



## **MEDIA STATEMENT**

**09 September 2013**

### **JUDGE IAN FARLAM DELIVERS RULING ON THE APPLICATION TO POSTPONE THE COMMISSION'S SITTINGS**

On Friday the legal representatives of the injured and arrested miners and the families of most of the miners who were killed at Marikana during the period 13 to 16 August 2012 applied for the postponement of the sittings of the Commission until the outcome of the High Court application brought by the injured and arrested miners against the President, the Minister of Justice and Legal Aid South Africa is known. In the High Court application they are seeking an order that they be given legal aid at State expense to enable them to instruct their present legal team to continue representing them before the Commission.

The Department of Justice sought leave to intervene in these proceedings to oppose the application for a postponement. The applicants opposed the application for leave to intervene but the Commission granted it because it was satisfied that the Department has a sufficient interest in the matter, as the costs of the Commission (which would be increased if the application for the postponement were granted) are paid from the funds voted by Parliament to the Department.

The legal representatives of the applicants submitted that if the postponement they sought were not granted the injured and arrested miners would be prejudiced as evidence would be led from witnesses whom they would, in the absence of their legal representatives, be unable to cross-examine. It was also contended that if the Commission were to proceed to hear evidence in their absence and that of their legal representatives the proceedings would be unfair and that this unfairness could only be prevented if the postponement they sought were granted.

We are satisfied that neither of these submissions is correct. As far as the alleged prejudice is concerned, it is to be noted, as Mr. Mpofu, who appeared for the injured and arrested miners, pointed out; the postponement sought is only until the outcome of the High Court application is known. The situation thereafter is not relevant in this application. Looking ahead, one can say that there are three possibilities in none of which will the injured and arrested miners be prejudiced if the postponement is refused. These possibilities are: (1) that the injured and arrested miners receive funding from some private source before the High Court decides on their application; (2) that the High Court decides in their favour and orders the State to give them the funding they require to enable their lawyers to return to the Commission; and (3) that their application is dismissed by the High Court. Whichever of the first and second possibilities is realised, the result will be the same. The legal representatives will return to the Commission. They will be able to see from the daily transcripts of the evidence led before the Commission whether there are questions which they would have asked the witnesses in cross-examination if they had been here. They will be able to apply to the Commission for the witnesses in question to be recalled for further cross-examination and if the questions they wish to ask are relevant the witnesses will be recalled. If this happens there can be no question of prejudice to the miners concerned. The mere fact that their cross-examination will take place later than it would have done if they had been here all the time can scarcely cause prejudice. This point was forcibly made by Mr Budlender, the senior evidence leader, who opposed

the application for a postponement, and neither of the legal representatives for the applicants dealt with the point in reply. If the third possibility is realised and the legal representatives do not return to the Commission there can also be no prejudice to the miners based on the fact that the evidence was led in their absence because that would have happened in any event once the outcome of the application was known.

We are of the view that the same considerations apply to the suggestion that the proceedings will be unfair if the postponement is refused. Once it is realised that the refusal of the postponement cannot prejudice the miners concerned and that their rights to ask all relevant questions that have not otherwise been asked and to lead evidence are preserved should they obtain the necessary funding and return to the Commission it is clear that no question of unfairness can arise.

For these reasons the application for a postponement is refused.

Ends...

Issued by the Marikana Commission of Inquiry

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