Marikana Commission Terms of Reference amended

The Socio-Economic Rights Institute of SA (SERI) has noted with concern the deletion of paragraph 1.5 from the Marikana Commission of Inquiry's Terms of Reference, and the announcement that the Commission intends to curtail its proceedings on 31 July 2014.

The clause in paragraph 1.5 empowered the Commission to investigate “the role played by the Department of Mineral Resources or any other government department or agency in relation to the incident and whether this was appropriate in the circumstances and consistent with their duties and obligations according to law.” The deletion of this clause has created the impression that the Commission does not intend to require any of the relevant cabinet Ministers to testify before it in relation to the role they played in the events leading up to the 16 August 2012 massacre at Marikana.

SERI remains of the view that, in particular, the Minister of Police has questions to answer in relating to his role in instigating and escalating the police operation that led to the massacre. Any failure to require him or any other cabinet minister in possession of relevant information to testify before the Commission would seriously undermine the Commission's credibility.

Today SERI made enquiries with the Commission. We sought clarification on the meaning and effect of deleting paragraph 1.5 of the Terms of Reference. We have been assured that –

1. Phase 1 includes a full investigation of the role of the SAPS, and why they acted as they did. If any instructions were given to the SAPS, or if any other conduct by people outside the SAPS, including cabinet ministers, led to the SAPS acting as they did, that would fall squarely within Phase 1. This issue is covered by paragraph 1.2 of the Terms of Reference, which has not been amended. (Phase 1 of the Commission’s enquiry deals with the injuries and deaths during 9 to 16 August 2012, and responsibility for those injuries and deaths.)

2. The removal of paragraph 1.5 of the Terms of Reference does not in any way affect Phase 1 of the Commission’s enquiry.

3. The Commission has received statements from the Minister of Police and Mr Cyril Ramaphosa with regard to their role in relation to the conduct of the SAPS. As matters currently stand, it is anticipated that they will be called to give oral evidence. The deletion of paragraph 1.5 of the terms of reference will have no impact on that.

SERI remains concerned that the deletion of paragraph 1.5 now makes it unlikely that the Commission will consider any of the broader policy determinants of the events of, and leading up to, 16 August 2012. This is a missed opportunity.

Finally, SERI believes that even though the Commission’s mandate has now been significantly narrowed, it will not be able to hear all the necessary evidence before 31 July. We will be engaging with the Commission on this issue and will make further announcements in due course.

- Terms of Reference (12 September 2012) here and amendments (5 May 2014) here.

Contact:

Stuart Wilson, executive director of SERI: stuart@seri-sa.org / 072 265 8633