Families to make closing arguments before the Marikana Commission

On Tuesday 11 November 2014 the families of 36 of the deceased miners killed at Marikana in August 2012 will deliver closing arguments before the Marikana Commission of Inquiry. Advocate Dumisa Ntsebeza SC, instructed by SERI, will argue on behalf of the families.

It has been a long and painful journey for the families. They have attended the Commission for two years in order to discover the truth about what happened to their loved ones, and why. They have come to a number of conclusions about what happened between 13 and 16 August 2012, and who bears responsibility for the massacre that occurred.

The families, like most South Africans, were shocked and appalled at television footage of miners being gunned down by police on 16 August. The police claim that they shot all the miners in self-defence, yet the SAPS has failed dismally to present any convincing evidence that this is the case. All of the strikers who were killed at scene 1 were shot multiple times with the fatal wound being to the upper body. Not a single one of the police officers who fired shots at scene 1 reported even a wound or a scrape. The strikers shot at scene 1 were only provided with medical treatment an hour after they had been shot. The families are enraged at the death of Mr Mdze, who bled to death at scene 1, because it is clear that he could have survived had he been given medical assistance, even simply a tourniquet tied around his arm. Mr Gwelani, who had gone to the koppie to deliver food to his cousin, was shot in the back of the head while 210 metres away from the TRT line, clearly posing no threat to the police.

The families will argue that scene 1 was an attempt by the SAPS to encircle the strikers: in essence, a trap. While there is debate on whether there was a premeditated intent to kill the strikers, or to disarm and forcibly arrest them, it is indisputable that the police acted with, at least, dolus eventualis. Evidence presented before the Commission showed that the SAPS channelled the strikers to the line set up by heavily-armed Tactical Response Team (TRT) members, and that the strikers never actually attacked the line, as argued by the SAPS. The SAPS want to be completely exonerated from all of the killings and to take no responsibility for any of the shootings. The families strongly align themselves with the South African Human Rights Commission’s (SAHRC) submissions that the approach the Commission must adopt is that the onus is on the SAPS to justify each shot and killing.

The families argue that the SAPS members are prima facie guilty of murder, alternatively culpable homicide, attempted murder and/or assault with intent to do grievous bodily harm (and SAPS civilly liable) for the deaths and injuries at scene 1. The families want the Commission to recommend that the following people be referred for investigation and prosecution: Brigadier Calitz, then Minister of Police Nathi Mthethwa, the SAPS leadership that endorsed the tactical intervention at the extraordinary session of the National Management Forum (NMF) on 15 August; SAPS members of the police joint operational co-ordinating committee (JOCCOM) who attended the Special JOCCOM meeting on 16 August at which the decision to implement the tactical plan was made; the commanders of the different SAPS units who took part in the operation; and the individual shooters on 16 August.

Furthermore, after two years the families have yet to hear a justification as to why the police were allowed to seek out and assassinate 17 people at scene 2, a full 13 minutes after the killings at scene 1. The families believe that there was more than enough time for the SAPS to call a halt to the operation and that, if it had done so, these killings would not have occurred. This was grossly negligent under the circumstances and the SAPS should be held liable for the killings at scene 2. The relevant commanders in the JOCCOM, Brigadier Calitz, the police commanders responsible for scene 2 and the individual shooters at scene 2 should all be investigated and prosecuted for the unlawful killings.
The SAPS have failed to present any evidence justifying these killings except for the death of Thobile Mpumza, who was shot 13 times and sustained 21 wounds. Constable Sebatjane gave evidence at the Commission claiming that he shot Mr Mpumza 10 times in self-defence. The families will argue that objective evidence and statements from SAPS officials disprove this. Further the nation has seen the video footage of a police man bragging about shooting Mr Mpumza 10 times. The families will submit that the Commission must recommend the prosecution of Constables Sebatjane, as well as Constables Mabe and Buthelezi who were also clearly involved.

The families believe that the SAPS’ discharge of tear gas and stun grenades on 13 August amounted to an unprovoked attack against the strikers and caused the confrontation that led to the deaths of Mr Mati, Mr Jokanisi and Mr Sokanyile. The SAPS is thus also responsible for these deaths. Mr Sokanyile was shot execution-style in the back of the head with an R5 bullet from over 70 metres away. The families want the Commission to recommend that the six police officers identified as forming part of the group that shot and killed Mr Sokanyile be investigated and prosecuted for his murder.

Finally, the families feel betrayed when they consider Lonmin’s role in the massacre. They expected the company to refuse the increase demanded by the workers or to simply dismiss them. They did not expect their loved ones to be killed. The families believe that Lonmin used political influence to get the police to the break the strike, and that they were well aware of the probability of bloodshed, but cared more about their profits. The families want the Commission to find that Lonmin senior executives should be charged as accomplices to the crimes committed by the SAPS on 16 August.

Lonmin has delayed in upholding its undertaking to ensure that one family member per family is provided with employment at Lonmin. The families want Lonmin to honour its undertaking in this regard without any further delay. The families also want the company to undertake the expense of completing houses partially constructed by their deceased family members. The families feel very strongly that Lonmin’s position of not providing any assistance to the Thelejane, Gwelani and Mpumza families, on the basis that their loved ones were not Lonmin’s employees at the time that they were killed, is cruel and arbitrary in the extreme. They want Lonmin to provide assistance to these families as it does to the other families.

The families agree with the Legal Resources Centre (LRC) submission that the Commission should recommend that compensation be paid to the victims, and that Lonmin must compensate the dependants of the deceased miners for loss of support. Further, the families want the state to acknowledge civil liability for the loss suffered by the dependants of those killed on 13 and 16 August, as well as those who were injured, and to provide compensation.

According to Nomzamo Zondo, SERI’s director of litigation and attorney for the families: “The families have sacrificed a lot to attend this Commission and have endured the torture of watching their loved ones gunned down without regard for their humanity. They listened to people label their husbands, brothers and sons as multi-crazed savages, and watched the blatant manipulation of evidence by the SAPS and Lonmin. They endured this so that they could at some point demand justice for their loved ones’ deaths. This time has come. The families want the Commission to recommend the criminal prosecutions of all those who were implicated in the deaths and compensation for the loss that they have suffered.”

- Information on the 37 miners killed at Marikana on 13 and 16 August 2012 here.

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