Commissioner, police ignoring AMCU evidence

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A YEAR after the Marikana massacre, South Africans are still searching for the truth of that dreadful day. That search has been painful. The Marikana Commission of Inquiry's process has now ground to a halt, because no one is willing to fund the representation of the victims of the massacre.

The police, for their part, are recognizing their faults, have withdrawn into a fortress of denial.

Last October, the commission was all promise. Ian Farban is a fine judge, with a strong record of anti-apartheid work, as a lawyer.

The advocates leading evidence for the commission are gifted, independent men and women of sound judgment and integrity.

Yet, almost a year after the first sitting, it feels as if the commission has hardly yet got going. No single policeman who saw a shot being fired has yet testified. Important post-mortem evidence is yet to be analyzed.

The families' lawyers claim that this evidence proves that many of the miners were shot in the back, so it is hard to see why the post-mortem did not receive the commission's immediate attention.

Important evidence has emerged from Joseph Mathunjwa, president of the Association of Mineworkers and Construction Union (AMCU).

Mathunjwa told the commission that on the evening of August 16 he was optimistic that the strike might end the next day. He said Lonmin had agreed to negotiate with the miners and the miners were open to such a suggestion.

However, on the morning of August 16, Lonmin had rescinded its promise to engage the miners.

Mathunjwa tried to convey this to the provincial commissioner, but the news fell on deaf ears.

He attempted twice to convince the miners to leave the kopje, the second time making it clear that he believed that the police would kill them.

Shortly after he left, and before the miners could leave the kopje, the tactical part of the police operation began. Within minutes the first shots were fired.

One of the injured miners, Mncedisi Magwedzana, told the commission the miners were trying to run away when they saw armed police being rolled out.

The police blocked their escape route. To get on to the road home the miners ran around a kopje. As they came around the kopje, police officers stood in a line waiting for them, with their guns cocked, and fired live ammunition.

Magwedzana was wounded and at no stage did he attack the police. He was, however, shot more than 10 times.

Most of the shots came at close range when he was already lying on the ground.

The police have been given most of the headlines. Why, though, a week, or two to do a PowerPoint presentation, a full month for the national commissioner to testify that he saw nothing, knows nothing, and will not even concede that police bullets killed the miners.

As for the planning of the operation on August 16, the most telling part of Commandant-General William Mpihlophe's overall evidence is that there is no evidence of live ammunition. The intelligence was foreseen and authorized.

Chief-Inspector Cato Mbonambi has testified that the police plan was flawed and should not be followed again.

The main question must surely be whether the police acted, as they claim, in self-defense.

This seems like a fanciful claim. But the longer the commission delays direct evidence from the police of what happened at the scene of the massacre, the more likely it is that obfuscation and confusion will set in, and that the truth will be lost.

The reason why the commission has struggled to get the point is that it did not, at the outset, define the scope of its inquiry, and fashion its procedures with the precision necessary to produce relevant evidence at the required pace.

The delay has been costly. Civil society organizations representing the victims and their families have struggled to raise money to sustain a presence at the commission. Lawyers fees—even when reduced—are crippling.

The volume and content of the evidence produced at the commission has required many hours of attention by advocates.

Those skills cost too much money. And while the state and Lonmin bitterly sign cheques for their legal costs, the victims scrap and save.

The arrested and injured miners have now dropped out of the commission, because they cannot afford to carry on, having originally budgeted only for the four months the commission said it would sit.

Amcu and the families have gone too. Amcu because it will not participate in the commission if its members aren't, and the families because they see no point in doing so if the miners' version is not heard.

Perhaps the miners last, best hope for finding a truth with an application to the Constitutional Court to compel state funding. The court will give its judgment tomorrow.

The commission's future therefore hangs in the balance. There is talk of a last-minute donation from an international benefactor. But, failing that, and the commission proceeds without the miners, the families or Amcu, it will have little credibility. In the unlikely event that it adjourns until the miners can participate again, its proceedings may grind to a halt.

The upshot of all this is that the commission looks unlikely to build a credible public record of the Marikana massacre.

Perhaps the time has come for civil society organizations, unions and communities to start generating their own record.

One unfortunate consequence of the commission, and its slowness, is that it has stymied much-needed public discussion and reflection on the massacre, and its consequences for the broader South African dream of a healing society committed to justice and equality.

That conversation now needs to happen outside the commission and its proceedings.

Whatever the circumstances, it is undeniable that a group of very poor miners, living in appalling conditions, with legitimate grievances, were killed by the police because they embarked on protest action to advance the interests of the state, mining capital and members of the ruling political alliance.

As a nation, we seem habitually unable to listen to the grievances of our poorest and most vulnerable citizens unless and until things turn violent. It is that broader truth, and the state it leaves on the South African conscience, that we have yet to address. It will not go away if we do not begin to do so now.

Wilson is the executive director of the Socio-Economic Rights Institute of South Africa (SERI). SERI represents the families of 36 dead miners, and Amcu, before the Marikana Commission of Inquiry. Their views are its own.