



21 November 2013

## Media statement

### **LEGAL AID SOUTH AFRICA WELCOMES THE NORTH GAUTENG HIGH COURT'S DECISION TO GRANT LEAVE TO APPEAL JUDGMENT IN THE MARIKANA COMMISSION OF INQUIRY**

Legal Aid SA welcomes the North Gauteng High Court's decision yesterday of granting it leave to appeal the recent judgment, which compels the organisation to provide funding for the legal representation of the injured and arrested miners in the Marikana Commission of Inquiry.

"Whereas it may be desirable to fund commissions in almost all instances where indigent persons are affected, it is our view that unless specific provision thereof is made, the Board and management of Legal Aid SA have a fiduciary duty to ensure compliance with Legal Aid Act and the Guide. We also stand by our view that the judgment will have an effect on the sustainability of the organisation in providing access to justice in criminal and civil legal aid matters for the poor and vulnerable," says the Legal Aid SA's CEO Ms Vidhu Vedalankar.

In coming to its judgment, the Court considered issues such as; infringement of the applicants right to equality (section 9), secondly, whether section 34 of the constitution (right to access to the courts) was applicable and thirdly, whether the decisions of opposing respondent in refusing to fund the commission was irrational and had to be set aside. The court proceeded to quote an excerpt from the constitutional court judgment which stated that it would be admirable to fund the injured miners if their adversaries are mining corporations and state organs. It went further to say that unfairness may arise if adequate legal representation is not afforded.

Ms Vedalankar argues: "what the court did not rely on is that the constitutional court further stated that "but this does not mean that courts have the power to order the executive branch of government on how to deploy state resources. We also hold the view that the approach taken by the court is not supported by case law and there is merit in Legal Aid SA appealing on this ground. We therefore believe that this case is

worth pursuing further in order to determine and clarify; first, the applicability of section 34 in commissions of enquiry; the criteria set for entitlement of legal representation; whether legal aid is available in commissions of enquiry; rationality or otherwise of our decision to differentiate in funding”.

**Issued by the Communications Department of Legal Aid South Africa. For more information, please contact the National Spokesperson, Mpho Phasha on 011 877 2081/2143  
Visit our website at [www.legal-aid.co.za](http://www.legal-aid.co.za) or call the Legal Aid Advice Line on 0800 110 110.**

Please be reminded that the name of our organisation **Legal Aid South Africa** **is correctly abbreviated as Legal Aid SA** and not as LASA. We respectfully request that you use the correct abbreviation **Legal Aid SA** which is representative of our Mission to deliver quality **legal aid** services to the poor and vulnerable in South Africa.