

Avoiding another Marikana massacre

Why police leadership matters

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The Marikana Commission of Inquiry report presented damning findings against the South African Police Service (SAPS) National Commissioner, Riah Phiyega, and the senior commanders involved in the Marikana massacre. Their decision to disarm and disperse striking miners was found to be flawed and to have resulted in police officers unjustifiably shooting 112 striking mineworkers, killing 34 of them. Moreover, their integrity was found wanting on the basis that Phiyega and her senior commanders withheld crucial evidence, constructed misleading evidence, and provided untruthful testimony before the commission. This article argues that a necessary condition for improvements to take place in the SAPS relates to improving the top leadership of the organisation. Fortunately, the National Development Plan provides a starting point as to how this can be achieved. 'Police supervisors at any level need to be aware that their behaviour has a strong impact on the organisational culture, which in turn contributes to police behaviour.'¹

Since 2012, official government policy documents have increasingly focused on police leadership in South Africa. The National Development Plan (NDP)² speaks of a 'serial crisis of top management' and includes recommendations aimed at improving the quality and competencies of senior police managers.³ It identifies good leadership as being at the heart of what is required to address the numerous challenges facing the South African Police Service (SAPS).

The draft White Paper on Police states that South Africa is entitled to a police service 'that exhibits exemplary leadership and management'.⁴ It further refers to the importance of ethical leadership and how 'police leadership and management must ensure a clear normative standard of the highest quality'.⁵

Neither the NDP nor the White Paper, however, explains the reasons for their focus on police leadership. No diagnosis of the failings of past

and current SAPS leadership is presented. No explanations are provided as to how these failings may be the cause of key organisational challenges facing the SAPS, or what the consequences are for public safety.

The Marikana Commission of Inquiry into the killings that took place in the run-up to and on 16 August 2012, provides useful insights into the workings of SAPS senior leadership.⁶ Based on the findings of the commission, there is now objective information on the nature of senior police leadership decision-making in the lead-up to the massacre. Moreover, there are findings relating to the integrity of senior police leadership, based on their engagement with the commission, which was established to unearth the facts of what happened on that day.

This article outlines the key characteristics of good police leaders and the principles that should guide their actions. It then discusses relevant findings of the commission pertaining to senior SAPS commanders. The article argues that the crisis of police leadership

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may be used to explain certain worrying indicators, reflecting the deterioration of police effectiveness and public credibility in recent years. It reflects on what can be done to improve the senior leadership of the SAPS – this being a precondition for the improvement of policing in South Africa.

Police leadership in a democracy

Policing ‘refers to the work of the public, civilian (non-military) institution that is empowered by government to enforce the law and ensure public order through the legitimised use of force’.⁷ It has been argued by international policing experts such as Massachusetts Institute of Technology Professor Gary T Marx that one element that defines a democracy is a police force that:

- Is subject to the rule of law, embodying values respectful of human dignity, rather than the wishes of a powerful leader or party
- Can intervene in the life of citizens only under limited and carefully controlled circumstances
- Is publicly accountable⁸

Indeed, international research on the democratic objectives of police agencies holds that police should, *inter alia*, strive to:

- Promote public trust and confidence (necessary prerequisites for effective policing)
- Stand outside of politics while protecting the democratic rights of the public (for example to exercise free speech, freedom of association and other democratic rights)
- Be guided by the principle that everyone shall be subject to limitations determined by law when intervening in conflicts between groups or individuals⁹

In crafting a new vision and orientation for the police in South Africa, the drafters of the South African Constitution accepted and included references to these principles. For example, the Constitution emphasises that none of the country’s security services, nor any of their members, ‘may in the performance of their functions

(a) prejudice a political party interest that is legitimate in terms of the Constitution; or

(b) further in a partisan manner any interest of a political party.’¹⁰

Moreover, the legislation giving effect to the establishment of the SAPS specifically intends to ensure that the police do not act, and are not seen to act, in a politically partisan manner, by stating that no police member shall in anyway associate themselves with a political party, hold any office in a political party, or ‘... in any manner further or prejudice party political interests’.¹¹ The principle of non-political partisanship is crucial for a police service if it is to secure public trust and legitimacy.

If leaders of a police service in a democracy are to ‘secure public trust and legitimacy’, it is important that they display a high level of integrity. For the purposes of this article, the definition of police leadership integrity refers to the extent to which police commanders act and speak in accordance with a core set of formal organisational values.¹² For a South African police leader to be seen as having integrity, he or she should behave in accordance with the SAPS Code of Conduct, which *inter alia* states that SAPS officers will ‘act impartially, courteously, honestly, respectfully, transparently and in an accountable manner’.¹³

Various studies have identified characteristics synonymous with integrity as particularly important for effective police leadership. For example, the Australian Institute of Police Management undertook a meta-analysis of 57 empirically based articles into the requirements for effective police leadership from Australia, the United Kingdom, Canada, New Zealand and the United States.¹⁴ This study identified seven key characteristics that were considered necessary for a police commander to be effective. Three of these characteristics are commonly associated with integrity, namely that a police leader must be ethical, trustworthy and legitimate. The remaining four characteristics are that police leaders should recognise the need to ‘act as a role model; be good communicators; be critical and creative thinkers; and be able to make good decisions’.¹⁵

The findings of the commission as they relate to senior police leadership in the SAPS can now be assessed against the key principles and characteristics highlighted above. This exercise will

provide some insight into the nature of the challenges implicitly referred to by the NDP and the White Paper as they pertain to the senior police leadership at the time of writing.

The serial crisis and politicisation of top police management

The SA Constitution mandates the president to appoint the SAPS national commissioner.¹⁶ However, it has been argued that, unlike many other senior appointments, there are inadequate minimum objective criteria to guide the president when making this appointment.¹⁷ The consequence has been that appointments to the post of SAPS national commissioner during the post-apartheid era have predominantly been compromised individuals who have not had relevant policing qualifications or experience.

In 2000, then-president Thabo Mbeki appointed Jackie Selebi to the post of SAPS national commissioner. Selebi had a long history in the African National Congress (ANC). He was elected as president of its Youth League and appointed to its most senior decision-making structure, the National Executive Committee (NEC), while in exile in Zambia in 1987.¹⁸ He was also appointed a member of Parliament in 1994, and before being appointed to the post of SAPS commissioner, Selebi had served as the South African ambassador and permanent representative to the United Nations and Director-General of the Ministry of Foreign Affairs, a post he held until 1999.

He was perceived to be personally loyal to Mbeki, who reportedly went to extraordinary lengths to prevent him from being arrested and prosecuted on corruption charges, for which he was ultimately convicted and sentenced to 15 years' imprisonment in 2010.¹⁹ Arguably, this dealt a significant blow to the morale of senior police commanders and the public credibility of the SAPS, given the substantial publicity that the investigation and prosecution of Selebi garnered in the local and international media.

When Jacob Zuma became president, he appointed a powerful provincial ANC politician who was then the KwaZulu-Natal member of the Executive Council (MEC) for Community Safety, Bheki Cele, to the post

of SAPS national commissioner. Cele was seen to be close to Zuma and although he had no formal policing experience, had at least held a post that required him to exercise oversight of the SAPS on behalf of the KwaZulu-Natal Provincial Executive Committee.

During his relatively short term in office, Cele became closely associated with ongoing attempts to militarise the SAPS when he established the controversial and paramilitarised tactical response teams in 2009,²⁰ and reintroduced military ranks to the SAPS in 2011.²¹ Cele was eventually fired by the president on the recommendation of a board of inquiry into his fitness to hold office, following a public outcry over his involvement in tender irregularities involving R1.7 billion.²² As with Selebi before him, the removal of the most senior SAPS commander, following a highly publicised scandal, could not have been positive for police morale or public credibility.

Zuma then appointed Riah Phiyega to the post of SAPS national commissioner on 13 June 2012. At the time of her appointment, much was made of her prior management experience.²³ However, her lack of police experience and any proven ability to address the types of organisational challenges facing the SAPS was publicly raised as a concern at the time.²⁴ A little more than a year after her appointment, the ongoing negative publicity surrounding Phiyega once again raised questions about her suitability for the post of national commissioner.²⁵

It was the findings of the Marikana Commission of Inquiry, headed by retired Judge Ian Farlam and two senior advocates, that first raised official concerns about Phiyega's fitness to hold office. Despite the constitutional and legal imperative that requires Phiyega and her senior officers to act impartially, the commission found that in the days running up to the massacre, 'Gen. Phiyega was complicit in engaging in discussions where political factors were inappropriately considered and discussed in relation to policing the situation at Marikana'.²⁶ Specifically, Phiyega and Lt.-Gen. Zukiswa Mbombo discussed the possibility that Julius Malema, the leader of the then newly launched Economic Freedom Fighters (EFF), might arrive at Marikana during the strike and take credit for diffusing the situation.²⁷

Moreover, transcript evidence before the commission revealed that Mbombo discussed Phiyega's concerns with Lonmin mine management, saying that,

- 'She did not want mining companies to be seen to be supporting AMCU [The Association of Mining and Construction Workers]
- She did not want mining companies to undermine NUM [National Union of Mineworkers]
- She was responding to what she perceived as pressure from Mr Cyril Ramaphosa, whom she considered to be politically influential
- She wanted to end the violence before Mr Julius Malema arrived in Marikana and was given credit for defusing the situation
- She was concerned that Mr Malema supported nationalisation of the mines.'²⁸

The commission found such conduct 'inconsistent with our constitutional and statutory regime which requires that policing be conducted in an impartial and unbiased manner'.²⁹

Decision-making and avoiding bloodshed

If police commanders rely primarily on their legal and policy obligations, they may be less likely to make decisions that would result in the unnecessary loss of life or injury to people. Indeed, Section 12(1)(c) of the Constitution states specifically that, '[e]veryone has the right to freedom and security of the person, which includes the right ... to be free from all forms of violence from either public or private sources'.³⁰

The South African Police Service Act, which governs police conduct, is explicit in stating that where police officers have to use force, it must be 'the minimum force which is reasonable in the circumstances'.³¹ This principle is also presented in the SAPS Code of Conduct, which states that all police officers are expected to exercise their powers in a 'responsible and controlled manner'.³²

The SAPS legal team argued that the decision to remove the striking mineworkers from the hill (referred to as a 'koppie' in South Africa) where they had been gathering each day, was taken by police commanders on the scene at around 13h00

on 16 August, and in response to circumstances that required action from the police. However, the commission found this version of events to be false. Rather, the commission found, the decision to disarm and disperse the striking mineworkers was taken by senior SAPS leaders, who had attended an 'extraordinary session' of the SAPS National Management Forum the evening before (15 August).³³

This finding is significant because the evidence before the commission showed that senior operational commanders 'warned the Provincial Commissioner that proceeding to the tactical option that day would involve bloodshed'.³⁴ Rather than revisit the decision to disperse, disarm and arrest the striking mineworkers, top SAPS commanders, including the SAPS commissioner, accepted that bloodshed might follow.³⁵

The six experienced lawyers who were hired by the commission to act as impartial evidence leaders concluded in their final argument, 'That a bloody confrontation was anticipated by at least some senior members of the SAPS is evidenced by the fact that 4 000 additional rounds of R5 ammunition were ordered for delivery and that attempts were made to procure the attendance of four mortuary vehicles (which would have provided for the removal of sixteen corpses).' The commission accepted this argument by the evidence leaders as an accurate assessment.³⁶ The commission found that any decision by police commanders to use force, when in all probability such force would be unnecessary, could be considered to be an illegal decision.³⁷ Moreover, they had breached the McCann Principle, accepted in South African law, 'which requires the planners of policing operations where force may possibly be used to plan and command the operations in such a way as to minimise the risk that lethal force will be used'.³⁸

Concerns about a lack of integrity and accountability

One of the more damning findings of the commission regarding the SAPS national commissioner and her senior managers was that they had sought to mislead the commission. The commission found that, in an effort to distract from

police failings at Marikana, the scene was set for a 'cover-up' very early on. The day after the police shootings, Phiyega addressed a police parade, stating that, 'what happened represents the best of responsible policing. You did what you did because you were being responsible.'³⁹

The commission found that this statement was

... singularly inappropriate because it set out what was from then on to be the official police line: that no blame at all attach to the police for what happened as they were being responsible in what they did. This was calculated to effect the closing of the ranks encouraging those who had participated in the operation to withhold information from the commission and indeed to deny that mistakes had been made and things had been done that could not be described as 'the best of responsible policing'⁴⁰

Indeed, the commission found that efforts to construct a police version of events took place at a police meeting held from 27 August to 8 September 2012 in Potchefstroom, referred to at the commission as the 'Roots Conference'.⁴¹ The commission agreed with arguments that this conference was used by the SAPS leadership as an 'opportunity to collude' in order to construct 'tailored' evidence, withhold certain damning evidence and provide other evidence that was 'materially false' before the commission so as to support the SAPS's manufactured version of events at Marikana both in the run-up to and during the massacre.⁴²

The commission agreed that both the national and provincial commissioners had seen the (SAPS) presentation prior to being submitted to the Commission and they would have been well aware of some of the omissions and misleading information contained therein.⁴³

The evidence leaders' closing submission in this regard was that Phiyega 'gave false evidence to the commission and her evidence before the commission was generally characterised by a lack of candor'.⁴⁴ The evidence leaders also argued that Phiyega's 'immediate response to the shootings was incompatible with the office of the head of a police service in a constitutional state'.⁴⁵

The commission accepted that the most senior police leaders had been dishonest and therefore recommended that the president establish a board of inquiry under section 8 (1) of the SAPS Act to consider the fitness of Phiyega and Mbombo to hold office in the SAPS. This was due to the finding that senior SAPS leadership at the 'highest level' gave false or misleading evidence before the commission and should therefore be the subject of an inquiry to establish whether they were guilty of misconduct in attempting to mislead the commission.⁴⁶

The impact of compromised police leadership

Arguably, the 'serial crisis of top management' as stated by the NDP and briefly discussed above has started to take its toll on the effectiveness and public credibility of the SAPS. While it is beyond the scope of this article to provide a full assessment of the evidence available, there are indicators that are worth considering.

At the time of writing, the SAPS national spokesperson argued that most of the negative public attitude about the police was a result of poor or unbalanced journalism.⁴⁷ There are certainly many examples of good police work and many dedicated and professional officers in the SAPS at all levels, but while the media does tend to focus on sensational stories that may be considered 'bad news', there are many well-documented police shortcomings that are directly related to SAPS leadership.

A good example of this is the deterioration in the productivity of the SAPS Crime Intelligence Division since 2011/12. The ability to produce reliable crime intelligence would be one of the most important police functions if the police were then able to mobilise their considerable resources towards identifying those involved in repeat violent offending. Policing experts have asserted that crime intelligence 'should underlie all crime combating activities of the police'.⁴⁸

SAPS Crime Intelligence found itself severely destabilised during 2011, following the various criminal charges that were laid against its national commander, Lt.-Gen. Richard Mdluli.⁴⁹ Mdluli was initially appointed in July 2009, following a meeting with four of Zuma's cabinet ministers, without proper

procedures being followed.⁵⁰ Various investigations against him were undertaken, resulting in murder charges being laid against him on 31 March 2011 and his suspension a little over a week later.⁵¹ Later that year, on 21 September, he was charged on separate cases of fraud and corruption.⁵²

Mdluli then wrote a letter to Zuma stating that 'in the event I come back to work I will assist the President to succeed next year' – in reference to the ANC's national elective conference that was to be held in December 2012.⁵³ The fraud and corruption charges were then irregularly withdrawn on 14 December 2011 and the murder charges similarly withdrawn on 2 February.⁵⁴ The following month Mdluli's suspension was lifted and he returned to head the national SAPS Crime Intelligence Division.

The civil society organisation Freedom Under Law (FUL) subsequently launched a successful application to the North Gauteng High Court, resulting in Mdluli's being interdicted from executing his duties as a police officer, given the substantial evidence of criminality against him.⁵⁵ The various criminal charges were re-instated, following a Supreme Court of Appeal on the matter, which also 'directed the Commissioner of Police to reinstate the disciplinary proceedings and to take all steps necessary for the prosecution and finalisation of these proceedings'.⁵⁶

At the time of writing, 15 months after this judgement, the SAPS national commissioner had yet to take disciplinary action against Mdluli, and reportedly allowed his perks and privileges to continue, at great cost to the state.⁵⁷ The Crime Intelligence Division has been managed by different officers in an acting capacity, which has arguably caused uncertainty among its personnel, thereby undermining the ability of crime intelligence to operate at its full capacity. Evidence of this situation can be found in an assessment of the SAPS annual reports that demonstrates overall productivity of this division declining by 19% between 2009/10 and 2011/12.⁵⁸

An additional indicator that all is not well within the SAPS is the substantial increase in the number of people leaving the organisation. In the four years ending in 2012/13, the average number of people leaving the SAPS stood at 2 743.⁵⁹ However, this

has risen dramatically since then, so that in the 2014/15 financial year, over 7 000 people left the SAPS.⁶⁰ It was also revealed that of this number 1 200 were detectives, a division already experiencing severe shortages.⁶¹

The consequence of the deterioration of intelligence and the loss of experienced detectives can be seen in the substantial growth of violent acquisitive crime in South Africa. In 2013/14, a total of 119 351 aggravated robberies were reported to the police.⁶² This is over 18 000 more armed robberies than were reported to the police two years ago, in 2011/12.⁶³ Consequently, there are on average 50 more robberies taking place every single day across South Africa than was the situation two years ago. More and more people are being attacked by armed criminals while walking the streets, with those who use public transport most at risk. However, armed gangs are also increasingly attacking people in their homes and workplaces, or hijacking them while driving.

Aggravated robbery is a type of crime that the SAPS has the resources and operational know-how to reduce. This was evidenced with the success of the implementation of the Gauteng Aggravated Robbery Strategy in 2009.⁶⁴ This police intelligence-led strategy with dedicated detective support contributed to a 21.3% reduction in house robberies, a 19.8% reduction in non-residential (primarily business) robberies and a 32.8% reduction in vehicle hijacking between 2011/12 and 2012/13.⁶⁵ But with no dedicated strategy to address these categories of robbery since 2012/13, incidents of robbery have subsequently increased. Ensuring the development and implementation of effective crime strategies is arguably a core function of police leadership.

Increasing crime rates, along with high levels of police misconduct, appear to be contributing to low levels of public trust in the police. For example, a 2014 survey found that 'three quarters of South Africans believe that a lot of police are criminals themselves' and 33% said that they were 'scared of the police'.⁶⁶ Moreover, the proportion of victims of crime who report their incident to the police had declined substantially across various crime categories. The National Victims of Crime Survey revealed that, between 2011 and 2014, the proportion of victims

of robbery who reported their attack to the police dropped by 8% while that for sexual assault dropped by 19.9%.⁶⁷

Improving SAPS leadership

On 21 August 2015, Zuma stated that he had written to Phiyega to inform her that he would be establishing a board of inquiry into her fitness to hold office, as per the recommendations of the Marikana Commission.⁶⁸ However, even if this board of inquiry were to recommend the dismissal of the SAPS national commissioner, simply replacing her will not enhance overall senior leadership in the SAPS, given the substantial challenges facing the organisation.

The Marikana Commission report refers extensively to the NDP, which described the SAPS as having become increasingly militarised and re-politicised since 2000.⁶⁹ Arguably, these dynamics have served to influence the organisational culture of the SAPS, a concern recognised by the NDP. It therefore recommends that 'the organisational culture and subcultures of the police should be reviewed to assess the effects of militarisation, demilitarisation and the serial crises of top management'.⁷⁰

Part of the problem has been the ongoing challenge, over the years, of senior appointments that have been made irregularly and for reasons other than the skills and abilities of the appointees. Although there are clear criteria and procedures in the SAPS for making senior appointments, the national commissioner is legally able to override these procedures. Ostensibly, this is to enable the national commissioner to bring new and scarce skills into the organisation. This makes sense, given that new policing challenges for which the SAPS might not be prepared, may emerge over time. For example, with the rise in cyber crime, new and complex skill sets and expertise that are not immediately available within the organisation may become necessary.

Far too often, however, this authority has been misused by SAPS national commissioners to appoint people into senior positions without their having the necessary skills, experience or integrity. This is a problem that has been raised by the Parliamentary Police Portfolio for years, with a former chairperson

stating that such practices in her opinion were, 'wrong, unjust and should not be allowed'.⁷¹

According to the Marikana Commission, finding a solution to changing the culture of the SAPS is 'an urgent priority and has to start at the very top. Other senior officers and rank and file members of the SAPS can hardly be expected to see the need for the SAPS to act in a non-political manner, and to act accordingly, if the example set by their most senior leaders is exactly the opposite'.⁷²

Fortunately for the president and his cabinet, the NDP formally adopted in 2012 provides a number of specific recommendations on how to go about improving the leadership of the SAPS so as to professionalise the organisation.⁷³ These recommendations are summarised and briefly discussed below.

- A National Policing Board (NPB) should be established with multi-sectoral and multi-disciplinary expertise to set objective standards for recruitment, selection, appointment and promotion. *The NDP is silent on the composition of this body, but given its purpose it should include recognised professionals who understand the demands of executive management in large public sector organisations generally, and in the SAPS in particular.*
- The national commissioner and deputies should be appointed by the president after recommendations by a selection panel that would select and interview candidates against objective criteria, following a transparent and competitive recruitment process. *The NDP does not state how the panel should be constituted but the above policing board could play this role so as to ensure that only the best possible men or women are appointed to the top leadership positions of the SAPS.*
- The NDP recommends that a competency assessment of all officers is undertaken. *It is silent on who should undertake this assessment, but arguably it could also be undertaken or overseen by the NPB, and should start by assessing the competency and integrity of those holding the rank of Lieutenant-General, followed by those holding the rank of Major General. Once these two rank*

levels consist only of experienced men and women whose integrity is beyond reproach, the SAPS will have a top management team of approximately 70 people who could then undertake the remaining recommendations to professionalise the SAPS.

- In the next five years a two-stream system should be developed to create high-calibre officers and recruits (non-commissioned officer and officer streams) who will be trained as professionals. *This should ensure that there is an ongoing corps of trained police managers who could take up top positions as they become available and remove the long-standing problem of inappropriate lateral level appointments.*

The commission appears concerned that no concrete action has been taken to implement the various recommendations: 'It is now three years since the National Planning Commission published the National Development Plan, and more than two years since the report was handed to the President.'⁷⁴

The SAPS is a very large and complex organisation, with almost 200 000 personnel facing a range of difficult challenges. However, had these recommendations been implemented once the NDP was adopted by cabinet in September 2012, headway might have been made to improve the SAPS leadership.

Honest and skilled senior leadership will not necessarily guarantee the reduction of crime and the eradication of police misconduct – but such leadership is a prerequisite for the improvement of the organisation. Fortunately the SAPS has highly experienced and honest police managers at all levels. These men and women could provide a solid foundation for professionalising the SAPS, in line with the vision of the NDP. Police appointments need to be depoliticised so that only the best and most honest are able to make it to the top of the organisation.



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