

Media Statement on provision of financial support to families in the Marikana Inquiry

The department of justice has noted calls by Casac on the department to reverse a decision to discontinue financial support to the families of victims of Marikana incident for their attendance of the Inquiry.

The Legal Aid South Africa provide financial aid to the destitute families of the deceased miners and their decision to provide this assistance is based on the fact that the families have a direct interest in the outcome of the Inquiry, in particular if the Commission establish culpability on the part of any of the parties directly referred to in the terms of reference. The Legal Resource⁴ of the families.

Families, to the extent that they have a direct interest in the parties may be effectively assisted by counsel as is the position currently. They are not directly involved. Counsel who represent most of the families do so by placing evidence their own evidence or cross examining witnesses who had testified before the Commission, a function which families cannot discharge themselves. Their attendance of the Inquiry is therefore is similar to that of any other audience who would listen and follow the proceedings, but not as a participant.

The terms of reference for the commission of inquiry list the categories of parties who are directly involved or affected by the fact sought to be established by the Inquiry, and whole conduct or failure to act may have contributed to the tragic incidents. The families do not fall within the categories of the parties listed in the terms of reference. To the extent that any evidence by some of the family members may be relevant in ascertaining the cause of the tragedy, they may participate as witnesses. Regulations applicable to the Commission make provision for the legal assistance to be afforded to any such witness whose evidence may be relevant to the terms of reference of the Commission and families will be entitles to same assistance if they participate as witnesses.

The Department took a decision to afford financial assistance for family members to attend the first session of the Inquiry, and this was with a view to afford them to be present when the Commission commences with the Inquiry which was planned to be preceded by a statement of sympathy to the families. Further attendance of the Inquiry would be left to the choice of the families themselves. The attendance of the first session of the Commission was mainly based on humanitarian basis as it is important that they understand the primary purpose of the Inquiry. There is no legal basis on which the attendance of the family members or representatives can be sustained on state expense.

Even during their attendance of the Inquiry on Monday and Tuesday, some of the families questioned the decision to fly them and book them in expensive hotels when the Commission is not going to give them any money for food. They asked that rather than that money be spent on them to travel from Eastern Cape to Rustenburg, they be send the same monies that are spent on their travel and hotel for buy food for their children as they have lost bread winners due to this tragedy. Some even raised that the Inquiry was opening wounds as the death of their loved ones' are relived, and this does not assist in bringing closure to the loss.

When the department of social development was requested to assist on the previous occasion, it did so as a sympathetic gesture to the families. In as much as we are sympathetic to the families and understand their desire to attend the proceedings, we cannot finance their attendance as that is not covered by any legislative framework that governs the work of the commission. This decision has been communicated to the commission.

Issued by
Mthunzi Mhaga
Justice Spokesperson
0836418141
30 Nov 2012