

# Marikana: Bewerings kwel die polisie erg

## Cobus Claassen

Die polisie het gister by die Farlam-kommissie terugbaklei nadat hy daarvan beskuldig is dat hy doelbewus Marikana-inligting en -bewysstukke weerhou en gemanipuleer het.

Adv. Ismail Semanya, die polisie se regsverteenvoerder by die kommissie, het in Centurion gesê hulle is baie bekommerd oor die bewerings.

Hoewel daar aanvanklik berig is die kommissie meen die polisie het gekonkel met getuienis, het regter Ian Farlam, voorsitter van die kommissie, sedertdien vure doodgeslaan en bevestig die sentiment is uitgespreek op grond van voorleggings deur die kommissie se getuienisleier, adv. Geoff Budlender SC.

Semanya het gesê dit is onrusbarend dat Budlender se uitlatings as die kommissie se standpunt voorgehou is.

Farlam het onomwonde bevestig dit is en was nooit die kommissie se standpunt nie.

Semanya het gevra die getuienisleiers moet aandui na watter dokumente verwys word en watter van hul getuies oneerlik was.

Farlam het opnuut benadruk die kommissie het 'n "oop gemoed" oor alle kwessies waarvoor bevindings gemaak moet word totdat die bevindings van alle ondersoeke, alle getuienis en alle aanbiedings aan die kommissie voorgelê is.

Farlam het gesê die aanneemlikheid van Budlender se kommer oor die polisie se beweerde geknoei sal deur die kommissie bepaal word en nie deur die getuienisleiers nie.

Lt.kol. Duncan Scott, wat in die aanloop tot die tragedie 'n beduidende rol gespeel het in die polisie se operasionele plan by Marikana, is gister gepeper met vrae van adv. Matthew Chaskalson SC, een van die advokate wat die getuienis lei.

Budlender het vroeër gesê dele van wat die getuienisleiers bekommer, sal uit kruisondervraging duidelik word, maar hy is "meer as bereid om dit aan ons kollegas te kommunikeer" as dit nie die geval sou wees nie.

Dit het geblyk dat die polisie se operasionele plan van 16 Augustus 2012 nie meer bestaan nie en dat Scott in Desember 'n plan heropgestel het op grond van wat hy kon onthou.

# Madonsela cannot help in Marikana funding case

ERNEST MABUZA  
and KHULEKANI MAGUBANE

THE Office of the Public Protector would not be able to assist the injured and arrested Marikana miners who are trying to obtain government funding for their participation in the Marikana Commission of Inquiry.

Thuli Madonsela said yesterday at a media briefing on the continuing investigations by her office that the issue regarding the fairness of the state funding the South African Police Service's (SAPS) representation at the Farlam Commission, but not that of the mine workers, fell out of her jurisdiction when it went to court. "The constitution is very clear that once a court has spoken, I have no jurisdiction and that is a universal thing," she said.

The matter is before the North Gauteng High Court after an urgent application to the Constitutional Court was dismissed.

The mine workers launched a fresh court bid yesterday to compel the government to provide them with funding for legal representation at the Marikana Commission of Inquiry.

The more than 270 workers' legal representatives stopped attending proceedings at the commission in July because of lack of funding. The workers also failed to obtain an interim order in the high court in July to compel the government to provide it with funding

pending the review of the decisions by Legal Aid SA and Justice Minister Jeff Radebe not to provide them with funding.

Dali Mpofu, advocate for the injured and arrested miners, said yesterday the state was responsible for financing rights guaranteed in the constitution.

He also said the Presidency, the justice minister and Legal Aid SA had misled the public by focusing on the fact that the commission was not a court of law, and its outcomes did not have consequences. He said the constitution stated that everyone deserved a fair public hearing. He said this case was not about access to court, but about access to justice.

The workers are supported in

their quest to get legal funding by the families of the 36 miners who were killed by members of the police in Marikana on August 13 and August 16 last year.

They are also supported by the Association of Mineworkers and Construction Union.

Dumisa Ntsebeza SC, for the families, told the court that all parties must have an equal opportunity to put their cases before the commission. The families had indicated in court papers that they sought to know the truth about what happened in Marikana in order to bring closure and to safeguard their rights in relation to possible future civil claims against the police.

The matter continues.

# Marikana lawyers aim to expose lies

**Hlengiwe  
Nhlabathi**

Political Reporter

**POLICE** have revolted against damning allegations that suggested they deliberately lied and withheld evidence to boost their case in the slaying of mineworkers at Marikana on August 16 last year.

Evidence leaders at the Marikana Commission of Inquiry yesterday stuck to their guns, pointing to "errors" they continue to identify.

"This could have dire consequences," said evidence leader Geoff Budlender, speaking of the extent of these errors.

Police legal counsel Ishmael Semenya hit back at Budlender and his team, demanding proof of the claims.

Semenya demanded to be pointed to specific documents that proved police witnesses had indeed lied. He also wanted to be directed to any evidence that had been withheld as the allegation was very "damning" to the police.

Semenya, who has the likes of police commissioner Riah Phiyega to protect, would respond to the allegation in writing in due course.

But Budlender

said: "The untrue version will be clear during the cross-examination."

Last week, Budlender told the commission there were documents which police had claimed did not exist, and some which gave the impression they were constructed after events.

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**'The untrue  
version will  
be clear'**

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Should this be true, criminal charges could be laid against those found to have committed perjury.

But, all this is not final until a determination can be made by commission chairman Ian Farlam who yesterday wanted complaints on the matter to be ironed out.

Budlender promised Farlam that Semenya would be briefed despite their plan to expose all lies during cross-examination of police strategist Lieutenant-Colonel Duncan Scott.

Scott was part of the team who made a plan to disperse striking Lonmin workers gathered at the koppie.

His testimony continues today.

# Cops' evidence doubts

## **MARIKANA:** INQUIRY TESTIMONY IN QUESTION

»→ **They will indicate aspects of police information thought to be 'not the truth'.**

**E**vidence leaders have concerns about evidence supplied by police to the Farlam Commission of Inquiry, senior evidence leader Geoff Budlender, SC, said yesterday.

"It is a matter for the [SA Police Service] to respond to. It is not as though the evidence leaders have reached a conclusion, we have very serious concerns. We have identified certain of them and we continue to identify them," he said.

"Certain of the matters which have given us cause for concern will be raised in the further cross-examination of [Lieutenant] Colonel Duncan Scott," said Budlender.

In response, Ishmael Semanya, SC, for the police, said the evidence leaders' concerns would be addressed in writing.

Budlender said he would also communicate with the police attorneys and point out to them the parts which had caused concern.

Earlier this month, Budlender sought a postponement of the public hearings to enable the evidence leaders to work through new material running into thousands of pages. In his statement,

he said the new material had been made available by the police and its legal team to explain certain matters.

The statement read: "In the past 10 days we have discovered through the evidence leaders that there must be info that was not disclosed by the police that seeks

to suggest that the information was withheld to try and portray a certain approach to the commission in relation to what has been discovered."

During Budlender's submissions he stated that, in the opinion of the evidence leaders, some of the documents demonstrated

that the police version of events at Marikana, and the evidence of police witnesses at the commission, were in material respects not the truth.

The commission is probing 44 deaths in strike-related unrest at Lonmin mining operations at Marikana last year. – *Sapa*.

# Marikana inquiry a 'sham' without miners

## LAWYER: POOR WORKERS DISCRIMINATED AGAINST

**Ilse de Lange**

**T**he Marikana mine-workers were unfairly discriminated against because they were poor and couldn't afford to pay for a legal representative at the commission of inquiry into the massacre, the North Gauteng High Court was told yesterday.

Advocate Dali Mpofu argued that the commission would become a "one-sided sham" if it was allowed to continue without the injured and arrested miners being able to state their case properly. "What's the point of spending R120 million on something that's not worth the paper it's written on, because it will be a one-sided

sham?" he asked.

The miners want the court to set aside a decision by the Justice Minister and Legal Aid South Africa to refuse them legal funding for the commission proceedings, claiming the decision was unconstitutional.

The High Court in July refused an urgent application to force the president and Justice Minister to grant the miners legal aid at state expense for the commission proceedings pending the outcome of their review application.

The Constitutional Court subsequently dismissed an application for leave to appeal against the court's ruling.

A total of 44 people, including policemen, were killed, at least 78 injured and over 200 minewor-

kers arrested during a strike at the Lonmin mine near Rustenburg last year during which police opened fire on mineworkers on August 16.

Mpofu argued that the miners could be charged with murder if the commission found they had acted unlawfully. Charges against the miners had been provisionally withdrawn to await the outcome of the commission.

The commission would not only make recommendations but also findings of fact, which could be damaging for some, he said.

"What's happening is unfair. Because of our poverty, we're not in the same position as them (the mine and police). We have one unpaid advocate who has to do all the work. They have seven."

# Cops protest over Marikana 'lies' claim!

By SIMON NARE

COPS protested yesterday about "damning" statements suggesting their Marikana inquiry evidence was untrue.

This follows the statement by senior evidence leader Geoff Budlender that they may have manipulated evidence.

Police advocate Ishmael Semenya said at yesterday's hearing in Centurion that Budlender's statements were damaging. He said Budlender's concerns about police evidence would be addressed in writing.

Semenya asked Budlender and his

team to identify documents that led to their opinion.

"They must also identify which of the SAPS witnesses are demonstrated to have been untruthful to this commission," said Semenya.

Budlender said: "We have very serious concerns. We've identified certain of them and continue to identify them as we go. Certain matters which have given us cause for concern will be raised in the cross-examination of Lieutenant-Colonel Duncan Scott."

Semenya said: "About the police version being untrue, I do not hear any an-

swer. It was definitive . . . it was said the version of the SAPS was untrue."

Budlender said: "We are happy to communicate further with our colleagues to tell them where our concerns are if it's not sufficiently clear."

The inquiry into the deaths of 44 people during the Marikana mine strike resumed after a postponement. Budlender asked for it to give evidence leaders a chance to work through thousands of pages of new evidence.

Budlender said they felt some documents showed the police version of events and evidence by police witness-

es were not the truth.

■ Advocate Matthew Chaskalson resumed cross-examination of Scott and poked holes in the police plan. Evidence leaders suspect cops didn't have an adequate plan or changed their plan in desperation.

Scott admitted he knew only the old public order police standing order on crowd control. He was tasked with drafting the operation plan but said he couldn't remember some aspects of it and didn't tell other commanders he was not fully familiar with the standing orders.