

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 118 14 AUGUST 2013 PAGES 12242 TO 12247



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<p style="text-align: right;">Page 12242</p> <p>1 [PROCEEDINGS ON 14 AUGUST 2013] 2 [10:07] CHAIRPERSON: The Commission resumes. I 3 understand that there are going to be ceremonies held at 4 the site of the killings on Friday to commemorate the 5 anniversary of the events of the 16th of August last year, 6 but also to commemorate the killings of certain other 7 persons who died in the period immediately before the 16th 8 and it would not be appropriate for this Commission to sit 9 on Friday. Many of those who are involved with the 10 Commission may well wish to attend that ceremony if it's 11 possible to do so. So we have decided not to sit on 12 Friday, but there's been a further development this morning 13 which I must now report to you. We had previously stood 14 down because we understood that a potential donor was 15 considering providing funding for the arrested and injured 16 miners and we anticipated that the decision would be given 17 before today, but I was informed this morning by someone 18 from the potential donor that the decision has not yet been 19 made but that it would definitely be made before the end of 20 the week. In the circumstances it seems appropriate in the 21 light of the attitude we've adopted so far, to wait till 22 Monday until we know what that decision is. And it may 23 well be that in consequence of the decision the problem or 24 the question of a possible postponement may fall away. It 25 will be unnecessary for us then to consider it. So what</p>	<p style="text-align: right;">Page 12244</p> <p>1 2012, the National Union of Mine Workers, NUM and we are at 2 the moment hearing evidence being presented by Counsel 3 representing the South African Police Service. The process 4 has not been as speedy as any of us would have wished and I 5 wish to refer to three reasons for this, first, there are 6 many interested parties which are represented before us, 7 the number of parties varies from time to time but it is 8 approximately 12. The interested parties often wish their 9 lawyers to cross-examine the witnesses who have given 10 evidence. In some cases to challenge evidence that's been 11 given because there are a number of factual disputes which 12 we will have to resolve. In other cases to elicit 13 information which the party concerned wishes to have on 14 record. With so many witnesses and so many cross-examiners 15 it is inevitable that progress has not been rapid. Second, 16 all the evidence has been interpreted in several languages 17 in the auditorium and in a room nearby. This has been 18 necessary because this is a public process. The Commission 19 is an exercise in public accountability, it is important 20 that as many as possible of those who wish to do so should 21 be able to hear and understand the evidence as it is given. 22 This is particularly the case for the families and the 23 loved ones of the deceased, namely; the miners, the 24 employees of Lonmin and the members of the police service, 25 all of whom were killed in the period covered by the events</p>
<p style="text-align: right;">Page 12243</p> <p>1 we're going to do, is we're going to adjourn in a short 2 while until Monday by which time we will know what the 3 decision of the potential funder is. But before we 4 adjourn, I'd like to make a short comment on some of the 5 matters that have formed the subject of public debate in 6 the last few weeks. As I've said, this week marks the 7 anniversary of the events which the Commission was 8 established to investigate and my colleagues and I think 9 it's appropriate to say something about the progress that 10 we've made so far and about the challenges facing the 11 Commission as we move ahead. 12 The Commission has now held 114 sessions. We've 13 heard submissions and evidence which run into more than 12 14 000 pages of transcript. We've heard extensive opening 15 statements by interested parties. We've conducted 16 inspections in loco and we have viewed video recordings of 17 some of the events of that week in August 2012. We've 18 examined a very large number of documents which now form 19 part of the evidence and we've heard the evidence of a very 20 large number of witnesses who have been examined and cross- 21 examined. We've heard the evidence of witnesses who have 22 been presented by the following interested parties, in 23 alphabetical order, the Association of Mine Workers and 24 Construction Union, AMCU, the injured and arrested people 25 who were on the koppie in the week terminating on 16 August</p>	<p style="text-align: right;">Page 12245</p> <p>1 which we are currently investigating. 2 Inevitably the process of interpretation has 3 slowed down the progress of the Commission. In one case 4 the evidence of the witness, which was given in Afrikaans, 5 had to be translated first into English and thereafter into 6 various vernacular languages. The process of 7 interpretation, has for the reasons I've explained, been 8 necessary in order to ensure the inclusiveness of the 9 process. Some time ago the Commission attempted to address 10 this problem by requesting The Department to arrange a 11 simultaneous translation service. We were advised that 12 this could not be done for reasons of cost. The Commission 13 has renewed this request and I'm pleased to report that The 14 Department has now made the necessary facilities available. 15 I am hopeful that this will speed up the process 16 considerably. 17 The third factor to which I refer is the 18 following, in recent weeks a further delay has been caused 19 by the fact that funding has not been provided to pay the 20 fees of the legal representatives of the injured and 21 arrested persons and the Commission has stood down while 22 attempts were made to resolve that. As I've previously 23 said these attempts have not yet reached a final outcome. 24 It's obviously desirable that the proceedings of the 25 Commission should be as inclusive as possible. There is a</p>

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1 case pending before the Constitutional Courts dealing with
2 the funding question, but it's obviously not appropriate
3 for me to say anything about the legal merits of that case.

4 Now the members of the Commission are very
5 conscious of the need to reach a conclusion without undue
6 delay and what will be required in this regard, to achieve
7 this, is the total co-operation and commitment of all the
8 parties to this end. Although, as I've said already, the
9 simultaneous translation service which will be available
10 from now on will assist us to some extent in achieving this
11 end, but that will clearly not be enough by itself. In
12 bringing the work of the Commission to a conclusion we have
13 to strike the proper balance between two matters. On one
14 hand to ensure, the need to ensure that the process is fair
15 and as inclusive as possible. On the other hand, the need
16 for us to report as soon as possible to the President and
17 to the people of South Africa on the very important matters
18 which are raised in our terms of reference. The Commission
19 is committed to completing its task without undue delay and
20 will do everything reasonable in its power to achieve that
21 result. Before we adjourn does anybody wish to add
22 anything or say anything further? Mr Budlender, you are
23 now the senior evidence leader, do you wish to say
24 anything?

25 MR BUDLENDER SC: Chair, nothing except

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1 to say that we respectfully endorse what has been said by
2 you and your commissioners.

3 CHAIRPERSON: Does anybody else
4 representing any of the other parties wish to add anything
5 before we adjourn?

6 MR GUMBI: Yes, Chairperson, on behalf of
7 Lieutenant Baloyi we indicated that we do have a pending
8 judgement in respect of his finding and I must bring to the
9 attention of the Commission that the judgment is still
10 outstanding and we don't know the impact of the judgment
11 after that.

12 CHAIRPERSON: As soon as you have any
13 information in that regard I'd be grateful if you'd
14 communicate it to the evidence leaders and to the Secretary
15 to the Commission so that we'd be aware of it as soon as
16 possible. I don't know whether you'll get the judgment
17 before we resume on Monday, but if you do I'd be grateful
18 if you could tell us.

19 MR GUMBI: I will do that, Chairperson.

20 CHAIRPERSON: No-one else appears to wish
21 to make any further comment, so on that note we will
22 adjourn until Monday morning at 9:30.

23 [COMMISSION ADJOURNED]

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