

18 July 2013

MEDIA RELEASE

MARIKANA COMMISSION OF INQUIRY – APPLICATION FOR STATE FUNDING DISMISSAL CLARIFIES LEGAL AID SA MANDATE

Legal Aid SA accepts the North Gauteng High Court decision to dismiss the urgent application for state funding for the legal representation of the injured and arrested miners in the Marikana Commission of Inquiry.

“This clarifies the organisation’s mandate in as far as commissions are concerned i.e. that we are not funded to provide legal aid in Commissions of Inquiry. Furthermore, if the court had ruled that we should provide legal aid in this instance, this would have affected the sustainability of the organisation in providing access to justice in criminal and civil legal aid matters for the poor and vulnerable”, says the Chief Executive Officer of Legal Aid SA Ms Vidhu Vedalankar.

Legal Aid SA is mandated by the Constitution to provide legal assistance in criminal and civil matters to the poor and vulnerable. “Due to funding constraints some limitations are placed on the granting of the much needed legal aid for the indigent in criminal and civil matters. Most of our budget is consumed by the criminal legal aid, we have a lot more to do on civil legal aid”, says Vedalankar. Thus the additional responsibility of providing legal aid assistance to witnesses in Commissions of Inquiry would have meant less assistance in civil legal aid matters.

Legal Aid South Africa therefore opposed the application for funding for the following reasons:

- Both the Legal Aid Act and the Legal Aid Guide provide for legal aid in respect of criminal and civil court proceedings. It does not provide for legal aid in respect of proceedings before commissions, which are not judicial bodies but bodies that function within the Executive arm of government. As commissions are not provided for in our enabling legislation we are not funded to provide such services.
- In the present instance, a specific discretion was exercised in respect of family members of the deceased, consisting *inter alia* of widows and orphans who have no personal knowledge of the events which form the subject matter of the enquiry. They have lost their bread winner

and women and children have been identified as a particularly vulnerable group. Legal aid was approved on a very limited basis and as an exception to the general limitation relating to the funding of legal representation for witnesses appearing before commissions.

- If we are required, as a general rule, to fund legal representations for witnesses appearing before commissions that will mean that ordinary south Africans who relied on legal aid for criminal and civil proceeding where they face substantial injustice may be deprived of access to legal representation in favour of witnesses appearing before commissions.
- Legal Aid SA must prioritize its assistance. It must be sustainable. In the foreword to the Legal Aid Guide, Judge President Mlambo as Chairperson of Legal Aid SA states that:
“After all it is not possible to provide legal aid in all instances due to budgetary and resource constraints. It is furthermore not possible for Legal Aid SA to fulfil all the legal representation needs of the poor in South Africa.”

- Ends -

-

Issued by the Communications Department of Legal Aid South Africa. For more information or interview requests, please contact Mpho Phasha on 082 603 4607, email: MphoP@legal-aid.co.za or Nelisiwe Masina on 079 541 6344, email: nelisiwem1@legal-aid.co.za

Visit our website at www.legal-aid.co.za or call the Legal Aid Advice Line on 0800 110 110.