PRESS STATEMENT
20 July 2014

Marikana legal funding: correcting inaccurate reports

SERI wishes to correct an inaccurate and misleading report by reporter Loyiso Sidimba that appears on page 7 of today's Sunday Independent and has been picked up by other media houses.

In his report Mr Sidimba claims that lawyers for the arrested and injured miners at the Marikana Commission of Inquiry "have received about R5.13 million in legal fees".

This is not true. The papers submitted to the Supreme Court of Appeal by Legal Aid SA in fact state that no money has yet been paid to the miners, but that up to R5.13 million has been budgeted in terms of a contract that has yet to be concluded between Legal Aid SA and the miners' legal team.

Mr Sidimba's erroneous claim misquotes written submissions filed by SERI at the Supreme Court of Appeal in the case of Legal Aid SA v Magidiwana, due to be heard on 8 September 2014. Paragraph 75 of those submissions makes clear that up to R5.13 million has been tendered, but not yet disbursed, to the miners' legal team. SERI submissions do not say, and could not reasonably be understood to say, that R5.13 million has been paid to the miners' lawyers.

The terms and conditions attached to Legal Aid SA's tender of funding have not yet been finalised or agreed to by Legal Aid SA or the miners, and the R5.13 million figure is clearly a maximum figure that has been budgeted for the miners' representation. It in no way reflects any amounts actually disbursed for the miners' representation at the Marikana Commission.

All of the papers filed in the appeal are freely available from the Supreme Court of Appeal Registrar in Bloemfontein. Mr Sidimba has clearly not read them. Nor did he seek comment from SERI, or obtain comment from any of the other parties to Legal Aid SA appeal. Had he done so, he would have been apprised of the true position.

We call on Mr Sidimba and the Sunday Independent to retract the falsehoods printed in Mr Sidimba's story and issue the appropriate apology forthwith.

In Legal Aid SA's appeal, SERI represents the families of 36 of the miners killed at Marikana on 13 and 16 August 2012. We also act for the Association of Mineworkers and Construction Union (AMCU). The families and AMCU oppose the appeal because they consider the miners' continuing participation in the Marikana Commission as essential to their case at the Commission, and to the Commission's ability to produce a fair and accurate report.

Legal Aid SA has already provided funding to the families to pay for their legal representation at the Commission. The families and AMCU have submitted to the Supreme Court of Appeal that there was no rational basis for Legal Aid SA to provide funding to the families and not to the arrested and injured miners. They further submit that this amounts to arbitrary discrimination against the miners, in breach of section 9 (1) of the Constitution, 1996. It is unfortunate that Mr Sidimba, having spent a great deal of time and effort explaining Legal Aid SA's case, chose to exclude the submissions made by AMCU and the families from his report.

Finally, Mr Sidimba's report, that Legal Aid SA could fund 1000 people's legal fees with the up to R5.13 million it has budgeted for the miners, requires interrogation. The fact is that there are approximately 300 miners, and the cost and complexity of representation at the Commission is far greater than that faced by an ordinary civil litigant. In SERI's view, these facts make Legal Aid SA's claim far less sensational than Mr Sidimba seems to think it is.

- Read more on the case and SERI's submissions here.

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