

ICTUR

**International Centre for Trade Union Rights
Centro Internacional para los Derechos Sindicales
Centre International pour les Droits Syndicaux**

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22 August 2012

Your Excellency,

We write with grave concern following the events of 16 August during which police fired on striking miners, killing 34 and wounding many more.

In our view, the incident at the Marikana platinum mine (owned by the London-listed, South Africa-based transnational company Lonmin) is one of the most serious incidents in recent years – and perhaps ever – of State violence against trade unionists, and it raises complex questions concerning the policing of the dispute. It raises questions also concerning the actions of the company in its handling of a case that was clearly volatile even before the massacre of 16 August.

As we understand the context the strike began on 10 August, when rock-drillers walked out in support of a substantial wage increase demanded by the recently established Association of Mineworkers and Construction Union ('AMCU'). Although the long-established National Union of Mineworkers ('NUM') described this demand as 'unachievable' several thousand workers stopped work and occupied a hillside close by the mine. As the strike continued many were observed to be carrying traditional weapons such as spears and sticks, while others carried machetes. In a number of separate incidents ten people, including two police officers, were killed. No clear information has yet emerged as to who was responsible for these earlier killings, but Amnesty International acknowledged reports of 'conflict between the rival unions'.

By 16 August, we note that the police had erected barbed wire fencing and were patrolling the perimeter of the occupied area with armoured vehicles. Helicopters were flying overhead. The company and the police both appear to have decided to take drastic action to bring the situation to a swift halt that day. Lonmin began by announcing that workers must return to work (effectively empty-handed) that day or they would be dismissed. Zukiswa Mbombo, provincial commissioner with the South African Police Service, backed-up the company, echoing the view that 16 August represented an ultimatum. Referring to the protest as an "illegal gathering", Mbombo told reporters at a press conference that "today we will ask them to leave", and continued, "but then I don't want to explain to you, if they don't, what then? What I told you is, today we are ending this matter".

The police then began their attempt to disperse the strikers using water cannons and tear gas, sending groups of workers scattering. In the somewhat chaotic scenes the police were unexpectedly met with a group of strikers advancing towards them rapidly. As the group neared their lines the police responded with a sudden and sustained burst of fire from numerous automatic weapons, which Amnesty International has described as 'prolonged'. Even after a period of some ten seconds or more passed and the order to ceasefire was eventually given, video footage of the incident shows that a number of shots continued to be fired for several seconds, even though the only strikers visible in the film at this time were already dead or were incapacitated and clearly seriously wounded on the ground.

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As of the time of writing the dispute continues and workers remain on strike. The company issued, and subsequently withdrew, another back to work order under threat of dismissal, and engaged in discussions with the trade unions. Tensions between all parties remain high.

ICTUR recognises that policing of protests where individuals are armed and where violence has occurred will be qualitatively different from those expected for unarmed and entirely peaceful protests. However, ICTUR observes that even the policing of groups in which individuals are known to be armed is not unregulated. International human rights standards on the use of force and firearms require that officers must use the minimum amount of force necessary to contain a situation and that consideration must be given to the deployment of shields and body armour combined with non-lethal weapons before deploying lethal weapons.

ICTUR raises the following specific concerns:

- that on 16 August the company issued an arbitrary return to work deadline under threat of dismissal in a context that was known to be volatile and dangerous (several deaths having already been reported).
- that the company repeated this action following the massacre by issuing a further arbitrary return to work deadline. ICTUR notes that this deadline was grossly insensitive in the context of the massacre that had just occurred and observes that it did not respect the week of national mourning called by Your Excellency.
- that the company will urgently review its handling of this case. ICTUR notes that the company has now delayed its return to work order and has met with the trade unions involved to discuss the situation. ICTUR calls on the company to continue with such measures to calm tensions and to achieve a sustainable resolution to the situation.
- by the actions of the police in respect of the apparently arbitrary commitment that was made to end the strike on 16 August and by the remarks made by Zukiswa Mbombo, provincial commissioner, in which veiled and unspecified consequences were alluded to in the events of non-compliance by the strikers.
- by the remarks issued following the massacre by Rhiah Phiyega, National Commissioner of Police, who, as Amnesty International have observed, appeared quickly and without the assistance of an inquiry to reach the conclusion that the police were justified in using lethal force.
- that the policing tactics overall and the decision to widely deploy automatic lethal weapons must be investigated in order to assess whether the decision-making processes complied with international rules on deployment of lethal force.

ICTUR recalls with great concern that South Africa's police and security services have in recent years fired either live or rubber ammunition on trade unionists in several cases, including in 2011, 2010, and 2009, and now again in 2012, and notes that on several occasions these firings resulted in several deaths. ICTUR further observes that reports of trade unionists killed by police officers or other State agents are rare, and are reported in just a handful of countries around the world. Further, such cases rarely involve more than one or two victims. The level of violence in this case is, ICTUR observes, quite extraordinary, even on an international scale, and indeed the question of violence and the policing of labour disputes in South Africa is a serious, sustained, and ongoing problem. ICTUR calls for serious and urgent action to be taken to address this problem.

In responding to this incident, ICTUR trusts that the authorities will make arrangements for a thorough, adequate, and impartial investigation into the facts. ICTUR supports Amnesty International's call for judicial oversight of any such inquiry, and further advises that the authorities make adequate arrangements for transparency of proceedings and to ensure that international observers and experts are able to participate in the inquiry.

Yours Faithfully,



Daniel Blackburn, Director, International Centre for Trade Union Rights ('ICTUR')