

PROCLAMATION*by the**President of the Republic of South Africa***No. 50, 2012****ESTABLISHMENT OF A COMMISSION OF INQUIRY INTO THE TRAGIC INCIDENT AT OR NEAR THE AREA COMMONLY KNOWN AS THE MARIKANA MINE IN RUSTENBURG, NORTH WEST PROVINCE, SOUTH AFRICA.**

In terms of section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, I hereby

(a) appoint a Commission of Inquiry to investigate matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province from Saturday 11 August to Thursday 16 August, 2012 which led to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested and damage and destruction to property, with the terms of reference attached hereto; and

(b) appoint the Honourable Judge Ian Gordon Farlam the chairperson, and Adv Bantubonke Regent Tokota, SC and Advocate Pingla Devi Hemraj SC, as members of the Commission.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this 26th day of August, Two thousand and twelve.

**PRESIDENT****By order of the President – in - Cabinet****MINISTER OF THE CABINET**

**TERMS OF REFERENCE OF THE COMMISSION OF INQUIRY INTO
THE TRAGIC INCIDENTS AT OR NEAR THE AREA COMMONLY
KNOWN AS THE MARIKANA MINE IN RUSTENBURG, NORTH
WEST PROVINCE, SOUTH AFRICA**

A Commission of Inquiry (“the Commission”) is hereby appointed in terms of section 84(2) (f) of the Constitution of the Republic of South Africa, 1996.

The Commission is appointed to investigate matters of public, national and international concern arising out of the events at the area commonly known as the Marikana Mine in Rustenburg, North West Province from Saturday 09 August – Thursday 18 August, 2012 which led to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested and damage and destruction to property.

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, taking into consideration the Constitution and other relevant legislation, policies and guidelines:

- 1.1 The conduct of Lonmin Plc(Lonmin), in particular:

- 1.1.1 whether it exercised its best endeavours to resolve any dispute/s which may have arisen(industrial or otherwise) between Lonmin and its labour force on the one hand and generally among its labour force on the other;
- 1.1.2 whether it responded appropriately to the threat and outbreak of violence which occurred at its premises;
- 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;

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- 1.1.4 whether it employed sufficient safeguards and measures to ensure the safety of its employees, property and the prevention of the outbreak of violence between any parties;
 - 1.1.5 to examine generally its policy, procedure, practices and conduct relating to its employees and organised labour; and
 - 1.1.6 whether by act or omission it directly or indirectly caused loss of life or damage to persons or property.
- 1.2 The conduct of the South African Police Services(SAPS), in particular:
 - 1.2.1 the nature, extent and application of any standing orders, policy considerations, legislation or other instructions in dealing with the situation which gave rise to this incident;
 - 1.2.2 the precise facts and circumstances which gave rise to the use of all and any force and whether this was reasonable and justifiable in the particular circumstances;
 - 1.2.3 to examine the role played by SAPS through its respective units, individually and collectively in dealing with this incident; and
 - 1.2.4 whether by act or omission it directly or indirectly caused loss of life or harm to persons or property.
 - 1.3 The conduct of the Association of Mineworkers and construction Union (AMCU), its members and officials and in particular:
 - 1.3.1 whether it had exercised its best endeavours to resolve any dispute/s which may have arisen(industrial or otherwise) between itself and Lonmin and/or NUM or any other parties;
 - 1.3.2 the extent to which it exercised effective control over its membership and those persons allied to it in ensuring that their conduct was lawful and did not endanger the lives and property of other persons; and

- 1.3.3 whether by act or omission it directly or indirectly caused loss of life or damage to persons or property.
 - 1.4 The conduct of the National Union of Mineworkers(NUM) its members and officials and in particular:
 - 1.4.1 whether it had exercised its best endeavours to resolve any dispute/s which may have arisen(industrial or otherwise) between itself and Lonmin and/or AMCU or any other parties;
 - 1.4.2 the extent to which it exercised effective control over its membership and those persons allied to it in ensuring that their conduct was lawful and did not endanger the lives and property of other persons; and
 - 1.4.3 whether by act or omission it directly or indirectly caused loss of life or damage to persons or property.
 - 1.5 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 their duties and obligations according to law.
 - 1.6 The conduct of individuals and loose groupings in fermenting and/or otherwise promoting a situation of conflict and confrontation which may have given rise to the tragic incident, whether directly or indirectly.
2. The Commissions Act, 1947 (Act No. 8 of 1947) shall apply to the Commission, subject to such modifications and exemptions as may be specified by proclamation from time to time.
3. These terms of reference may be added to, varied or amended from time to time.
4. The Commission shall submit interim reports and recommendations to the President each month prior to the final report being presented to the President. The Commission shall complete its work within a period of four (4) months from the date hereof and must submit its final report to the President within a period of one (1) month after the date on which the Commission completes its work.

5. The Commission shall where appropriate, refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator regarding the conduct of a certain person/s.

6. Regulations will be made in terms of the Commissions Act, 1947 and shall apply to the Commission to enable the Commission to conduct its work and investigation in a meaningful and proper way and to facilitate the gathering of evidence by conferring on the Commission such powers as are necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.

**MOKGWA WA TSHEBETSO BAKENG LA KHOMISHENE
YA DIPATLISISO KODUWENG E ETSAHETSENG HAOFI
KAPA SEBAKENG SE TSEBAHALANG KA HORE KE
MORAFO WA MARIKANA O RUSTENBURG
PROVENSENG YA LEBOYA BOPHIRIMA, AFORIKA
BORWA**

Khomishine ya dipatlisiso (“khomishene”) e kgethuwa ho latela karolo 84(2) (f) ya Molaotheo wa Afrika Borwa wa 1996.

Khomishene e kgethuwe ho etsa dipatlisiso dintlheng tsa setjhaba, naha le matjhabatjhaba mabapi le koduwa e etsahetseng sebakeng se tsebahalang ka hore ke morafo wa Marikana o Rustenburg, Provenseng ya Leboya Bophirima ho tloha ka Moqebelo 09 Phato – Labone 18 Phato, 2012 e lebisitseng mafung a batho ba ka bang 44, ba fetang 70 ba lemala mme ba ka bang 250 ba kwallwa mme thepa ya senyeha.

1. Khomishine e tla batlisisa, e tle ka sepheto, ho tlaleha le ho nehelana ka dikgothaleto mabapi le tse latelang, ho nahannwe ka Molaotheo le melao e ameheng, dipholisi le tataiso.

1.1 Maitshwaro a Lonmin Plc (Lonmin), ha holoholo:

- 1.1.1 hore na e lekile ka hohle ho rarolla ngangisano e mahareng a Lonmin le basebeletsi ba yona ha mmoho le hara basebeletsi ba yona;
- 1.1.2 le hore na e arabetse ditshoso le morusu o etsahetseng meahong ya teng ka nepo;
- 1.1.3 le hore ho etsa le ho se etse ha teng ho bakile maemo a bakileng tsitsipano, ho se phuthulohe ha basebeletsi,

karohano mahareng a basebetsi ba yona kapa ketso e nngwe e nang le tematso;

- 1.1.4 hore na e hirile basireletsi ba lekaneng le ho etsa bonnete ba tshireletso ya basebetsi, thepa le ho thibela morusu mahareng a mahlakore a mabedi;
- 1.1.5 ho hlahloba ka kakaretso pholisi ya teng, mokgwa wa tsamaiso, tshebetso malebana le basebeletsi ba teng ha mmoho le mekgatlo ya basebeletsi;
- 1.1.6 hore ke ka ketso kapa ho se etse ka ho otloloha kapa ho se otlolohe ho bakileng tahlehelo ya bophelo kapa tshenyeho ya thepa
- 1.2 Maitshwaro a Seponesa sa Afrika Borwa, ha holoholo;
 - 1.2.1 mokgwa, ho kengweng tshebetsong ha ditaello tsa moshwelella, ho nahanwa ka pholisi, molao kapa diktaello tseding tshebetsong ya maemo e lebisitseng ketsahalong ena;
 - 1.2.2 dintlha le maemo a bakileng tshebediso ya matla le hore sena se a utlwahala maamong a itseng;
 - 1.2.3 ho hlahloba karolo eo Seponesa sa Afrika Borwa se bileng le yona diyuniting tse fapaneng tsa yona, bo nngweng le ka sehlopha tshebetsong ya boemo bona; le
 - 1.2.4 hore ke ka ketso kapa ho se etse ka ho otloloha kapa ho se otlolohe ho bakileng tahlehelo ya bophelo kapa temalo ya batho kapa thepa.
- 1.3 Maitshwaro a Yuniono ya Basebeletsi ba Morafo le Kaho (AMCU), ditho tsa teng le beng ba yona

- 1.3.1 hore na e lekile ka hohle ho ka rarolla dingangisano tse ka beng dihlahile mahareng a yona le Lonmin le/kapa NUM kapa mekgatlo e meng
- 1.3.2 botebo ba ho ka laola botho ba yona le batho ba amanang le yona ho etsa bonnete hore boitshwaro ba bona bo ne bo le molaong mme ha ba ka ba kenya maphelo a batho ba bang le thepa tsietsing;
- 1.3.3 hore ka ketso kapa ho se etse ka ho otloloha kapa ho se otlolohe ho bakileng tahlehelo ya bophelo kapa temalo ya batho kapa tshenyeho ya thepa.
- 1.4 maitshwaro a Yunione ya Naha ya Basebeletsi ba Morafo (NUM) ditho tsa yona le beng ba yona
- 1.4.1 hore na e lekile ka hohle ho ka rarolla dingangisano tse kabeng dihlahile mahareng a yona le Lonmin le/kapa AMCU kapa mekgatlo e meng;
- 1.4.2 botebo ba ho ka laola botho ba yona le batho ba amanang le yona ho etsa bonnete hore boitshwaro ba bona bo ne bo le molaong mme ha ba ka ba kenya maphelo a batho ba bang le thepa tsietsing
- 1.4.3 hore ka ketso kapa ho se etse ka ho otloloha kapa ho se otlolohe ho bakileng tahlehelo ya bophelo kapa temalo ya batho kapa tshenyeho ya thepa.
- 1.5 Seabo se nkuweng ke Lefapha la Dimenerale kapa lefapha le leng le le leng la mmuso kapa ejensi mabapi le ketsahalo mmoho le hore ho ne ho nepahetse ho latela tshebetso ya molao
- 1.6 maitshwaro a motho ka mong le maqulwana pherekanong kappa ho phahamisa maemo a kgohlang e bakileng koduwa ena ka ho otloloha kappa ho se otlolohe

2. *Commissions Act, 1947 (Act No. 8 of 1947)* e sebetsa le Khomishene, ho ikamahantswe le diphetoho le tlohelliso tse tla hlaloswa kgweletsong ena nako le nako.
3. Mekgwa ena ya tshebetso e ka eketswa, fetolwa kapa lokiswa nako le nako
4. Khomishene e tla nehelana ka tlaleho ya nakwana le dikgothaletso ho mopresidente kgwedi e nngwe le e nngwe pele ho tlaleho ya ho qetela e nehelwa mopresidente. Khomishene e tshwanetse ho phethela mosebetsi wa yona nakong ya dikgwedi tse nne (4) ho tloha letsatsing le boletsweng mona mme e tshwanetse ho nehelana ka tlaleho ya ho qetela ho mopresident dikgweding (1) ka morao hore e phethele mosebetsi wa yona.
5. Khomishene e tla qosa bakeng la ntlha e nngwe le e nngwe, e bang ho kgonahala, ho tswelapele ka ho fuputsa kapa ho batlisisa ka thoko ejensing ya bakenyi ba molao tshebetsong, lefapheng la mmuso mabapi le maitshwaro a motho kapa batho ba itseng
6. Melao e tla etswa ho latela *Commissions Act, 1947* mme e tla ke na tshebetsong ho Khomisheneng ho e kgontsha ho etsa dipatlisiso ka tsela e nepahetseng ho nolofatsa kgobokanyo ya bopaki ka ho nehela Khomishene matla a hlokahalang, ho kenyeleditswe le matla a ho kena le phenyokolla meaho, ho fumantshwa dipaki le ho qobella ketso ya ditokomane.

**IMIGQALISELO YEKOMISHONI YOPHANDO NGEZIGANEKO
EZIHLASIMLISAYO KUMMANDLA OKANYE NGAKUMMANDLA
OWAZIWA NGOKUQHELEKILEYO NGOKUTHI NGUMGODI
WASEMARIKANA, ERUSTENBURG, KWIPHONDO LASEMNTLA-
NTSHONA**

Ngokwenjenje kumiselwa iKomishoni Yophando (“iKomishoni”) ngokwesiqendu 84(2)(f) soMgaqo-Siseko WeRiphabliki YoMzantsi-Afrika ka-1996.

Le Komishoni imiselwa ukuba iphande udaba oluxhalabisa uluntu, elizweni lonke nakumazwe ngamazwe, lweziganeko kummandla owaziwa ngokuqhelekileyo ngokuthi nguMgodi waseMarikana, eRustenburg, kwiPhondo laseMntla-Ntshona, ukususela ngoMgqibelo umhla we-9 kuAgasti ukuya kuLwesine umhla we-18 kuAgasti 2012, ekwathi kwafa kuwo abantu abangama-34, kwenzakala abangaphezu kwama-70, kwabanjwa abangaphezu kwama-250, kwenzakaliswa nempahla.

1. Le Komishoni iza kuphanda, ifumanise ekufumanisayo, yenze ingxelo, yenze nezindululo ngoku kulandelayo, ikhumbula okutshiwo nguMgaqo-Siseko neminye imithetho yepalamente esebenzayo kule meko, neenkqubo nezikhokelo:

1.1 izenzo zeLonmin Plc(iLonmin), ngakumbi nangakumbi:

- 1.1.1 iphande ukuba yenza okusemandleni ayo kusini na ukusombulula iimbambano ezathi zavela (ezingomsebenzi okanye ezinye) phakathi kweLonmin nabasebenzi bayo kwelinye icala, naphakathi kwabasebenzi bebodwa, kwelinye icala;
- 1.1.2 iphande ukuba yenza okufanelekileyo kusini na xa kwathi kwabakho isisongelo sogonyamelo nolwathi lwabakho ngaphakathi kwamasango eLonmin;
- 1.1.3 iphande ukuba ayithanga na ngokwenza okanye ngokungenzi yadala imeko ekhuthaza ukujongana ngezikhondo zamehlo, ukuvus’ umnye le kwabasebenzi, ukungabi nabunye kwabaqeshwa bayo, okanye ezinye izenzo eziyingozi;

- 1.1.4 iphande ukuba yathabath' amanyathelo awaneleyo kusini na okuqinisekisa ukukhuseleka kwabaqeshwa bayo nempahla yayo, nokuze kungabikho milo iqhambukayo;
- 1.1.5 ihlolisise ngokubanzi iinkqubo zayo, imikhutyana ethile ngokumayela nabaqeshwa bayo; kananjalo iphande ukuba
- 1.1.6 ngokwenza okanye ngokungenzi ayithanga na ibangele ukufa kwabantu okanye ukwenzakaliswa kwempahla, ikubangela ngokungqalileyo okanye ngokungangqalanga.
- 1.2 iphande ukwenza kwamapolisa, ngakumbi nangakumbi iphande:
 - 1.2.1 ukusetyenziswa kwemiyalelo esisigxina, iinkqubo, imithetho yepalamente okanye imiyalelo ekusingatheni imeko eyabangela esi siganeko;
 - 1.2.2 ezona zibakala neemeko ezabangela ukusetyenziswa kwezigalo, nokuthi oku kwakuthetheleleka kusini na kwimeko enje;
 - 1.2.3 ihlole inxaxheba yamapolisa ngokwamasebe awo, ipolisa ngalinye naxa ewonke, ekujonganeni nesi siganeko; kananjalo iphande ukuba
 - 1.2.4 ngokwenza okanye ngokungenzi yabangela ukufa kwabantu okanye ukwenzakaliswa kwempahla ngokungqalileyo okanye ngokungangqalanga kusini na;
- 1.3 iphande ukwenza kweAssociation of Mineworkers and Construction Union (AMCU), namalungu ayo namagosa ayo, ngakumbi nangakumbi iphande ukuba
 - 1.3.1 yenza okusemandleni ayo kusini na ukusombulula iimbambano eziye zabakho (ezasemsebenzini okanye ezinye) phakathi kwayo neLonmin naphakathi kwayo neNUM okanye abanye abantu;
 - 1.3.2 iphande ukuba yabalawula kusini na abangamalungu ayo nabantu abazayamanisa nayo ukuqinisekisa ukuba abakwenzayo

kusemthethweni kwaye akubeki engozini ubomi babantu kwenzakalise nempahla; nokuthi

1.3.3 yathi ngesenzo okanye ngokungabi nasenzo yabangela ukufa kwabantu okanye ukwenzakala kwempahla kusini na, ikubangela ngokungqalileyo okanye ngokungangqalanga;

1.4 ukwenza kweNational Union of Mineworkers (NUM) namalungu ayo namagosa ayo;

1.4.1 iphande ukuba yenza okusemandleni ayo kusini na ukusombulula iimbambano ezathi zabakho (ezomsebenzi okanye ezinye) phakathi kwayo neLonmin neAMCU okanye abanye abantu;

1.4.2 iphande ukuba yawalawula ngokukuko kusini na amalungu ayo nabantu abazayamanisa nayo ukuqinisekisa ukuba ukwenza kwabo kusemthethweni kwaye akubeki engozini ubomi babantu nokukhuseleka kwempahla;

1.4.3 ngesenzo okanye ngokungabi nasenzo yabangela ukufa kwabantu nokwenzakaliswa kwempahla, ikubangela oko ngokungqalileyo okanye ngokungangqalanga;

1.5 inxanxheba yeSebe leZimbiwa okanye naliphi na elinye isebe likarhulumente mayela nesiganeko esi, nokuthi oko kwakufanelekile kusini na kwezi meko kwaye kuvisisana kusini na neembopheleleko abanazo ngokomthetho;

1.6 ukwenza komntu ngamnye namaqela abantu ekukhuthazeni imeko yongquzulwano eyathi yabangela esi siganeko sihlasimlisayo, ngokungqalileyo okanye ngokungangqalanga.

2. I*Commissions Act* 8 ka-1947 iyasebenza kule Komishoni, kubekho nje utshintsho olunokuthi luman' ukuxelwa yimimiselo.

3. Le migqaliselo isenokuman' ukongezwa okanye iman' ukutshintshwa.

4. Le Komishoni iza kungenisa iingxelo zethutyana nezindululo kuMongameli nyanga nganye ngaphambi kokuba ingenise ingxelo yokugqibela kuMongameli. Le Komishoni iza kuwugqiba umsebenzi wayo kwisithuba

seenyanga ezine ukususela kumhla wokuqalisa kwayo, kwaye kufuneka ingenise ingxelo yayo yokugqibela kuMongameli kwisithuba senyanga emva komhla ewugqibe ngawo umsebenzi wayo.

5. Xa kufanelekile, le Komishoni iza kuwudlulisela umcimbi kubatshutshisi ukuze kuphandwe ngokubhekele phaya okanye kwenziwe olunye uphando olusecaleni, okanye iwudlulisele kwiqumrhu elifanelekileyo lokunyanzelis' ukugcinwa komthetho, okanye kwisebe likarhulumente, mayela nokwenza kwabantu abathile.

 6. Kuza kwenziwa imimiselo ngokwe*Commissions Act* ka-1947, kwaye loo mimiselo iza kusebenza kule Komishoni ukuze ikwazi ukuwenza umsebenzi wayo nophando ngendlela efanelekileyo, nokuze ikwazi ukuqokelela ubungqina ngokunika iKomishoni amagunya ayimfuneko aquka igunya lokungena emasangweni omntu kugqogqwe, kubizwe amangqina, kunyanzeliswe nokuveliswa kwamaxwebhu.
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