cons; and there may be unpredictable and unintended consequences that cannot be easily foreseen or navigated – such as what happened with Marikana. Perhaps the core lesson is this: that while having politically-connected, heavyweight political figures on the board may be a ‘nice to have’ and may come with distinct advantages, there may also be some potential disadvantages, and that in the end, having such a board member is no substitute for a properly constructed government relations strategy that sustainably builds capacity beyond the board and the CEO, so that the strategy is not dependent on just one or two people and their (inevitably finite) political capital and contacts book.

This, in turn, has implications for BEE partnerships because historically BEE partners have been the ‘go to’ in house political advisor-lobbyist. Intelligent, forward-looking companies will now need to urgently review their approach to both their government-relations and to how they select and organise their relationships with their BEE partners, and the mutual expectations from both sides of the arrangement.

The ANC

The messy decline of the former liberation movement

The ANC government’s pre-occupation with Malema is one of the causes of Marikana. It is clear that one of the major political considerations that played on the minds of the main governmental protagonists in the run up to Marikana was the “Malema factor”. Julius Malema led the ANC’s Youth League until he fell out with Jacob Zuma and the ANC establishment for his increasingly intemperate and inflammatory public comments and his unwillingness to subject himself to party discipline. He was, following a disciplinary process presided over by Cyril Ramaphosa, expelled from the ANC in April 2012. Ever since he has proved to be an even bigger thorn in the side of the ANC outside of the tent than when he was still inside it, however an unruly presence he was. After his expulsion in April, Malema was intent on establishing his political brand ahead of the launch of a new party – the Economic Freedom Fighters in 2013 (the EFF and Malema went on to secure 7% of the national vote in the May 2014 national election – a respectably good result from a ‘standing start’ less than a year before). Poignantly Malema chose to launch the EFF at the koppie in Marikana.

Malema went where ANC members feared to tread – including Marikana, which Malema was poised to visit as an inexorable momentum built up towards the denouement on 16 August. At the crucial meeting of the leadership of the police on the evening of 15 August, when the plan (the tactical option) was set in stone for the next day, with terrible consequences, the ANC ministers were keen to press the police to get the job done quickly, and certainly before the weekend. As the Marikana Commission’s report finds: the discussions between the government and/or Lonmin on the one hand, and the police on the other, reveal that there was a common desire to resolve the matter quickly, because of concerns about the cost factor (on the police’s side, in terms of the extra 700 police that
were needed) and, so far as the ANC and the government was concerned, because of the political threat posed by Malema. Lonmin just wanted the nightmare that was happening in its backyard and amongst its workforce to go away. The pre-occupation with Malema contributed to the police making decisions that were decidedly partisan in political terms. The press briefings that followed Marikana, in which both the Minister of Police and the Commissioner of Police, Riah Phiyega, voiced their apparently unequivocal support for the police, notwithstanding the appalling tragedy that had occurred and the damage to South Africa’s reputation internationally, is evidence of the attitude of the leadership and its partisan approach to settling the Marikana uprising. Phiyega commended the SAPS for displaying “the best in responsible policing”. Evidence before the Commission stated that provincial commissioner of Police Zukiswa Mbombo, who was in charge on the ground on 16 August, told key protagonists including AMCU leader Joseph Mathunjwa “we will end this thing today because it is costing the state too much”.

**Malema is an example of how a lack of unity in the ruling ANC impacts on the whole of politics in South Africa.**

Reading the tea-leaves, as noted above, has become a much more perilous occupation. Largely, this is because the ANC has become a lot less predictable as a political organisation. In opposition to the apartheid regime, the necessities of exile and of a national liberation movement, underpinned by a unity of purpose, provided a centrifugal impetus for discipline. Under the revered Oliver Tambo, President of the ANC for most of its exile years, and then later once the ANC was unbanned and became from 1994 the party of government, Nelson Mandela and Thabo Mbeki provided the strong and credible leadership that the organisation needed, pulling its disparate nationalist and socialist tendencies to the centre ground of politics. However, since 2005 and Mbeki’s fateful decision to dismiss Zuma from his position as deputy president of the country, the organisation has at times been at war with itself, and weakly led, allowing factionalism to increase, with unpredictable consequences. The collateral damage that this has caused to government and to socio-economic stability has been immense.

**The ANC is likely to continue to unravel with unpredictable consequences for politics in the coming years.**

The ANC is facing a potentially watershed two years to the end of 2017. In May 2016, it will face the distinct prospect of losing its majority in three of the big five metropolitan city governments: Pretoria (probably), Johannesburg (possibly) and Port Elizabeth (almost certainly), having already long lost power in Cape Town. This will be a harsh wake up call for the ruling party. It may presage the ruling party’s fortunes in the 2019 national elections with its share of the vote edging closer to 50% than it would like. How the ANC reacts next will determine the political trajectory of South Africa for the ensuing twenty years, starting with its national conference in December 2017 at which it will elect Jacob Zuma’s successor. Three different scenarios can be presented. In one, the ANC responds to the threat of losing power by raising its game, restoring its traditional values of integrity, democratic dialogue and inclusiveness, with strong, one-nation leadership from the top. In a second, it resorts to increasingly despicable means to hang onto power, threatening the constitution and the rule of law, and choosing a muscular populist as the next leader to head off the threat posed by Julius Malema and his ilk. Between these two extremes, lies the most likely path: that the ANC, like the country and its sluggish economy, continues to bumble along, in a slow but inexorable decline, but with its most capable leaders in a perpetual struggle to find a new equilibrium between its competing factions and ideologies, while trying to ward off the opportunists and scoundrels that exploit its political power for crony capitalist financial advantage.

**Socio-Economic Factors**

**The Dangers of Failing to Walk the Talk**

The history and system of migrant labour in South Africa is a key to understanding the social and economic context of Marikana. Much of the best analysis of why what happened did happen, have come from experienced
observers of the migrant labour system that has traditionally served the mining sector in South Africa. In essence, what migrant labour has tended to do is create two communities – the migrant one, and the ‘local’ (indigenous) one in the same geographic space, which when combined with the ‘living out allowance’ introduced at the behest of the NUM some 10 years ago, led to an exodus from hostels and an explosion in informal housing. These factors served to create a range of tensions and complexities for government (especially at a local level), for corporations doing business nearby, as well as for the unions. At its heart, these tensions have pivoted around the question of jobs in a country with frighteningly high levels of unemployment (22% being the official government figure; and 40% the unofficial one), access to meagre social services and housing. Unsurprisingly, members of the local community have asked of companies such as Lonmin: why are you not employing us and not adequately investing in our communities?

The migrant labour dimension to the political economy of the mining sector has created enormous social pressure and added to the long list of questions that corporations anxious to secure or sustain their licence to operate have to ask in order to maintain sufficiently good social stakeholder relations.

In the case of the Marikana Commission it is important to distinguish between what the report says and what it does not say. The Marikana Commission elected to consider Lonmin’s obligations under the Mineral and Petroleum Resources Development Act 2002 (‘the MPRDA’) notwithstanding a significant change to the inquiry’s mandate. Under the MPRDA, the company was obliged to prepare and submit to the Department of Mineral Resources a Social and Labour Plan (SLP) as a condition for securing a mining licence. There was a legal dispute about the fairness of otherwise of the Commission’s examination of Lonmin’s conduct that arose essentially out of the amendment of the ToRs of the Marikana Commission of Inquiry (as noted above), whereby the part of the ToRs that encompassed an investigation of the role played by the Department of Mineral Resources was excised. As a consequence, the company was unable to test evidence that was adduced to the Commission relating to its own conduct and nor was it able to defend its position with reference to the government’s own responsibilities and performance.

Notwithstanding Lonmin’s protestations about the fairness of the investigation into its own housing obligations, the Marikana Commission opted to hear evidence on the matter and made substantial findings against the company based on Lonmin’s own documents and what the Commission saw for itself during its inspection in loco in October 2012. The Commission found that under South African law, the company’s obligations were “self-standing”: it was common cause that in order for Lonmin to have its old order rights in respect of the Marikana mine converted into a mining right under the MPRDA its Social and Labour Plan had to be approved by the Department of Mineral Resources (pursuant to sections 23(1)(e) and 25(2)(f) and (h) of the MPRDA (p. 526). Clause 1.1.3 of the Marikana Commission’s ToRs enjoined the Commission to:

“...inquire into, make findings, report on and make recommendations concerning the following: 1.1 the conduct of Lonmin PLC, in particular: ...1.1.3 whether it by act or omission, created an environment which was conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct.”

Under its Social and Labour Plan, Lonmin committed itself to building 5500 houses for its migrant employees, yet at the time of the Marikana tragedy, it had built just three of the houses that should have been built. It was also common cause that large numbers of Lonmin workers live in squalid informal settlements surrounding the Lonmin
mine shafts (p 527). Lonmin conceded that lacking basic social services, the living conditions in Nkaneng and other informal settlements were "truly appalling". Moreover, the report states that Lonmin conceded under cross-examination that there was "a critical shortage of decent housing for the employees of Lonmin and that the board and executive of Lonmin understood that the tragic events at Marikana were linked to that shortage." (p. 527-8).

Indeed, this concession was reflected in various public utterances by representatives of the company in the days, weeks and months following the tragedy. For example, at the first Lonmin AGM after Marikana, in January 2013, the company's chairman characterised the events that led up to the tragedy as being linked to a breakdown in trust between itself and the workforce.

The Commission found that, in effect, Lonmin had failed to do what it had said it was going to do (i.e. build houses), without any adequate explanation for the failure. Lonmin tried to persuade the Commission that its obligation was not actually to build houses but to facilitate a series of market-driven transactions between employee buyers and private financial institutions and/or developers. The Commission rejected this contention.

The Marikana Commission should serve as a stark warning to companies that make legal commitments as part of their licence conditions but then fail to walk the talk. Chapter 24 of the Marikana Commission report is, arguably, it's most compelling and certainly most decisive. Any leader of a business operating in an environment of socio-economic complexity and poverty should read pages 522-543 of the report, as it offers a salutory lesson in how to undermine a company’s social licence to operate and thereby risk its reputation in the eyes of both the market and government. Lonmin attempted to justify its lack of progress towards its housing obligations on two grounds: delays in the proclamation related to the land on which the new houses were to be built; and, shortage of capital in the wake of the 2008 financial crisis. The evidence leaders "demolished" the first ground as a "red herring" and the Commission concluded that the second ground was based on a mistaken premise because the SLP created a legally binding obligation. The Commission concluded that Lonmin's failure to comply with its housing obligation "created an environment conducive to the creation of tension and labour unrest by failing to comply with the housing obligations undertaken by its two subsidiaries in the SLPs on the strength of which it obtained new order mining rights" (p. 557).

Affordability arguments advanced on behalf of Lonmin to the Commission simply dug the company into a deeper hole. By advancing the argument that it could not afford to build the 5500 houses, Lonmin’s legal representatives exposed the company to the counter view: that the company had historically paid dividends and shareholders had supported an emergency right issue. Therefore, in the Marikana Commission’s view there was adequate opportunity to take into account the funding required for housing.

Even worse, Lonmin argued that, in effect, the 5500 was such a drop in the ocean that it would have made no difference to whether or not the Marikana tragedy would have happened. Counsel for the inquiry described this as a "breath-taking argument". The Commission concluded that Lonmin’s failure to comply with its housing obligation "created an environment conducive to the creation of tension and labour unrest by failing to comply with the housing obligations undertaken by its two subsidiaries in the SLPs on the strength of which it obtained new order mining rights" (p. 557).

Lonmin is not alone; other mining houses are no less vulnerable to claims that they have failed to meet their legal duties and may also be risking their reputation. According to the Mining Charter Assessment Report of the Department of Mineral Resources in May 2015 only 55% of mining rights holders across the country met the target for housing and living conditions by either converting hostels to family units or ensuring occupancy of one person
per room. In the North West province where the PGM sector is concentrated, 62% of rights holders failed to meet the housing target. Pressure will intensify on rights holders to close this gap, although some leeway may be permitted in the context of plans to protect jobs (see below).

Yet, this issue raises profound questions about the role and responsibility of a mining company operating in such a socio-economic context: how far does its duty extend and at what point does the state’s begin? Part of the complexity of Marikana, replicated elsewhere, is the dilemma posed by having a largely migrant workforce. Who do you prioritise and serve? Which community – the ‘migrant’ one, or the ‘local’ one?

What about the South African government’s responsibilities? Clearly, in a socio-economic context such as Marikana, not all of the social and economic responsibility can sit with government alone (notwithstanding the socio-economic rights enshrined in the Constitution); but equally, not all of it can sit with the company. One of the issues that the Commission did not deal with, because of the change in its ToRs, was the failure of government to bear its share of the responsibility. For example, part of the arrangement under the MPRDA was that royalties would go to the provincial government of the North West, but there was no inquiry as to what had been done with those funds. In June 2013 Lonmin indicated that it had paid over R370 million in royalties to the North West Provincial Government to hold in trust for the Bapo ba Mogale community, for local community development projects. The Standing Committee on Public Accounts in the North West Provincial Legislature in 2013 suspected that funds were unlawfully diverted from this account, and an investigation is underway by the Public Protector of South Africa (its Ombudsman). It had been alleged that the account had not been audited since 1994. Aside from accounting for any monies that may have been misappropriated, the Provincial Government must also report on what, if any, projects were initiated, and if none were, why.

The responsibility for social and community development cannot just be left at the door of mining companies; government at national, provincial and local levels have constitutionally embedded responsibilities to provide such services. Deputy President Ramaphosa is currently leading a process with the partners in NEDLAC assessing the rules and aspects relating to labour relations and the conduct of strikes in particular. Issues being considered include a national minimum wage to deal with low pay, strike ballots and picketing rules, as well as establishing workplace forums to facilitate a closer relationship between employers and workers. These issues reflect the concern over the increasingly violent nature of strikes in South Africa, as well as the schism that appears to have opened up between workers and the leadership of trades unions. The importance of this initiative is underscored by the challenges posed by the global economic crisis in particular as it impacts on the South African mining sector.

Lonmin’s dilatory approach to housing (as a key part of its SLP commitment) occurred, in fact, with the full knowledge of both government and the NUM in a mutually agreed effort to minimise job losses during the 2009 reorganisation caused by the post-Lehman Brothers 2008 global collapse. Yet, the Marikana Commission’s view that this is irrelevant poses worrying questions for the sector. With many mining companies behind on their SLP commitments, could this lead to widespread challenges to mining licences and could security of tenure be a threat? This point is particularly relevant in context of the current depressed commodity prices being experienced and the aggressive cost-cutting exercises being considered by many South Africa mining companies.

**Conclusion**

Was Marikana a ‘Black Swan’ Event? Could history repeat itself or will the Lessons be learned?
Marikana was a ‘perfect storm’. The socio-economic conditions; the inherent, structural difficulties of a migrant labour force in a poverty-stricken community; the fracturing of COSATU and the opportunistic break-away by a more militant AMCU; the absence of Lonmin’s CEO; the lack of capacity and training of the police in public order policing; the ANC-led political establishment’s fear of the threat posed by Julius Malema and its determination to deny him an opportunity to exploit the strike at Marikana – all of these factors contributed to the Marikana tragedy. While the police should bear the responsibility for firing the bullets that killed over 30 people, notwithstanding its diffidence and failure to offer decisive conclusions or findings in regard to some aspects, the Marikana Commission report makes it clear that the unions and Lonmin should bear some of the responsibility for failing to avert the tragedy.

Marikana was a ‘black swan’ event, in that even though it was an ‘extreme outlier’ it could have been anticipated as a possible, though highly unlikely, occurrence. Even allowing for the benefit of hindsight, none of the individual factors that constituted the inflammable mix of Marikana should have been beyond the sightline of the main protagonists. More than anything, Marikana was a failure of intelligence, of strategy and of leadership – especially in the case of the government, but to some extent of Lonmin and the unions. Not enough was done to prevent the conflict from unfolding; more could have been done to anticipate the sequence of terrible events.

Not much has changed since Marikana; if anything, the socio-economic context is more intense. In the post-Marikana period since 2012 the mining sector in South Africa as a whole had shed almost 30,000 jobs by 2014 according to the Department of Mineral Resources and the Chamber of Mines. In the PGM sector in the same period employment decreased from 199,215 to 188,429 with further job losses more than likely in the current climate. Lonmin has indicated that a further 3,500 jobs are at risk at its operations. The Minister of Mineral Resources said on 31 August 2015 that 19,000 jobs in the mining sector remain at risk. Post Marikana, South African country risk is perceived to have increased, which in turn increases the cost of capital and the hurdle rate for investment decisions. In short, investment will go down – just what the country does not need.

Can a new social compact be built? Against this backdrop an agreement was thrashed out between government, business and unions at the end of August 2015 under the auspices of the Mining Industry Growth and Development Task Team (MIGDETT). It seeks to address the crisis of impending job losses in mining by providing for retraining of affected staff funded by government, greater consultations but no moratorium on retrenchments, increasing productivity and disposing of marginal mines rather than moth-balling them. It speaks of promoting platinum as a reserve asset for central banks, especially among the BRICS countries, and local beneficiation through fuel cell technology and imposing higher vehicle emission standards to expand market for auto catalysts. Although the ten-point plan states that “The Mining Industry will develop mechanisms to strengthen the industry’s resilience to the cyclical nature of commodity prices and demand”, it is primarily directed at the symptoms of the crisis facing the industry rather looking at its underlying causes, both locally and internationally.

But perhaps the greatest challenge that it faces is that AMCU has not signed the agreement. The implications of the end of COSATU as it once was, and the impact on the ability of its alliance with the ANC to anticipate, absorb and navigate social conflict and economic strife, will continue to be felt for the foreseeable future. The labour landscape will continue to bedevil the sector, yet the broader economic conditions are also beginning to impose on the union leadership a new sense of realism.

As the Zuma era comes to an end, the ANC will either raise its game or continue its slow decline. The government is under great pressure, and as the Zuma years approach their final chapter, and the ANC faces the prospect of
losing power in some of the big cities of South Africa in the May 2016 municipal elections, so new opportunities are likely to emerge. After twenty-one years of relatively stable democracy, South Africa is poised for a political and economic ‘re-set’, presenting further challenges and new opportunities in equal measure. Corporate leaders in South Africa and investors will both have to be alert to the changing landscape, with the capability of interpreting and responding to the deeper trends against the backdrop of an increasingly harsh socio-economic context. Post Marikana the mining industry feels as if it is on the ropes reputationally, and perhaps a final question needs to be asked: does this make it politically easier for government to keep moving the regulatory goal posts?

**Marikana was a terrible wake-up call for modern South Africa; the question is whether its tragic lessons have been learned.** Three years after the horrifying events of August 2012, South Africa is in a sense still in shock and, in some quarters, in denial over what happened. It is not too late to absorb the lessons. The Marikana Commission report asks as many (further) questions as it answers. Yet, it does provide a framework or platform for those willing to look beneath the surface to examine the true causes of Marikana and, thereby, the prospects of history repeating itself. As a seminal event in the ‘new’ South Africa, it stands as poignant motif of the hard work that still needs to be done if the country is prosper in the future. Leaders in all sectors – corporate, government and unions – must summon the courage to face the analytical conclusions of serious examination of the lessons of Marikana or else run the profound risk of being caught off guard once again in the future.