

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 85    3 MAY 2013    PAGES 8950 TO 9035

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 3 MAY 2013]  
 2 [09:42] CHAIRPERSON: The Commission resumes.  
 3 Majoor-Generaal, u is nog steeds onder eed. U is eintlik  
 4 generaal-majoor in Afrikaans, is dit nie? Ek is jammer ek  
 5 het die verkeerde benaming gebruik. Generaal-Majoor, u is  
 6 nog steeds onder eed.  
 7 CHARL ANNANDALE: s.o.e.  
 8 CHAIRPERSON: Mr Bizos, you're still  
 9 cross-examining.  
 10 MR MSIMANG: Chairperson, Mr Chairperson,  
 11 before the cross-examination resumes, we want to make an  
 12 observation - an observation which I wouldn't really call  
 13 an objection - into the manner the cross-examination is  
 14 being conducted. There are questions asked, simple  
 15 question, and then we get a very, very lengthy answer, and  
 16 I know you ruled yesterday that the witness should be  
 17 permitted to answer as long as possible, but I think there  
 18 must be boundaries. The witness should not -  
 19 CHAIRPERSON: Sir, I didn't say as long  
 20 as possible, but I said if a witness is asked a question  
 21 and told he must say yes or no, he's entitled to say I'm  
 22 not going to answer yes or no, I'll give a qualified  
 23 answer, but I think the point you've made is that some of  
 24 the answers were rather lengthy and perhaps we must ask the  
 25 witness, if possible, to keep his answers within reason, if

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1 that's what you're saying, within reason, but if he feels  
 2 he can do so in order to give justice to the answer he's  
 3 giving. Would that be a fair approach?  
 4 MR MSIMANG: That will be a fair  
 5 approach.  
 6 CHAIRPERSON: Let's hear what Mr Semenya  
 7 says about it. Mr Semenya?  
 8 MR SEMENYA SC: Chair, if -  
 9 CHAIRPERSON: Subject to the proviso that  
 10 he must obviously be in a position to give what he  
 11 considers to be a fair answer to the question which does  
 12 justice to the answer he's giving.  
 13 MR SEMENYA SC: Part of the problem,  
 14 Chair, is that the questions are open-ended and they invite  
 15 that type of long answers to them.  
 16 CHAIRPERSON: You will remember on  
 17 [inaudible] occasion [inaudible] suggested he reformulate  
 18 his questions to avoid that problem. But anyway, a concern  
 19 has been expressed and I'm sure that the Major-General will  
 20 do his best to ensure that his answers are not  
 21 unnecessarily prolix. I'm not saying they necessarily have  
 22 been so far, but anyway, it's a point you've raised and  
 23 it's on the table. Okay, Mr Tip, I understand - sorry,  
 24 before you - some of the questions, Mr Msimang, of course  
 25 did call for long answers because Mr Bizos put a lot of

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1 material to the witness and the witness had to deal with it  
 2 all in his answer. Your complaint isn't about those  
 3 answers, I take it, but anyway, let's not regard it as a  
 4 complaint. It's really a suggestion for future. Would  
 5 that be fair?  
 6 MR MSIMANG: It will be fair,  
 7 Chairperson.  
 8 CHAIRPERSON: And you would accept  
 9 obviously that the witness mustn't be put under constraints  
 10 whereby he's not able to give what he considers to be an  
 11 adequate answer that does justice to what he wants to say.  
 12 You'll be the first to accept that, it take it.  
 13 MR MSIMANG: That is acceptable, and even  
 14 the objections and the interjections sometimes, because  
 15 they also refer to certain pages and then the witness  
 16 starts reading all those pages as answers. Even that is a  
 17 problematic, Chairperson.  
 18 CHAIRPERSON: Okay, well let's take each  
 19 case as it arises, but anyway, I'm aware of the point that  
 20 you've raised. Mr Tip, I understand you have something  
 21 rather sad to tell us?  
 22 MR TIP SC: Thank you, Chair. Yes,  
 23 everyone here will recall Mr Albert Gegeleza who was one of  
 24 the four NUM witnesses who testified earlier this year. He  
 25 very sadly passed away in the early hours of this morning

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1 and after a long illness, I may say that he was not a well  
 2 man when he gave his evidence and we thought it fitting  
 3 that the Commission should be aware of that and we are sure  
 4 that all the parties also would feel that they would like  
 5 to be informed of that sad fact.  
 6 CHAIRPERSON: Thank you for telling us of  
 7 this sad event. Would you kindly convey to his family the  
 8 sincere condolences of the Commission. We're very sorry to  
 9 hear the news. Our sympathy goes out in this period of  
 10 their loss.  
 11 MR TIP SC: Chair, we're very  
 12 appreciative of that and we'll certainly see to it that  
 13 those remarks are conveyed.  
 14 CHAIRPERSON: Thank you. Mr Bizos.  
 15 Major-General, you've heard the discussion between Mr  
 16 Msimang, Mr Semenya, and myself. I don't want you to be  
 17 constrained in any way to give answers which do not do  
 18 justice to what you want to convey to us. It's important  
 19 we get your evidence to be able to weigh it up fully. Mr  
 20 Msimang was afraid that some of your answers were unduly  
 21 long, but that is a matter for debate that I don't propose  
 22 entering into, but the fact is I want you to appreciate  
 23 that your evidence is very important and we don't want you  
 24 at any point to feel that you're being handicapped in any  
 25 way to giving your evidence to us as fully as you consider

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1 it necessary for us to hear.

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

3 baie dankie –

4 CHAIRPERSON: I understand also that

5 depends to some extent on the question you're asked. Some

6 questions may almost invite lengthy answers; others can be

7 satisfactorily answered in a short way, but that's a

8 decision you have to make when each question is put to you.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 ek sien die opmerking in die regte konteks. Dankie.

11 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):

12 Thank you, Mr Chairman. General, we have heard from you

13 and others that the happenings at Marikana on the 16th of

14 August were unique and unprecedented. Do you share that

15 view?

16 GENERAAL-MAJOOR ANNANDALE: Ek deel dit,

17 Voorsitter.

18 MR BIZOS SC: Now we know that the

19 environment or other circumstances play an important part

20 in the decisions that are made at any given time, and they

21 have to be taken into consideration. Would you agree?

22 GENERAAL-MAJOOR ANNANDALE: Ek stem saam,

23 Voorsitter.

24 MR BIZOS SC: Have you any knowledge of

25 what happened on the 22nd of May 2012 where there was a very

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1 large demonstration in the vicinity of Marikana?

2 GENERAAL-MAJOOR ANNANDALE: Ek kan nie

3 die betrokke demonstrasie onthou nie, nee Voorsitter.

4 MR BIZOS SC: Well, perhaps the details

5 that are to be found in the statement, which is not yet an

6 exhibit, of Joseph Omphile Merafe – we ask for leave to

7 hand it in, Mr Chairman, and given an exhibit number.

8 CHAIRPERSON: Certainly, Mr Bizos, if you

9 would hand it up – it will be exhibit GGG15, I believe.

10 Now Mr Bizos, I don't know how you're going to handle this

11 statement in cross-examination. I see it is made by a

12 lieutenant-colonel. It's one of the, presumably one of the

13 police statements.

14 MR BIZOS SC: Yes.

15 CHAIRPERSON: I don't know whether the

16 Major-General has read it. I don't know whether it will be

17 –

18 MR BIZOS SC: There is only one paragraph

19 in this that I want to deal with, Mr Chairman. Have you

20 got a copy, General?

21 GENERAAL-MAJOOR ANNANDALE: Ek het 'n

22 afskrif, dis korrek.

23 MR BIZOS SC: Please turn to page 8,

24 paragraph 9 of the statement. Has it got an exhibit

25 number?

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1 CHAIRPERSON: I have given it the exhibit

2 number GGG15. Mr Bizos, I'm not sure whether you were here

3 when I said previously that in future when exhibits are

4 going to be handed up during the course of the day I'd

5 appreciate it if we were given copies the day before so we

6 can study them the night before. I did make that as a

7 request. If I have to turn it into a ruling, I will do so,

8 but I take it you weren't aware of that, but please, I hope

9 everyone will remember that in future.

10 MR BIZOS SC: The statement only came to

11 my notice last night, Mr Chairman, but we will try and

12 observe that direction. Thank you.

13 CHAIRPERSON: Not only you, but your

14 colleagues as well.

15 MR BIZOS SC: Would you like to read it

16 out, or do you want me to read it out?

17 CHAIRPERSON: It's actually page 3, Mr

18 Bizos, it's headed 8 because it's paragraph 8.

19 MR BIZOS SC: I'm sorry.

20 CHAIRPERSON: It's paragraph 9 on page 3

21 of the statement.

22 MR BIZOS SC: Yes.

23 CHAIRPERSON: Perhaps the witness could

24 get a chance to read it silently to himself before you

25 proceed.

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1 MR BIZOS SC: Yes.

2 CHAIRPERSON: And when he's ready he'll

3 let us know.

4 MR BIZOS SC: Yes.

5 GENERAAL-MAJOOR ANNANDALE: Dankie,

6 Voorsitter, ek het die paragraaf gelees.

7 MR BIZOS SC: It would appear that

8 despite the 15 000, some of whom were armed, that members

9 of VISPOL and POP and Tactical Response Team members

10 managed to deal with the 15 000 without any casualties.

11 GENERAAL-MAJOOR ANNANDALE: Dit wil so

12 voorkom, Voorsitter.

13 MR BIZOS SC: I know that similes for

14 comparisons very often are not complete solutions, but to

15 assert that what happened in Marikana was unprecedented

16 isn't correct, is it?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 ek is nie bewus van die omvang en die omstandighede rondom

19 hierdie spesifieke insident nie. Uit die paragraaf wat aan

20 my voorgehou is kan ek nie lees dat daar enige aanval op 'n

21 polisielyn plaasgevind het nie, en ek weet ook nie wat die

22 aanloop was tot hierdie situasie nie.

23 MR BIZOS SC: And we also don't know

24 whether they used razor wire. We don't know whether they

25 used gas. We don't know if they used –

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1 CHAIRPERSON: - gas, Mr Bizos. They used  
2 a CS canister.  
3 MR BIZOS SC: I'm sorry, Mr Chairman?  
4 CHAIRPERSON: They used a CS canister,  
5 didn't they?  
6 MR BIZOS SC: Yes.  
7 CHAIRPERSON: Isn't that gas?  
8 MR BIZOS SC: Yes. No, I'm sorry, yes I  
9 withdraw that question. But there were no casualties.  
10 That's really –  
11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
12 ek het reeds geantwoord in terme van hierdie paragraaf blyk  
13 dit dat daar nie enige sterftes/beserings was nie.  
14 MR BIZOS SC: The other situation where  
15 there was a death was the Tatane incident. You know about  
16 that?  
17 GENERAAL-MAJOOR ANNANDALE: Ek is bewus  
18 van die Tatane insident, dis korrek.  
19 MR BOOI: I am aware of the total  
20 incident, yes.  
21 MAJOR-GENERAL ANNANDALE: Tatane  
22 incident.  
23 CHAIRPERSON: It's Tatane, T-A-T-A-N-E.  
24 MR BOOI: Sorry, I've got it, Mr  
25 Chairperson.

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1 MR BIZOS SC: There was a death there.  
2 GENERAAL-MAJOOR ANNANDALE: Dit is  
3 korrek.  
4 CHAIRPERSON: I'm informed that the  
5 previous interpretation was not recorded because the  
6 interpreter's microphone was off. Is that correct? So –  
7 MR MAHLANGU: The interpretation was, I  
8 am aware of the Tatane incident.  
9 MR BIZOS SC: There was considerable  
10 public disquiet about that death.  
11 GENERAAL-MAJOOR ANNANDALE: Daar was,  
12 Voorsitter.  
13 MR BIZOS SC: And there was even greater  
14 disquiet when the nine policemen that were involved in it  
15 were acquitted for the lack of evidence.  
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
17 my enigste kommentaar is dat daar 'n bevoegde hof aangestel  
18 was wat 'n bevinding gemaak het en ek het verneem dat daar  
19 persone is wat nie noodwendig saamstem nie.  
20 MR BIZOS SC: The significant reason why  
21 the proper court could not come to a conclusion is that  
22 although two policemen had made statements before, they  
23 were not prepared to repeat those statements before the  
24 court.  
25 CHAIRPERSON: Mr Bizos, I'm not sure as

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1 to the relevance of that question. Perhaps you can  
2 enlighten me on that?  
3 MR BIZOS SC: It will become apparent, Mr  
4 Chairman.  
5 CHAIRPERSON: You give me your assurance,  
6 Mr Bizos?  
7 MR BIZOS SC: Yes, it will become  
8 apparent that there is some relevance to that.  
9 CHAIRPERSON: I accept your assurance.  
10 If counsel me the assurance –  
11 MR BIZOS SC: Yes.  
12 CHAIRPERSON: - I'll leave the matter  
13 there.  
14 [10:02] MR BIZOS SC: It was a situation where  
15 nine policemen were involved. Two of them made statements  
16 implicating their fellow policemen. They went to court.  
17 They reneged on the statements, and the nine, all nine said  
18 they could not identify the one that actually shot. You  
19 accept that, that that is what happened?  
20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
21 ek is nie bewus van die besondere, of die besonderhede nie.  
22 Ek moet aanvaar as mnr Bizos so sê dat dit waarskynlik so  
23 was, maar ek is nie bewus daarvan nie.  
24 MR BIZOS SC: The facts are in the public  
25 domain, but what I want to put to you, that that is an

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1 example of policemen going out of their way to protect  
2 their fellow policemen, even though a crime was committed  
3 in their presence.  
4 CHAIRPERSON: Mr Bizos, I don't mean to  
5 stop you. I understand the point you're making, but I  
6 wonder whether you didn't put the proposition a bit too  
7 strongly. I understand – I may have misunderstood, but I  
8 understood that disciplinary steps are contemplated against  
9 some of the policemen who gave evidence and they presumably  
10 will not submit that what you've put is correct. So it may  
11 well be that what you said must be qualified by some word,  
12 "allegedly," or something of that kind, but you present it  
13 as a stark fact that these policemen have been guilty of  
14 serious misconduct because of this, what you would say was  
15 a mistaken pleading of collegial loyalty, and that  
16 statement without any qualification as a fact, I don't  
17 think could appropriately be made in these proceedings. So  
18 perhaps you can reformulate what you said.  
19 MR BIZOS SC: Well, the allegations – the  
20 allegations are that the nine policemen made it impossible  
21 for justice to be done by either remaining silent in  
22 relation to the conduct of one or other of their  
23 colleagues, or they gave evidence which did not help the  
24 court come to a just conclusion. I'm not asking you to  
25 judge them. What I am concerned with, General, is that the

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1 validity of the public perception that the police will not  
2 give evidence to implicate their fellow policemen, is that  
3 public perception either in part or in whole justified?  
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, u  
5 sal merk dat my antwoorde tradisioneel korter is as die  
6 vrae.  
7 MR BOOI: Mr Chairman, you will note that  
8 my answer will not be as short as it should perhaps be, or  
9 expected to be –  
10 CHAIRPERSON: No, he said the opposite.  
11 “You’ll note that my answer is traditionally shorter than  
12 the question.” That was the answer, which Mr Bizos says he  
13 can take that. Anyway, carry on with your answer, Major-  
14 General.  
15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
16 elke verkeerde handeling van enige polisiebeampte is sleg  
17 in die oë van die publiek. Voorsitter, ek sal graag dat  
18 ons nie twee polisielede uit 196 000 plus – miskien moet ek  
19 die vraag net meer volledig eers, dat hy dit makliker kan  
20 vertaal. Hierdie is twee polisielede se optrede uit 'n  
21 totale getal sterkte van meer as 196 000 polisielede in die  
22 Suid-Afrikaanse Polisie diens. So wat ek wil sê, dit sal  
23 onregverdig wees om 'n oordeel te vel op elke  
24 polisiebeampte se integriteit gebaseer op twee  
25 polisiebeamptes se pertinente gedrag.

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1 MR BIZOS SC: Let me put it in another  
2 way. Would you deny that there is a code of silence  
3 prevalent in the police force, that is that you don't give  
4 evidence against your colleague; you stick together?  
5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
6 daar bestaan verseker nie so 'n kode in die Suid-Afrikaanse  
7 Polisie diens nie.  
8 MR BIZOS SC: Well, are there some who  
9 believe in this code of conduct?  
10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
11 maar daar is nie so 'n “code of conduct” nie. Dit bestaan  
12 nie. Ons het 'n “code of conduct” in die polisie wat  
13 verseker dit nie onderskryf nie.  
14 CHAIRPERSON: Major-General, could I ask  
15 a question based on the approach that Mr Bizos is putting  
16 to you. Have you in the course of your experience as an  
17 officer ever presided over disciplinary tribunals where  
18 policemen are brought up, charged with infractions of the  
19 disciplinary rules applying in the service?  
20 GENERAAL-MAJOOR ANNANDALE: Ek het  
21 inderdaad voorgesit, dis korrek, Voorsitter.  
22 CHAIRPERSON: What Mr Bizos is after is  
23 have you in the course of your experience encountered  
24 conduct by members of the service who have lied to defend,  
25 to assist their colleagues who are charged, or stated

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1 things they didn't know about, which in the circumstances  
2 they should have known about, which would have reflected  
3 adversely on the colleague who were charged before you in  
4 the disciplinary proceedings?  
5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
6 maar die vraag was nie so gevra nie. Die vraag het verwys  
7 na 'n pertinente “code of conduct” –  
8 CHAIRPERSON: No, no, I know that, that's  
9 why I said I was approaching the matter from a different  
10 angle.  
11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
12 ek kan een geval onthou wat ek self 'n dissiplinêre verhoor  
13 voorsitter was. Dan is daar uiteraard wat mens in die  
14 media lees waar daar sodanige bewerings gemaak word.  
15 MR BIZOS SC: Let's come to Marikana.  
16 CHAIRPERSON: Before you get to Marikana,  
17 if I can just ask you one more question on the topic. I  
18 take it you've been aware in the course of your career of  
19 lots of case where policemen were convicted by courts on  
20 the basis of evidence given by their colleagues.  
21 GENERAAL-MAJOOR ANNANDALE: Baie, baie  
22 meer as die negatiewe, verseker, Voorsitter, en so ook in  
23 departementele verhore wat ek voorgesit het.  
24 MR BIZOS SC: Do you believe, General,  
25 that the Constitution, the legislation relating to the

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1 police, or the Standing Orders, impede the work of the  
2 police in fighting crime?  
3 CHAIRPERSON: Mr Bizos, didn't we have  
4 that question yesterday?  
5 MR BIZOS SC: It wasn't the precise  
6 terminology as I put it today.  
7 CHAIRPERSON: Well, my recollection was  
8 the question was more or less verbatim as you put it now.  
9 MR BIZOS SC: No, because –  
10 CHAIRPERSON: But obviously if you want  
11 to go back to that topic to raise aspects that weren't  
12 raised yesterday, you have the fullest right to do that.  
13 MR BIZOS SC: We do.  
14 CHAIRPERSON: It did sound to me thought  
15 as if you were covering ground we covered yesterday. Mr  
16 Semenya, you turned your light on.  
17 MR SEMENYA SC: It was precisely to say  
18 that this topic has been – to use the expression – a lemon  
19 that's squeezed dry now.  
20 CHAIRPERSON: Mr Bizos thinks there is  
21 some juice left in the lemon. Mr Bizos, I'll allow you to  
22 ask questions which go further than the questions you asked  
23 yesterday, but if the questions are merely repetition of  
24 what happened yesterday I won't allow them. The question  
25 you asked yesterday was his views, you put the passage in

<p style="text-align: right;">Page 8966</p> <p>1 the opening statement by Mr Semenya to him, which more or 2 less said, well you said it said that and you asked him if 3 he agreed and he gave his answer. So if you're approaching 4 the matter again on another aspect, please get to the other 5 aspect.</p> <p>6 MR BIZOS SC: It is on another basis and 7 on evidence that we discovered yesterday, Mr Chairman. 8 What is your short answer? Do you believe that they are an 9 impediment in fighting crime in South Africa?</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 nee, ek is nie bewus van enige sodanige wetgewing pertinent 12 nie, die Konstitusie of dan Staande Ordes wat ons beperk om 13 misdaad te bekamp nie.</p> <p>14 MR BIZOS SC: Is there –</p> <p>15 CHAIRPERSON: It hasn't been interpreted 16 yet, Mr Bizos.</p> <p>17 MR BOOI: I am not aware of such –</p> <p>18 MAJOR-GENERAL ANNANDALE: Legislation.</p> <p>19 MR BOOI: - legislation. Yes, there are 20 impediments –</p> <p>21 CHAIRPERSON: No, no, no, no, it's the 22 other way around. He said, "I'm not aware of any 23 legislation or anything in the Constitution, or anything in 24 the Standing Orders that impede in any way the 25 investigation or combating of crime." I think that was his</p>	<p style="text-align: right;">Page 8968</p> <p>1 understand "body of policemen," so several police officers? 2 Is that my correct interpretation of a "body of policemen?" 3 More than one, a number, a substantial number?</p> <p>4 MR BIZOS SC: You tell us –</p> <p>5 CHAIRPERSON: The word "body" is a bit 6 ambiguous. You know, do you mean a dozen or do you mean a 7 couple hundred or do you mean thousands or –</p> <p>8 MR BIZOS SC: The witness can tell us 9 whether there are discussions when you're having tea, when 10 you're having lunch, or whether you go, when you go to the 11 bar, or whatever, is there a perception that we actually 12 need to be "kragdadig" in order to deal with crime?</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 in my daaglikse handel en wandel in my kantooropset en die 15 mense wat ek daaglik omgaan mee, is daar geen sodanige 16 gevoel nie.</p> <p>17 [10:22] MR BIZOS SC: Do you know of any 18 statement of any person in high authority to have said 19 anything which may be interpreted that they have the right 20 to be "kragdadig?"</p> <p>21 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 22 ek is bewus van media verwysings na sodanige uitlatings wat 23 gemaak is.</p> <p>24 MR BIZOS SC: Please tell us of what you 25 know of these rumours or statements.</p>
<p style="text-align: right;">Page 8967</p> <p>1 answer. If I misinterpreted it, he will tell me.</p> <p>2 GENERAAL-MAJOOR ANNANDALE: U is 100% 3 daar, dankie, Voorsitter.</p> <p>4 MR BIZOS SC: Are there people within the 5 police service who blame the Constitution, the Standing 6 Orders, the legislation, for the high degree of criminality 7 in the country?</p> <p>8 GENERAAL-MAJOOR ANNANDALE: Uiteraard kan 9 ek nie elkeen van die 196 000 se opinies kan ek weergee 10 nie, maar waarvan ek bewus is, nee.</p> <p>11 MR BIZOS SC: Is there a body of 12 policemen who believe that these instruments prevent them 13 from being – and I think that the best word is the 14 Afrikaans word, "kragdadig," – in order to lessen the crime 15 in South Africa?</p> <p>16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 as ek verstaan, "a body of policemen," dan verstaan ek 'n 18 amptelike benadering deur 'n groot groepering, of 'n 19 groepering. Is ek reg as ek dit so verstaan? So amper 'n 20 amptelike benadering tot kragdadigheid?</p> <p>21 MR BIZOS SC: No, the question is, is 22 there a body of policemen who believe that they are 23 prevented from being "kragdadig" in order to lessen the 24 criminality in the country?</p> <p>25 MAJOR-GENERAL ANNANDALE: I need to</p>	<p style="text-align: right;">Page 8969</p> <p>1 CHAIRPERSON: No, he's not talking about 2 rumours and statements. He's talking about things that 3 appeared in the media. He's aware, as we all are, that 4 various statements have been quoted in the media from time 5 to time. That's what he said, not "rumours," but he's 6 referring to reports that appeared in the media, as I 7 understand his evidence, of statements allegedly made by 8 people.</p> <p>9 MR BIZOS SC: Well, can you remember 10 anyone highly placed that made any statement which would 11 encourage policemen to be "kragdadig?"</p> <p>12 MR SEMENYA SC: No, no Chair –</p> <p>13 CHAIRPERSON: How is this going to help 14 us as to whether he's aware of any particular statement in 15 the media? Some of these media statements have been 16 referred to. You've in fact referred to them yourself in 17 the course of the cross-examination of the National 18 Commissioner. So these statements are, for what they're 19 worth, before the Commission. Now the extent of the 20 knowledge of this particular witness of the statements, is 21 that going to help us to answer any of the questions that 22 we have to answer? I don't want to unduly hinder you in 23 the course of your cross-examination, but remind you how 24 much the Commission costs every day, remind you of the 25 necessity for us to proceed with expedition to make our</p>

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1 findings, and if we're going to have this kind of question  
 2 all the time then I'm afraid we're going to be hampered in  
 3 expeditiously dealing with the problems before us. If you  
 4 have a very good reason for asking this question, because  
 5 it leads up to something else, I won't stop you, but for  
 6 the life of me I can't see at the moment how his answer on  
 7 that question, whichever way it goes, is going to help us.  
 8 MR BIZOS SC: Mr Chairman –  
 9 CHAIRPERSON: May I say something else?  
 10 Obviously this is a witness who reads the newspapers. I  
 11 think we can accept that he's likely to have read at least  
 12 some of the statements that have been referred to in the  
 13 past, but how does that help us to answer any of the  
 14 questions that we have to answer?  
 15 MR BIZOS SC: I'll explain why I am  
 16 pursuing this line, because yesterday we came across  
 17 further information about the lack of leadership at  
 18 Marikana and how the one person that actually said that  
 19 there will be - as you know it was disclosed - that there  
 20 will be bloodshed, we have unearthed evidence that she was  
 21 in fact sidelined.  
 22 CHAIRPERSON: Maybe you can put those  
 23 points directly to the witness, but –  
 24 MR BIZOS SC: Yes, I –  
 25 CHAIRPERSON: You are approaching the

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1 matter rather circumspectly. I understand sometimes why  
 2 cross-examiners do that, but I don't know in this case with  
 3 this witness if you need be as circumspect as you are. Why  
 4 not come directly to the point, put it to him, and let's  
 5 get his comments.  
 6 MR BIZOS SC: Yes. I'm going to read –  
 7 there are numerous such statements, but there is one that I  
 8 want to remind you of in view of what we have to deal with  
 9 later. The Deputy Minister of Safety & Security, Susan  
 10 Shabangu, now the Minister of Mineral Resources, "You must  
 11 kill the bastards if they threaten you or the community.  
 12 You must not worry about the regulations. I want no  
 13 warning shots. You have one shot and it must be a kill  
 14 shot. I will not tolerate any pathetic excuses for you not  
 15 being able to deal with crime. You have been given guns;  
 16 now use them."  
 17 CHAIRPERSON: Can you tell us when she  
 18 said that? I know we've had it before. It's in some of  
 19 the materials that are before us, but I think for the  
 20 benefit of the witness –  
 21 MR BIZOS SC: The statement was made on  
 22 the 9th of April 2008.  
 23 CHAIRPERSON: Yes.  
 24 MR BIZOS SC: And it was –  
 25 CHAIRPERSON: I think that's all we need

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1 now.  
 2 MR BIZOS SC: Yes, and it goes on, and  
 3 the following year Minister Mthethwa, Minister of Safety &  
 4 Security –  
 5 MR SEMENYA SC: Chair –  
 6 CHAIRPERSON: Sorry, before you carry on,  
 7 Mr Bizos, Mr Semenya wants to say something.  
 8 MR SEMENYA SC: Chair, apart from the  
 9 fact that we have had this before, its proximity to the  
 10 events of Marikana escapes me.  
 11 CHAIRPERSON: That's why I asked for the  
 12 date. Mr Bizos, you didn't discover this yesterday,  
 13 because we've had that before. So are you leading up to  
 14 something that you discovered yesterday?  
 15 MR BIZOS SC: Yes, Mr Chairman –  
 16 CHAIRPERSON: Because you talked about  
 17 somebody who was sidelined. Now perhaps we should get to  
 18 that. I don't want a cross-examiner with your years of  
 19 experience, I don't want to be prescriptive, but I would  
 20 like us to get to the nub of the matter sooner rather than  
 21 later, if you don't mind.  
 22 MR BIZOS SC: Mr Chairman, with the  
 23 greatest respect, we are concerned that these statements –  
 24 and those will be my questions to this witness – what do  
 25 statements to this effect have on the rank and file of the

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1 police that shot at Marikana.  
 2 CHAIRPERSON: May I suggest we settle our  
 3 difference as follows. You put the statements that you are  
 4 going to rely on and then you end up by asking the witness  
 5 the question, what effect will those have in his experience  
 6 and knowledge, and so on, on the rank and file at Marikana.  
 7 MR BIZOS SC: Yes.  
 8 CHAIRPERSON: So how many statements are  
 9 you going to put? You've given us the Shabangu one from  
 10 2008 and now you've got another one from the following year  
 11 by the then Minister -  
 12 MR BIZOS SC: There are two more short  
 13 statements, Mr Chairman –  
 14 CHAIRPERSON: Alright, let's hear the two  
 15 more short statements –  
 16 MR BIZOS SC: - and we cannot be  
 17 restricted, with respect, Mr Chairman, in putting to each  
 18 one of these persons that were there - and we will argue  
 19 that they are responsible for the deaths and the injuries –  
 20 we have to put to them what was the guiding principle that  
 21 led to the tragedy –  
 22 CHAIRPERSON: Yes, Mr Bizos, I indicated  
 23 I'm not stopping you. I'm just suggesting a way we could  
 24 do it with minimum expenditure of time.  
 25 MR BIZOS SC: Yes.

<p style="text-align: right;">Page 8974</p> <p>1 CHAIRPERSON: Put the other statements 2 that you rely on, then ask the follow-up question – 3 MR BIZOS SC: Yes, of course. 4 CHAIRPERSON: Let's carry on with that. 5 You agree, that's the appropriate way [inaudible]. 6 MR BIZOS SC: The Mthethwa statement, "We 7 don't believe that when you are faced with criminals armed 8 with sophisticated weaponry, the police task would be to 9 take out some human rights charter. Now we are saying to 10 the police that we ourselves have an obligation as well to 11 strengthen the arm of these task forces so that they are 12 able on the field to teach those people a lesson, to fight 13 fire with fire. There is no other way on that." And 14 finally, "We don't want hesitation from the police. 117 15 policemen died last year because they hesitated to defend 16 themselves." Had you heard or read – 17 CHAIRPERSON: I'm sorry, Mr Bizos, I 18 understood you said there were three statements you're 19 going to rely on. You've given us two so far. Is there a 20 third? 21 MR BIZOS SC: There are two from Mthethwa 22 and one – 23 CHAIRPERSON: I see. You've given us 24 both from Minister Mthethwa – 25 MR BIZOS SC: Yes.</p>	<p style="text-align: right;">Page 8976</p> <p>1 daarna gewees. 2 MR BIZOS SC: Had you not heard them 3 discussed among your fellow officers, what are the 4 ministers saying? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ons is 'n professionele polisie organisasie. Ons kry ons 7 leiding en rigting vanuit die Konstitusie, wetgewing, 8 nasionale instruksies, Staande Ordes. Ons kry dit ook in 9 terme van standaard operasionele prosedures en ons kry dit 10 in terme van direkteiewe en nêrens in enige van die 11 pertinente dokumente waarna ek verwys het bestaan daar so 12 'n benadering van kragdadigheid nie. So nee, Voorsitter, 13 ek hoor dit nie in die gange nie en ek hoor dit ook nie oor 14 tee nie. Voorsitter, ons is ook nie daar om enigiemand 15 lesse te leer nie. Ons het 'n verantwoordelikheid en ons 16 verantwoordelikheid is om persone voor die reg te bring en 17 daar is 'n regstelsel, 'n behoorlike regstelsel wat dan 18 hulle gang sal gaan. Voorsitter, my eie interpretasie van 19 enige sodanige praat is suiwer dat ons die, dat ons moet 20 meer toegewyd wees in terme van die bekampings van misdaad, 21 maar ook dat daar 'n bekommernis is oor die aantal sterftes 22 onder polisiebeamptes, en dat polisiebeamptes waaksaam moet 23 wees. 24 MR BIZOS SC: Are you going to tell the 25 Commission that these statements of these two ministers</p>
<p style="text-align: right;">Page 8975</p> <p>1 CHAIRPERSON: And the one from the Deputy 2 Minister, as she then was, Shabangu. 3 MR BIZOS SC: Yes. 4 CHAIRPERSON: Alright, so those are the 5 three statements. Now I understand you want to ask the 6 witness a question – 7 MR BIZOS SC: Yes. 8 CHAIRPERSON: - based on those 9 statements. 10 MR BIZOS SC: Yes. 11 CHAIRPERSON: The effect they would have 12 – but anyway, you phrase the question the way you want to. 13 MR BIZOS SC: Yes. Were you aware of 14 these statements being made by the ministers who head the 15 police? 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 nie noodwendig ten tyde van wat dit gemaak is nie, maar ek 18 het dit nou in die Marikana verrigtinge het ek dit gelees. 19 MR BIZOS SC: Have you not heard of them 20 before? 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 22 ek kan nie gaan sê dat ek pertinent die een van Adjunk- 23 Minister Shabangu gehoor het nie, en ek kan ook nie gaan sê 24 dat ek pertinent kan onthou dit was in 20-dit of 20-dat wat 25 dit gesê was nie. Ek het in die media, was daar verwys</p>	<p style="text-align: right;">Page 8977</p> <p>1 were not discussed by the senior officers among themselves, 2 among the people that they command, that these are 3 statements which do not accord with the Constitution, and 4 which do not accord with the legislation, and which do not 5 accord with the police orders? One would have expected if 6 you had the respect for these law provisions, to tell your 7 members ignore them, they are wrong, they are contrary to 8 the law. 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 ek het gesê in my omgewing is ek nie bewus daarvan dat daar 11 enige sodanige besprekings is nie. Voorsitter, 12 polisiebeamptes word behoorlik opgelei. Ons opleiding is 13 tans oor 24 maande, net die basiese opleiding, en daar word 14 omvattend gedeel met die relevante wetgewing, en ek stel 15 dit aan u dat polisiebeamptes terdeë bewus is van hulle 16 professionele verantwoordelikheid. 17 [10:42] MR BIZOS SC: And you're not prepared to 18 concede that these statements will send mixed signals, they 19 say never mind the regulations, and they are after all the 20 political heads of the police. Surely it must be matters 21 that were of necessity to be discussed to at least remind 22 them don't listen to them, listen to the orders, listen to 23 the legislation, listen to the Constitution. 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 ek is van 2005 af is ek op 'n hoofkantoor afdeling –</p>



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1 CHAIRPERSON: The head office division  
2 since 2005.

3 MAJOR-GENERAL ANNANDALE: That's correct.  
4 Ek het verwys na interne van my omgewing dat daar nie  
5 sodanige besprekings was nie. Ek kan sekerlik nie getuig  
6 wat bevelvoerders op die 1 116 polisiestasies in hierdie  
7 land, wase besprekings daar plaasgevind het nie.  
8 Voorsitter, maar wat ek weet, dit maak nie saak wie wat sê  
9 nie; op die einde van die dag is daar net een persoon wat  
10 in 'n hof gaan staan en verantwoordbaar gehou word vir sy  
11 of haar dade. There's only one person that will have to go  
12 and account in court, and that's the person that actually  
13 performed a specific action, and not those people that  
14 actually uttered the words.

15 MR BIZOS SC: The people at the radio  
16 stations, is it not a concern of the general, like  
17 yourself, what effect these statements would have on the  
18 people at the various stations?

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
20 ek kan dit nie beter verduidelik nie. Ek kan net getuig in  
21 my eie omgewing. Daar is regdeur die land, het ons nege  
22 provinsies. In elke provinsie is daar behoorlike stelsels,  
23 posvlak stelsels. Ek kan regtig net gaan getuig in terme  
24 van my eie waarneming van dit.

25 MR BIZOS SC: Do you consider yourself as

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1 a member of –

2 CHAIRPERSON: It hasn't been interpreted  
3 – sorry, Mr Bizos, it hasn't been interpreted into English  
4 yet, the answer.

5 MR BOOI: Mr Chairperson, what I do know  
6 is that in my area – ek kan dit nie alles onthou.

7 CHAIRPERSON: What he says, he can only  
8 testify as to what happened in his area of responsibility,  
9 but there are – he did speak about various other levels  
10 right throughout the country. There are nine provinces and  
11 what happens in all those nine provinces it's not a matter  
12 of which he has direct knowledge, as I understand his  
13 evidence. Did I understand you correctly?

14 MAJOR-GENERAL ANNANDALE: Yes,  
15 Chairperson, and that is various structures obviously that  
16 all go right down to station level.

17 MR BOOI: Thank you, Mr Chairman.

18 MR BIZOS SC: The passages that I have  
19 read to you were made by ministers who have powers to  
20 direct the police.

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
22 geen persoon in hierdie land is verhewe bo die wet nie.

23 MR BIZOS SC: Yes, thank you for that.  
24 We often say it ourselves.

25 CHAIRPERSON: We need still to be

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1 reminded of it. Major-General, may I ask you a question  
2 relevant to what Mr Bizos is asking you about. I  
3 understand you've got your own responsibilities and your  
4 own division, as it were, in head office. If there was  
5 concern in head office about the effect that particularly  
6 Deputy Minister Shabangu's comments might have on the  
7 understanding of the ordinary rank and file, and what would  
8 happen for example if policemen were brought before court,  
9 charged with shooting without giving a warning and so on,  
10 and he pleaded in mitigation that well, I merely did what  
11 the Deputy Minister said, which might put the court in a  
12 difficult position in imposing a proper sentence because  
13 after all he pleads in mitigation this is what the Deputy  
14 Minister told me to do, but who would have been responsible  
15 in head office for sending some kind of warning down the  
16 line, as it were, to the rank and file that never mind what  
17 the Deputy Minister said, you obey the law, the  
18 Constitution, the Standing Orders? Was there a particular  
19 division at head office that would have been concerned with  
20 that kind of thing? Obviously it wasn't your section, but  
21 was there a section, was there someone or some particular  
22 major-general or lieutenant-general whose responsibility it  
23 would have been to send that kind of message down into the  
24 nine provinces and down to the stations?

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 dit kan 'n verskeidenheid van persone wees. Dit kan  
2 byvoorbeeld die Nasionale Kommissaris wees of enige van die  
3 Adjunk Nasionale Kommissarisse, of dit kan ook vanuit die  
4 polisie se regsafdeling, kan daar so 'n, dan 'n opmerking  
5 gemaak word, en dit sal tipies deur Korporatiewe  
6 Kommunikasie sal dit dan versprei word, alhoewel dit  
7 natuurlik sou vanaf, een van die persone wat ek vermeld het  
8 sou gesê het ons moet so 'n berig uitstuur, 'n interne  
9 kommunikasie na al ons lede om dit in konteks te plaas, of  
10 dan wat ook al die geval sou wees.

11 CHAIRPERSON: It will be sent as an  
12 internal communication from head office to all the members.  
13 Is that right?

14 MAJOR-GENERAL ANNANDALE: That's right,  
15 Chairperson, yes. That is the channel that will be used.

16 MR BIZOS SC: Do you know whether any  
17 such step was taken in order to correct these statements or  
18 commands of the two ministers?

19 CHAIRPERSON: I'm not sure whether  
20 "command" is the right word. I'm not sure - the minister  
21 has the right to give guidance and so on, on matters of  
22 policy. I'm not sure the minister has got the power to  
23 give commands. So I'm not sure that "command" is a happy  
24 word, but perhaps you could rephrase the question.

25 MR BIZOS SC: Were any steps taken to

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1 inform the police force as a whole that these statements  
2 may not be in accordance with the law?  
3        GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
4 ek weet nie. Die uitspraak deur die adjunk-minister was in  
5 2008, so dis vyf jaar terug. Daar's letterlik duisende en  
6 duisende kommunikasiestukke wat deur die polisie versprei  
7 word in 'n finansiële jaar.  
8        CHAIRPERSON:        Mr Bizos, in order to save  
9 time, I understand the point you're making and I understand  
10 why you consider it's important, but I would have thought,  
11 if I may say so, the way perhaps we can deal with it with a  
12 minimum expenditure of time is you can ask your learned  
13 friend for the police to give you copies of any such  
14 communications that were sent out, and we don't have to ask  
15 this witness about it. As he says, he's at a disadvantage  
16 anyway; there are thousands of them every year. But you  
17 could ask the police counsel, legal representatives for  
18 that and if there are such communications they can be put  
19 before us, and if there aren't, that silence will itself  
20 possibly convey a message which you'll want to deal with in  
21 your argument.  
22        MR BIZOS SC:        I'm sure that they've heard  
23 you, Mr Chairman, and they will volunteer such statements  
24 if they were made. I doubt very much that they will –  
25        CHAIRPERSON:        Don't make comments like

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1 that, Mr Bizos.  
2        MR BIZOS SC:        Yes.  
3        CHAIRPERSON:        They may well have done so  
4 and they may also in their training courses for example  
5 have dealt with this kind of thing as well. There was also  
6 of course the letter of the Minister which is before us as  
7 an exhibit, I think it's July 2011, which was subsequently  
8 varied, which also did, as it were, reaffirm some law as  
9 traditionally laid down. But anyway, these are matters  
10 that can possibly more productively be addressed in  
11 argument -  
12        MR BIZOS SC:        There's just one last  
13 question –  
14        CHAIRPERSON:        But anyway, carry on with  
15 your next question.  
16        MR BIZOS SC:        The last question on the  
17 issue. General, section 199(6) of the Constitution says  
18 the following, "No member of any security service may obey  
19 a manifestly illegal order." Did you know of this  
20 provision, General?  
21        GENERAAL-MAJOOR ANNANDALE:        Ek is  
22 verseker bewus daarvan.  
23        MR BIZOS SC:        Yes. Would you agree that  
24 some of the police members who do not know that subsection  
25 of the Constitution may have interpreted the statements as

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1 orders and unwittingly may have committed offences?  
2        COMMISSIONER HEMRAJ:        Is there a basis  
3 for such a proposition, Mr Bizos?  
4        MR BIZOS SC:        I beg your pardon?  
5        COMMISSIONER HEMRAJ:        Is there any basis  
6 for such a proposition, for the proposition that you're  
7 putting?  
8        MR BIZOS SC:        The factual one or the  
9 legal one?  
10        COMMISSIONER HEMRAJ:        Yes, well either.  
11        MR BIZOS SC:        Well, I submit, with  
12 respect, that the ordinary policeman may have interpreted  
13 as an order that he had to obey, you have only one word,  
14 kill, and we don't want you to be guided by an order, with  
15 the words, the charter. There are words which may – I'm  
16 not saying to the witness or the Commission that they must  
17 judge the minister as to whether the order was unlawful or  
18 not, but I am entitled to put that this sort of talk could  
19 be interpreted by the lay policeman as orders from above,  
20 giving them a licence to kill.  
21        CHAIRPERSON:        Is that not a matter for  
22 argument rather than to be traversed with this witness?  
23        MR BIZOS SC:        I'm putting to him, Mr  
24 Chairman, what we are going to argue, for his comment.  
25        CHAIRPERSON:        I see. Mr Bizos, I have a

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1 bit of difficulty with your question. I understand where  
2 you're coming from and I don't want to be unduly  
3 restrictive, but is the suggestion that anyone who fired a  
4 shot at Marikana, any member of the police service who  
5 fired a shot at Marikana in 2012 in circumstances which you  
6 will argue in due course were illegal, was influenced to do  
7 so by remarks that were made by a deputy minister, who's no  
8 longer connected with the police department, four years  
9 previously? Is that what you're suggesting to the witness?  
10 Because if there's no causal connection between what was  
11 said by the deputy minister in 2008 and what happened on  
12 the 16th of August 2012, then it's an inquiry which we  
13 shouldn't expend our energy on. I understand what you say  
14 about the deputy minister's comments and I can understand  
15 and foresee the criticisms you're going to make about it,  
16 but as far as our inquiry is concerned, don't we need a  
17 causal link between the one and the other?  
18        MR BIZOS SC:        The submission is going to  
19 be, Mr Chairman that these statements have influenced a  
20 culture of "kragdadigheid" – I don't know what the English  
21 translation is in the police – and that spirit of  
22 "kragdadigheid" was all over the place at Marikana on the  
23 16th of August.  
24        CHAIRPERSON:        Major-General, we'll take –  
25 sorry, Mr Semenya?

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1 MR SEMENYA SC: Chair, would my learned  
2 colleague Mr Bizos tell us whether he's going to produce  
3 this evidence?  
4 MR BIZOS SC: We are conducting a case on  
5 behalf of our clients and in the interest of justice we are  
6 going to say that the evidence produced and that will be  
7 produced will, should lead to inevitable inference that  
8 there was this spirit of "kragdadigheid" that really  
9 influenced the people that shot the 34 dead and the 84  
10 injured person.  
11 CHAIRPERSON: But you're being asked by  
12 Mr Semenya to indicate what evidence you have or are going  
13 to produce to establish that. That's what Mr Semenya  
14 asked.  
15 MR BIZOS SC: There will be evidence of  
16 the experts, of the medical experts, of the crowd control  
17 experts –  
18 CHAIRPERSON: Ja, I think all that then  
19 will be a matter of argument at the end of the case, won't  
20 it? End of, not the case, the end of the sitting of the  
21 Commission. I'm concerned with questions you're asking  
22 this particular witness at this time, but perhaps there's a  
23 way of dealing with it, or I'll try. You yourself in your  
24 actions at Marikana, were you influenced by any belief that  
25 "kragdadigheid" was an important value that had to be

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1 subscribed to?  
2 [11:02] GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
3 verseker nie.  
4 CHAIRPERSON: Right, were you aware of  
5 any other member of the service who was there at Marikana  
6 at that time who was influenced, as far as you knew, by the  
7 belief that Mr Bizos is referring to?  
8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
9 weereens nee.  
10 CHAIRPERSON: Mr Bizos, isn't that all  
11 that you can legitimately ask this witness? I'm not saying  
12 you can't argue the point and you can't ask other people,  
13 but isn't that as far as you can take it with this witness?  
14 MR BIZOS SC: Yes.  
15 CHAIRPERSON: Alright, is this perhaps an  
16 appropriate stage for us to take the tea adjournment?  
17 MR BIZOS SC: Mr Chairman, we just want  
18 to give notice that we will hand out two new documents  
19 after the adjournment.  
20 CHAIRPERSON: May I suggest you hand them  
21 out during the adjournment –  
22 MR BIZOS SC: Now perhaps, so that they  
23 can be read before we continue.  
24 CHAIRPERSON: Are they lengthy?  
25 MR BIZOS SC: No.

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1 CHAIRPERSON: Are there particular  
2 passages in them that –  
3 MR BIZOS SC: They're two short  
4 statements, Mr Chairman.  
5 CHAIRPERSON: Alright, well hand them out  
6 during the tea adjournment. We'll now take the tea  
7 adjournment.  
8 [COMMISSION ADJOURNS COMMISSION RESUMES]  
9 [11:26] CHAIRPERSON: The Commission resumes. I  
10 see we have two statements now before us, one of Lieutenant  
11 Baloyi and one of Lieutenant-Colonel Vermaak. Do you want  
12 me to mark them as exhibits, Mr Bizos?  
13 MR BIZOS SC: Yes.  
14 CHAIRPERSON: Which must be 16 and which  
15 17?  
16 MR BIZOS SC: Option –  
17 CHAIRPERSON: No, you can choose. The  
18 one you're going to refer to first is obviously going to be  
19 16. So which one are you going to refer to first?  
20 MR BIZOS SC: Baloyi.  
21 CHAIRPERSON: Baloyi, alright. So that's  
22 GGG16 and the other one is GGG17, and that's Lieutenant-  
23 Colonel Vermaak. Right. Generaal-Majoor, u is nog steeds  
24 onder eed.  
25 CHARL ANNANDALE: s.o.e.

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1 VOORSITTER: Ek verstaan u was besig om  
2 die verklarings te lees wat u gekry het, gedurende die  
3 teepouse.  
4 GENERAAL-MAJOOR ANNANDALE: Dit is  
5 korrek, Voorsitter.  
6 CHAIRPERSON: Ja, okay.  
7 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):  
8 With your leave, Mr Chairman. I was before the adjournment  
9 challenged as to what evidence we have for the proposition  
10 that we then put. I ask for leave to put another question  
11 by referring to what we are relying on, and I would ask you  
12 to please look at FFF14 at page 26. This is Maximum Force,  
13 the exhibit by Mr David Bruce who is an expert –  
14 CHAIRPERSON: Yes, I thought you'd be  
15 referring to that. I brought my copy, but what's the  
16 exhibit number? I didn't have it written on – FFF?  
17 MR BIZOS SC: FFF –  
18 CHAIRPERSON: 14.  
19 MR BIZOS SC: 14.  
20 CHAIRPERSON: Alright, what page?  
21 MR BIZOS SC: Page 26, last paragraph.  
22 CHAIRPERSON: I think the witness was  
23 referred to it yesterday.  
24 MR BIZOS SC: Yes, it was referred to by  
25 –

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1 CHAIRPERSON: Mr Budlender.  
 2 MR BIZOS SC: Mr Budlender, yes. Yes.  
 3 CHAIRPERSON: Okay, we've got page 22 in  
 4 front of us. What – it's quite a lengthy page. Where on  
 5 the page does it –  
 6 MR BIZOS SC: I want to read that.  
 7 CHAIRPERSON: Not the whole page –  
 8 MR BIZOS SC: No, no, the bottom, three  
 9 lines at the bottom.  
 10 CHAIRPERSON: Three lines at the bottom?  
 11 MR BIZOS SC: Page 26 –  
 12 CHAIRPERSON: Page 26, I see.  
 13 MR BIZOS SC: At the bottom.  
 14 CHAIRPERSON: Yes, I see. Alright, let's  
 15 just make sure the Major-General has got it. Major-  
 16 General, have you got exhibit FFF14 in front of you, and  
 17 have you got page 267?  
 18 GENERAAL-MAJOOR ANNANDALE: Ek het dit  
 19 inderdaad, Voorsitter.  
 20 CHAIRPERSON: Right, Mr Bizos, carry on.  
 21 MR BIZOS SC: "How widely the term  
 22 'maximum force' is used in the SAPD is not clear. One  
 23 revealing piece of information are some notes made by a  
 24 SAPS member distressed by new firearms in law and –  
 25 CHAIRPERSON: Mr Bizos, I'm sorry, Mr

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1 Budlender questioned the witness specifically on this  
 2 passage.  
 3 MR BIZOS SC: Yes, yes.  
 4 CHAIRPERSON: He expressed his concern  
 5 about it. He said if it's true it's a very serious matter,  
 6 requires investigation and serious steps to be taken.  
 7 MR BIZOS SC: Yes.  
 8 CHAIRPERSON: So we've already dealt with  
 9 that point. Are you dealing with the point now from  
 10 another angle, as it were, or are you taking it further or  
 11 –  
 12 MR BIZOS SC: No, there is –  
 13 CHAIRPERSON: Well, it has been dealt  
 14 with in his evidence.  
 15 MR BIZOS SC: If I may just – no  
 16 reference to a maximum force, but he says, the trainer kept  
 17 saying shooting in the SAPS has been neglected for many  
 18 years and they are finally –  
 19 CHAIRPERSON: Yes, that is a new point.  
 20 MR BIZOS SC: - this again. That was put  
 21 and the witness was apprised and he actually made a promise  
 22 to the court in answer, to the Commission, that he would  
 23 look into it. I wanted to –  
 24 CHAIRPERSON: I see. Alright, okay.  
 25 MR BIZOS SC: - say that we are relying

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1 on it, and –  
 2 CHAIRPERSON: Alright. Okay, well carry  
 3 on then. I thought you were just repeating the point Mr  
 4 Budlender's made. I was wrong; I'm sorry. Please proceed.  
 5 MR BIZOS SC: No, the memory of my  
 6 colleagues is much better than mine to the matter, but  
 7 there is also another paragraph which answers the question  
 8 that was put to me, and I replied, but we have support to  
 9 the answer, on the second-last paragraph of page 27, Mr  
 10 Chairman. Whether or not the term –  
 11 CHAIRPERSON: I'm sorry, Mr Bizos, you  
 12 were challenged to produce evidence. This of course is not  
 13 evidence; this is just a statement in a book, but I will  
 14 allow you to ask the question, notwithstanding that.  
 15 MR BIZOS SC: Thank you. Whether or not  
 16 –  
 17 CHAIRPERSON: Sorry, obviously on the  
 18 clear understanding that this is an allegation made by a  
 19 reputable journalist in a published book -  
 20 MR BIZOS SC: Yes.  
 21 CHAIRPERSON: - which the Major-General  
 22 has said requires investigation by the police.  
 23 MR BIZOS SC: Yes.  
 24 CHAIRPERSON: So on that basis I'll allow  
 25 you to proceed.

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1 MR BIZOS SC: Yes, thank you, Mr  
 2 Chairman. But the paragraph deals with the question of  
 3 relevance and this is why I want to read it into the  
 4 record, and that was not dealt with previously. "Whether  
 5 or not the term 'maximum force' was used, what was conveyed  
 6 to the trainees was that certain types of actions on the  
 7 part of an opponent could be used as a pretext for using  
 8 force. Once they had been provided with such a pretext  
 9 there was no need for them to limit the amount of force  
 10 used. This understanding may have been articulated by some  
 11 of those who were guided by it as a concept of maximum  
 12 force, and though the term may not have been used generally  
 13 in firearms training, it is likely that the idea had gained  
 14 considerably currency amongst the leadership and  
 15 potentially the members of key units in the police. This  
 16 may also help to explain why it was then used to explain  
 17 the actions of the operational response services units at  
 18 Marikana." I don't know if the witness wants to comment on  
 19 that paragraph –  
 20 CHAIRPERSON: There's one further point,  
 21 passage that I suppose has to be referred to. Where Mr  
 22 Bruce refers to this term having been used to explain the  
 23 actions by the operational response service units, the  
 24 reference is to what he says in the first paragraph on page  
 25 26 where he refers to a statement which we've dealt with,

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1 which has been dealt with in evidence by the National  
 2 Commissioner where she said that the police were forced to  
 3 utilise maximum force to defend themselves. Now of course  
 4 there may be a lot of debate and I don't think this is the  
 5 right place to do it because this witness, it wasn't his  
 6 statement, it's the statement of the National Commissioner,  
 7 and there may be a lot of debate as to what that meant in  
 8 the context. So I don't think we should go there now, but  
 9 anyway, I just put that because that explains the last  
 10 sentence that you read out. But anyway, you've read the  
 11 passage. What do you want to ask the witness about it?  
 12 MR BIZOS SC: Well, whether he has any  
 13 comments to make about it, Mr Chairman. He has already  
 14 indicated that it's a matter of concern to him and it will  
 15 be looked into. If he wants to add anything, he is free to  
 16 do so, Mr Chairman. General, do you want to make any  
 17 further comments other than what you told Mr Budlender?  
 18 MAJOR-GENERAL ANNANDALE: Chairperson, I  
 19 was actually waiting for it to be translated into isiXhosa,  
 20 that's why I did not respond, and the Chairperson was busy.  
 21 I will respond. Can I continue?  
 22 MR MAHLANGU: Yes.  
 23 MAJOR-GENERAL ANNANDALE: Chairperson, I  
 24 would not go and repeat what I've said yesterday in terms  
 25 of, or was it the day before yesterday with Mr Budlender.

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1 I just want to mention that this whole article is based on  
 2 the one unidentified source, and I must stress, it's one  
 3 unidentified source. So dis een polisiebeampte wat  
 4 pertinent so 'n oordrag na bewering gemaak het aan die  
 5 skrywer van hierdie artikel, en dan na gelang van hierdie  
 6 oordrag is daar dan 'n pertinente aanname wat gemaak word  
 7 deur die skrywe. Ek het ook verwys dat ek nie kan sien wat  
 8 is die verbintenis tydens so 'n afleiding wat hy maak in  
 9 die laaste sin van daardie paragraaf met verwysing na  
 10 operasionele reaksiedienste nie, maar ek het ook dan my  
 11 bekommernis uitgespreek sou daar 'n moontlikheid wees dat  
 12 daar enige waarheid steek in terme van hierdie oordrag, en  
 13 dat daar sodanige ondersoek moet volg om dan die, om agter  
 14 die waarheid te kom.  
 15 CHAIRPERSON: I omitted to say when we  
 16 resumed that we'll be adjourning at 1 o'clock today and  
 17 we'll be resuming at 10 o'clock on Monday morning. We will  
 18 not be sitting on Friday the 10th, and so we'll be  
 19 adjourning at 1 o'clock on Thursday afternoon, the 9th.  
 20 Please carry on, Mr Bizos. Those comments didn't relate in  
 21 any way to your cross-examination.  
 22 MR BIZOS SC: Thank you, Mr Chairman.  
 23 General, do you accept responsibility for the plan devised  
 24 by SAPS to address the disturbances in Marikana in the week  
 25 of the 13th to the 16th?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 2 ek stem saam met die plan. Verantwoordelikheid, ek het  
 3 geen probleem om gesamentlike verantwoordelikheid te  
 4 aanvaar nie. Ek het egter verduidelik in terme van die  
 5 protokol was daar 'n oorhoofse bevelvoerder, so uiteraard  
 6 was dit in terme van sy goedkeuring ook.  
 7 MR BIZOS SC: I will accept that you  
 8 admit to taking collective responsibility, but I want to  
 9 ask you that whether a person in your position may not have  
 10 not only collective but personal responsibility for any  
 11 faults that there may be in the plan? You are, or you  
 12 hold one of the highest ranks in the police. Is that  
 13 right?  
 14 GENERAAL-MAJOOR ANNANDALE: Ek hou 'n hoë  
 15 rang, dis korrek –  
 16 CHAIRPERSON: He's a major-general. You  
 17 don't have to ask him if he holds a high rank in the  
 18 police. Obviously he does. Isn't that, with respect, a  
 19 little bit on the time wasting side? I'm sure you don't  
 20 mean it that way, but it has that effect. He's obviously  
 21 got a high post in the police. I mean major-general, you  
 22 expect him to say no I haven't got a high post in the  
 23 police? Aren't you wasting time?  
 24 MR BIZOS SC: No, you are one of the most  
 25 experienced generals.

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1 GENERAAL-MAJOOR ANNANDALE: In die  
 2 polisie?  
 3 MR BIZOS SC: Yes.  
 4 GENERAAL-MAJOOR ANNANDALE: Ek kan dit  
 5 net antwoord as ek weet wat is die ervaring van die ander  
 6 generaal-majoor, luitenant-generaal en dan die, daar is een  
 7 generaal in die polisie.  
 8 MR BIZOS SC: You are one of the most  
 9 experienced.  
 10 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar,  
 11 ja, dat 30 jaar is redelike goeie ervaring.  
 12 MR BIZOS SC: You were appointed the  
 13 commander of the JOC.  
 14 GENERAAL-MAJOOR ANNANDALE: Dit is nie  
 15 korrek nie, nee Voorsitter.  
 16 MR BIZOS SC: Or was it [inaudible] –  
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 18 ek het my rol omvattend verduidelik. My rol in die GOS was  
 19 dan gewees die voorsitter van die JOCOM vergaderings in  
 20 opdrag van die oorhoofse bevelvoerder.  
 21 MR BIZOS SC: Surely with your experience  
 22 and –  
 23 MR MAHLANGU: Excuse me –  
 24 CHAIRPERSON: I'm sorry, Mr Bizos, that  
 25 wasn't interpreted into isiXhosa. Those in the auditorium

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1 who have come to follow the proceedings are entitled to  
2 know what the answer is.

3 MR MAHLANGU: The interpreter himself did  
4 not understand the question.

5 MR BOOI: Mr Chair, I did not hear the  
6 question.

7 CHAIRPERSON: Let's have the question  
8 again so it can be interpreted into isiXhosa.

9 MR BIZOS SC: I'll put it this way. You  
10 were the nerve centre of the operations.

11 GENERAAL-MAJOOR ANNANDALE: Ek as  
12 individu was die "nerve centre" van die operasie?

13 MR BIZOS SC: Because you were the  
14 commander of JOC.

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
16 ek het in die vorige vraag gesê ek was nie die bevelvoerder  
17 van die JOC nie.

18 MR BIZOS SC: Well, whatever we may call  
19 you, surely you are in a position to accept responsibility  
20 for the plan and not merely as one of a larger team.  
21 Personally you are responsible. Do you accept that?

22 CHAIRPERSON: I'm sorry, Mr Bizos, Mr  
23 Semenya has turned on his light; he wants to say something.

24 MR SEMENYA SC: Chair, the witness has  
25 said that he takes joint responsibility for the plan. It

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1 was a plan approved by the overall commander. I don't  
2 understand what Mr Bizos now wants the witness to respond  
3 to, that he must take personal responsibility.

4 CHAIRPERSON: Mr Bizos, if he's jointly  
5 responsible, he can't say I'm only responsible in one way  
6 but I'm basically not responsible personally. Surely what  
7 he said amounts to a statement that I'm responsible, my  
8 responsibility is joint, but I'm still responsible.

9 MR BIZOS SC: Yes, let him say that I am  
10 personally responsible. It may be a fine matter and I  
11 don't want any arguments about it. I want him to, if that  
12 is so, to say yes I am personally responsible for the plan.  
13 There may be others also responsible, but I don't want any  
14 argument at the end of these proceedings that you cannot  
15 put blame on any particular individual; there was  
16 collective responsibility.

17 [11:46] CHAIRPERSON: Well, I've understood him  
18 to say already that he participated in the discussions  
19 which led to the adoption of the plan. I understood him to  
20 say that he agreed with what was, with the plan, and I've  
21 understood him to say that he accepts joint responsibility.  
22 Now I don't see how it could possibly be open to him or  
23 anyone else on his behalf to contend at the end of the day  
24 that despite all that he wasn't really responsible. That –

25 MR BIZOS SC: Mr Chairman, it's a simple

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1 question. What is my learned friend's objection? If he  
2 concedes that he was personally liable, why can't I ask the  
3 witness do you accept that you were personally liable?  
4 What are we afraid of –

5 CHAIRPERSON: Is liable the word –  
6 MR BIZOS SC: - and why is the objection  
7 raised?

8 CHAIRPERSON: Is liable the word, or  
9 responsible? Isn't the word we're dealing with  
10 "responsible?"

11 MR BIZOS SC: Responsible, not liable.  
12 Responsible. I'll stick with responsible. Do you accept  
13 personal responsibility? In view of your rank, in view of  
14 your experience, do you accept personal responsibility for  
15 the plan? That is – I don't understand why an  
16 interpretation of what he has already said amounts to his  
17 admitting personal responsibility, without allowing me to  
18 ask the witness, and to say yes or no, do you accept  
19 personal responsibility. What is the problem?

20 COMMISSIONER TOKOTA: But Mr Bizos, do  
21 you want him to accept responsibility in his personal  
22 capacity?

23 MR BIZOS SC: Yes.  
24 COMMISSIONER TOKOTA: Why? He has  
25 already said it was a joint thing. Why must he take

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1 personal responsibility? He's on official duty.

2 CHAIRPERSON: You know, I don't  
3 understand what responsibility you're talking about. Are  
4 you suggesting, asking him to acknowledge that if what  
5 happened amounted to some kind of delict, that he would be  
6 liable as – to use the English expression – one of the  
7 thought theses in his personal capacity. Is that what  
8 you're trying to get him to admit?

9 MR BIZOS SC: Yes.  
10 CHAIRPERSON: Is that relevant for the  
11 purposes of our inquiry? If there is legal liability it  
12 will manifestly be liability on the part of the State – if  
13 there is. I don't, we will find out perhaps at the end,  
14 and even if we say, find that there is, it may not be  
15 accepted and there may be further litigation, but we may  
16 not so find and we won't know, we don't know at this stage.  
17 But if there is a finding of liability, and if that finding  
18 is correct, then the State will be liable. I mean you're  
19 not going to also sue not only the State, but all the  
20 members of JOCOM, are you?

21 MR BIZOS SC: Mr Chairman, the fact that  
22 my learned friend is objecting is something that concerns  
23 me as to what the argument would be; that there is  
24 collective responsibility, but you cannot hold anyone  
25 personally responsible.

<p style="text-align: right;">Page 9002</p> <p>1 MR SEMENYA SC: Chair –</p> <p>2 CHAIRPERSON: Yes, I'd like to ask Mr</p> <p>3 Bizos a question before you speak. I still don't</p> <p>4 understand how it's going to help us to answer the</p> <p>5 questions put to us in the Terms of Reference, but before</p> <p>6 you carry on I want to ask you this. I asked you about</p> <p>7 delictual liability and you said yes. Do you also suggest</p> <p>8 that there might be criminal liability?</p> <p>9 MR BIZOS SC: There may well be. There</p> <p>10 may well be, Mr Chairman –</p> <p>11 CHAIRPERSON: So in that case –</p> <p>12 MR BIZOS SC: - and I would not dismiss</p> <p>13 that –</p> <p>14 CHAIRPERSON: In that case a civil action</p> <p>15 against the police might be, if the finding, if there is</p> <p>16 liability and so forth, might assist the persons who've</p> <p>17 suffered damage as a consequence of this, might give them</p> <p>18 compensation. Of course that wouldn't be an answer in a</p> <p>19 criminal case. That's your point, is it?</p> <p>20 MR BIZOS SC: Mr Chairman, yes –</p> <p>21 CHAIRPERSON: I'm just trying to</p> <p>22 understand your contention.</p> <p>23 MR BIZOS SC: Yes, and my fears are</p> <p>24 enhanced because of my learned friend's attitude, and we</p> <p>25 have an objection –</p>	<p style="text-align: right;">Page 9004</p> <p>1 CHAIRPERSON: - and to address me further</p> <p>2 on this point.</p> <p>3 MR BIZOS SC: And possibly advance</p> <p>4 argument that will –</p> <p>5 CHAIRPERSON: Yes, yes –</p> <p>6 MR BIZOS SC: - as to why we want to ask</p> <p>7 you to find, if the evidence supports it, that the</p> <p>8 following persons are personally responsible for what</p> <p>9 happened.</p> <p>10 CHAIRPERSON: Mr Bizos, I think the best</p> <p>11 way forward is for – I think this is quite a complicated</p> <p>12 aspect and I wouldn't like to give a ruling one way or the</p> <p>13 other without full argument on the matter. I suggest that</p> <p>14 we let that point stand over until next week when you can</p> <p>15 come with a prepared argument –</p> <p>16 MR BIZOS SC: Yes, full argument.</p> <p>17 CHAIRPERSON: And Mr Semenya can, if</p> <p>18 necessary, give a reasonably prepared reply. Possibly the</p> <p>19 way to do it might be if you prepare written argument, you</p> <p>20 can give it to Mr Semenya and he could prepare a reply,</p> <p>21 because seeing it may well be an important point and I</p> <p>22 wouldn't want to give a ruling off the cuff, as it were,</p> <p>23 with respect to a –</p> <p>24 MR BIZOS SC: We agree, Mr Chairman, that</p> <p>25 it is an issue which we should address you on because it's</p>
<p style="text-align: right;">Page 9003</p> <p>1 CHAIRPERSON: Alright, okay. Let's hear</p> <p>2 what your learned friend has to say. He's indicated he</p> <p>3 wants to say something.</p> <p>4 MR SEMENYA SC: Chair, more pointedly, my</p> <p>5 team and I are not on brief to resist a delictual claim in</p> <p>6 these proceedings, neither are we here on brief to deal</p> <p>7 with criminal charges of any kind, and I can't see any</p> <p>8 basis for those questions at all, Chair, and I don't think</p> <p>9 the SAPS must stand accused unrepresented on allegations of</p> <p>10 this kind.</p> <p>11 CHAIRPERSON: Can you refer me to</p> <p>12 passages, at anything in the Terms of Reference which will</p> <p>13 justify this questioning on?</p> <p>14 MR BIZOS SC: Speaking from memory, Mr</p> <p>15 Chairman –</p> <p>16 CHAIRPERSON: I wonder if –</p> <p>17 MR BIZOS SC: Perhaps I should get the</p> <p>18 Terms in front of me.</p> <p>19 CHAIRPERSON: Yes, I don't know whether</p> <p>20 your cross-examination is likely to end today.</p> <p>21 MR BIZOS SC: Yes.</p> <p>22 CHAIRPERSON: If you're likely to carry</p> <p>23 on next week, you'll have the opportunity between now and</p> <p>24 then to look at the Terms of Reference –</p> <p>25 MR BIZOS SC: Yes, well –</p>	<p style="text-align: right;">Page 9005</p> <p>1 important –</p> <p>2 CHAIRPERSON: Yes, no –</p> <p>3 MR BIZOS SC: It's important –</p> <p>4 CHAIRPERSON: I understand you consider</p> <p>5 it to be important –</p> <p>6 MR BIZOS SC: I will give that –</p> <p>7 CHAIRPERSON: - and if it's covered by</p> <p>8 the Terms of Reference, that's obviously an important</p> <p>9 aspect in the question as to whether, in answering the</p> <p>10 question whether you can ask this question. But let's not</p> <p>11 debate it further now. Let's carry on with your cross-</p> <p>12 examination on other matters and you can address it when we</p> <p>13 resume on Monday. Mr Semenya, if it's covered by the Terms</p> <p>14 of Reference, then the fact that you're not briefed to deal</p> <p>15 with that Term of Reference, if it is so covered, is not a</p> <p>16 matter that obviously would be relevant at this point, but</p> <p>17 if it's obviously not covered by the Terms of Reference,</p> <p>18 well that would be the end of the matter. But anyway,</p> <p>19 let's address those matters more fully when there's full</p> <p>20 argument on Monday. Mr Bizos, would you like to turn to</p> <p>21 some other aspect at this stage?</p> <p>22 MR BIZOS SC: Yes, Mr Chairman. General,</p> <p>23 would you agree that the plan did not simply appear on the</p> <p>24 14th of August out of the blue; it was germinated from the</p> <p>25 discussions held on the 13th? Do you agree?</p>

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1            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
2 die situasie het reeds begin op die 10de Augustus van 2012.  
3            CHAIRPERSON:            Mr Bizos, sorry to  
4 interrupt you. The position, as I understand it, there's  
5 an exhibit where all these plans are collected. It starts  
6 with the 10th -  
7            MR BIZOS SC:            Yes.  
8            CHAIRPERSON:            - the contingency plan.  
9 This witness wasn't involved at that stage. As we know, he  
10 only arrived on the scene later, and then there's a series  
11 of plans of greater completeness with more detail,  
12 culminating in the plan of the 16th.  
13            MR BIZOS SC:            It is apparent from  
14 Lieutenant-Colonel Scott's statement, exhibit FFF18, that a  
15 coordinated strategy was discussed at an 11PM meeting on  
16 the night of the 13th of August, as well as the basis of the  
17 ultimate plan, such as negotiations, dialogue, tactical  
18 intervention. Do you agree with that?  
19            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
20 ja, beide myself en Luitenant-Kolonel Scott het eers op die  
21 13de gearriveer, so dit was toe ons betrokkeheid by die  
22 beplanning.  
23            MR BIZOS SC:            According to your  
24 statement, paragraph 8 in GGG1, the very next morning,  
25 Tuesday the 14th, at approximately 10:15 you called national

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1 coordinator for hostage negotiators to deploy a team of  
2 negotiators, and they were deployed on the same day.  
3            GENERAAL-MAJOOR ANNANDALE:        Dit is so  
4 vermeld in my verklaring, dit is korrek, Voorsitter.  
5            MR BIZOS SC:            It would appear that you  
6 were already executing the so-called police plan.  
7            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
8 ja, daar was reeds 'n polisieplan vanaf die 10de en dan 'n  
9 addisionele een op die 13de. Die onderhandelingsgedeelte  
10 is in terme van die operasionalisering van die plan soos  
11 uiteengesit in die "Operational plan."  
12            MR BIZOS SC:            Do you agree with the  
13 National Commissioner that the plan would have worked had  
14 it not been disrupted?  
15            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
16 ons was oortuig dat ons 'n deeglike plan het, en dit was 'n  
17 plan wat nie tenuitvoer gebring kon word nie weens die  
18 aanval op die polisielyn.  
19            MR BIZOS SC:            You agree that it was  
20 disrupted. Did you foresee that there could have been  
21 possible disruptions on the plan?  
22            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
23 ek het reeds omvattend daarna verwys en ek kan weer  
24 teruggaan na dit. Dit gaan egter, dit kan net 'n  
25 omvattende antwoord wees.

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1            CHAIRPERSON:            Yes, I think you had  
2 already when you were questioned by Mr Budlender.  
3            GENERAAL-MAJOOR ANNANDALE:        Absoluut,  
4 Voorsitter.  
5            MR BIZOS SC:            Would you like to tell us  
6 how would you have dealt with at least some of the  
7 disruptions that you may have foreseen?  
8            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
9 ek sal graag wil. Ek het verwys na die preposisionering  
10 van die lemmetjiesdraad sodat dit ontplooi kan word om  
11 beide fisiese obstruksie te plaas –  
12            MR MAHLANGU:            It could be deployed in  
13 such a way to avoid any physical –  
14            CHAIRPERSON:            No, no, no, other way  
15 round. It was to be deployed both so that it could be a  
16 physical obstruction, I think he said, and he hasn't given  
17 us the second half yet. Is that right?  
18            GENERAAL-MAJOOR ANNANDALE:        Dis korrek,  
19 Voorsitter, asook 'n sielkundige versperring.  
20            CHAIRPERSON:            I suppose to be a  
21 psychological barrier as well as a physical barrier. Is  
22 that what you're saying, Major-General? Is that right?  
23            GENERAAL-MAJOOR ANNANDALE:        Dis korrek.  
24 Ek het verwys na afsperring van 'n sogenaamde neutrale  
25 gebied. Ek het ook verwys na die afstand wat ons pertinent

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1 gehou het tussen die polisielyn en die voorste groepering.  
2 Ek het verwys na die plasing van reserwemagte in die  
3 "forward holding area" 1 en 2. Ek het verwys na die  
4 pertinente verantwoordelikhede van die spesiale taakmag,  
5 maar ek het bowenal verwys na die onderhandelings en die  
6 prosesse wat ons in plek gesit het om te onderhandel, om  
7 enkeles te noem. Dit is nie omvattend nie, Voorsitter.  
8 [12:06] MR BIZOS SC:            I don't know if you want to  
9 answer my next question now or to await the argument that  
10 we may present to the Commission, but the question is this;  
11 if the Commission finds that there were serious faults in  
12 the plan, will you accept responsibility for those faults?  
13            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
14 ek was regtig onder die indruk ons het reeds daarmee  
15 gedeel, want dit is niks anders as dieselfde vraag wat  
16 vroeër aan my gevra is nie.  
17            MR BIZOS SC:            Well, we will leave that  
18 over. Now in your statement GGG1 in paragraph 7 you set  
19 out the names of the persons that had been deployed for  
20 various tasks. Your own, you say, you had the  
21 responsibility as Head, Specialised Operations, to command  
22 and coordinate the deployment of the NIU and STF members.  
23 You confirm that?  
24            GENERAAL-MAJOOR ANNANDALE:        Voorsitter,  
25 in my verklaring staan dit so. Ek het onder getuienis het



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1 ek ook gesê dat dit het ook ingesluit 10 lede van Mobiele  
 2 Operasies.  
 3 MR BIZOS SC: We will come to that.  
 4 There are set out in paragraph 67 of exhibit L –  
 5 MR MAHLANGU: Slide 67.  
 6 MR BIZOS SC: And you there say that the  
 7 running of the operation by managing the JOC. Is that  
 8 correct?  
 9 CHAIRPERSON: You left out the word  
 10 "coordinate." The witness was responsible to coordinate,  
 11 or it was his role actually, to use the exact word, it was  
 12 his role to coordinate the running of the operation by  
 13 managing the JOC with the designated role-players  
 14 representing each field. I take it you agree with that?  
 15 GENERAAL-MAJOOR ANNANDALE: Dis korrek,  
 16 Voorsitter.  
 17 MR BIZOS SC: And in the paragraph of  
 18 your statement you set out the deployment of the Provincial  
 19 Commissioner and Major-General Mpembe as Deputy Provincial  
 20 Commissioner, and to complicate matters further, Major-  
 21 General Naidoo was of the operational command structure of  
 22 the intervention, while Brigadier Calitz, Provincial Head  
 23 Operation Services, was operational commander. Is that  
 24 correct?  
 25 GENERAAL-MAJOOR ANNANDALE: Dit is so in

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1 my verklaring vermeld, Voorsitter.  
 2 MR BIZOS SC: I think we've got it  
 3 correctly. Now in the light of all these commanders, would  
 4 you agree that it's a somewhat bewildering command  
 5 structure?  
 6 GENERAAL-MAJOOR ANNANDALE: Nee, ek stem  
 7 nie saam nie, Voorsitter.  
 8 CHAIRPERSON: Perhaps you should say to  
 9 the witness why you say it's bewildering –  
 10 MR BIZOS SC: Yes.  
 11 CHAIRPERSON: - to enable him to answer  
 12 you comprehensively.  
 13 MR BIZOS SC: I say this because who was  
 14 in fact running the operation as a whole?  
 15 GENERAAL-MAJOOR ANNANDALE: Die oorhoofse  
 16 bevelvoerder, Generaal-Majoor Mpembe.  
 17 MR BIZOS SC: So he was the overall  
 18 commander.  
 19 GENERAAL-MAJOOR ANNANDALE: Dit is  
 20 korrek.  
 21 MR BIZOS SC: You corrected Adv Budlender  
 22 when he referred to JOC commanders and claimed that they  
 23 were not commanders, but JOC representatives.  
 24 GENERAAL-MAJOOR ANNANDALE: Dis korrek,  
 25 jy het GOS verteenwoordigers.

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1 MR BIZOS SC: Whom did you represent?  
 2 CHAIRPERSON: Sorry, you said "GOS  
 3 verteenwoordigers" –  
 4 GENERAAL-MAJOOR ANNANDALE: Gesamentlike  
 5 operasionele sentrum, JOC.  
 6 CHAIRPERSON: Thank you.  
 7 MAJOR-GENERAL ANNANDALE: JOC, yes.  
 8 MR BIZOS SC: Whom did you represent?  
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 10 ek dink, met respek, verstaan Adv Bizos nie die  
 11 bevelstruktuur in terme van die operasie nie.  
 12 CHAIRPERSON: I'm sorry to intervene, but  
 13 I think in the interest of moving this debate on, I see  
 14 from the relevant slide of exhibit L that what it said is  
 15 that the Major-General's role was to coordinate the running  
 16 of the operation by managing the JOC, with the designated  
 17 role-players representing each field. So the question  
 18 would be, did you represent any field yourself, or were you  
 19 the coordinator of the operation, coordinator of the  
 20 running of the operation?  
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 22 ek het die aktiwiteite in die JOC gekoördineer en ek was  
 23 die voorsitter van die JOCOM vergaderings. Die pertinente  
 24 bevelvoerders was Generaal Mpembe in terme van oorhoofs en  
 25 dan Brigadier Calitz as die operasionele bevelvoerder, maar

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1 daardeur is daar ook ander bevelvoerders, verwysend na  
 2 Generaal Naidoo in terme van "forward holding" area 1, en  
 3 Pitsi by "forward holding area" 2, en verskeie ander  
 4 bevelvoerders, Makhubela, Mere, Gaffley, en so kan ek  
 5 aangaan.  
 6 CHAIRPERSON: Mr Bizos, I think Mr Booi  
 7 has got to try and interpret that whole answer into  
 8 isiXhosa, but I suppose the answer is let Mr Mahlangu do it  
 9 first into English and then Mr Booi, perhaps he can, if  
 10 it's possible, break it up a bit and then Mr Booi can  
 11 interpret as he goes along. It's a long answer. I'm not  
 12 criticising the witness, because it was a question that  
 13 required a long answer, but still it does create problems  
 14 in relation to interpretation.  
 15 MR BIZOS SC: You have consistently  
 16 maintained that Major-General Mpembe was in overall  
 17 command. Is that right?  
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 19 dit is die feite en ek het dit so oorgedra.  
 20 MR BIZOS SC: Were you aware of the  
 21 difficulties that Major-General Mpembe faced during the  
 22 incident on Monday, the 13th of August?  
 23 GENERAAL-MAJOOR ANNANDALE: As ek u net  
 24 kan vra, verwysend na watse probleme?  
 25 MR BIZOS SC: Was it reported to you –

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1 CHAIRPERSON: No, you haven't answered  
 2 his question, Mr Bizos. I know counsel don't have to  
 3 answer the questions of witnesses, but sometimes it does  
 4 take the process forward. You referred to the difficulties  
 5 that Major-General Mpmembe experienced on the 13th.  
 6 MR BIZOS SC: Yes.  
 7 CHAIRPERSON: You asked whether the  
 8 witness is aware of them, and he said well what  
 9 difficulties, and you didn't answer. I take it you  
 10 probably meant the engagement between some of the strikers  
 11 and police at the railway line near the Karee Mine, which  
 12 led to the death of two policemen, injury of a third –  
 13 MR BIZOS SC: Yes.  
 14 CHAIRPERSON: - and death of three  
 15 civilians. I take it that's what you're referring to but  
 16 you didn't –  
 17 MR BIZOS SC: Yes.  
 18 CHAIRPERSON: - you didn't answer his  
 19 question. So he hasn't been able yet to answer your  
 20 question.  
 21 MR BIZOS SC: Yes.  
 22 CHAIRPERSON: Am I right? Are those the  
 23 difficulties at the mine -  
 24 MR BIZOS SC: Ja, those are – he asked  
 25 the question; he'll get the answer in the next question, Mr

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1 Chairman.  
 2 CHAIRPERSON: No, no, but he asks you a  
 3 question and you should answer it. Anyway, you heard the  
 4 debate between me and Mr Bizos, Major-General. Are you now  
 5 able to answer the question that he asked you; were you  
 6 aware of the difficulties which Major-General Mpmembe had  
 7 experienced on the 13th?  
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 9 ek is bewus dat Generaal Mpmembe met 'n moeilike situasie  
 10 gedeel het, 'n situasie waar daar 'n groot groep gewapende  
 11 individue was, 'n groep wat hy mee onderhandel het in 'n  
 12 poging om hulle te kry om hulle wapens neer te lê, 'n groep  
 13 wat geweier het om hulle wapens neer te lê op sy versoek,  
 14 'n groep wat toe beweeg het en daar was toe 'n alterkaside,  
 15 'n interaksie tussen die polisie en die stakende groep, en  
 16 dat daar tydens die alterkaside twee polisiebeamptes gesterf  
 17 het, en dat twee mynwerkers ook gedood is, en dat die  
 18 liggaam van 'n verdere persoon gevind is en dat daar ook  
 19 beserings was en dat daar ook polisiewapens en 'n  
 20 polisie-radio geroof is.  
 21 CHAIRPERSON: The radio, I think one  
 22 radio.  
 23 MR MAHLANGU: If I may correct, one  
 24 police radio robbed.  
 25 MR BIZOS SC: General, was it reported to

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1 you that the handling of the situation that you described  
 2 at some length, led to a fundamental disagreement between  
 3 General Mpmembe and Mr Merafe?  
 4 CHAIRPERSON: You mean Lieutenant-Colonel  
 5 Merafe? I take it you mean Lieutenant-Colonel Merafe?  
 6 MR BIZOS SC: Is it?  
 7 CHAIRPERSON: The deponent of exhibit  
 8 GGG15?  
 9 MR BIZOS SC: Yes. Did you become aware  
 10 of their, to put it mildly, differences of opinion?  
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 12 met my aankoms op die toneel op die Maandagmiddag, het  
 13 Luitenant-Kolonel Vermaak my ingelig dat daar nie 'n  
 14 ooreenkoms was tussen Generaal Mpmembe en Luitenant-Kolonel  
 15 Merafe in terme van die hantering van die toneel.  
 16 MR BIZOS SC: But what was the  
 17 fundamental difference between the –  
 18 CHAIRPERSON: Mr Bizos, Mr Booi is trying  
 19 to interpret what's been said into isiXhosa.  
 20 MR BIZOS SC: Sorry. Yes, the  
 21 fundamental difference between the two was whether the use  
 22 of force should be used to disperse the group or not.  
 23 [12:26] GENERAAL-MAJOOR ANNANDALE: Soos dit aan  
 24 my oorgedra was, Voorsitter, het ek dit verstaan dat  
 25 Generaal Mpmembe van oortuiging was dat die groep moet

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1 toegelaat word om te beweeg, terwyl Luitenant-Kolonel  
 2 Merafe van opinie was dat die groep uiteengedryf moet word.  
 3 MR BIZOS SC: And were you informed that  
 4 General Mpmembe said that he did not want another Tatane  
 5 incident?  
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 7 ek het dit gelees in een van hierdie bewysstukke wat aan my  
 8 gegee is net voor die teetyd.  
 9 COMMISSIONER HEMRAJ: General, when was  
 10 it conveyed to you that there was a difference of opinion  
 11 about the approach in this matter? When was that fact  
 12 conveyed to you?  
 13 GENERAAL-MAJOOR ANNANDALE: Kommissaris,  
 14 dit was tydens my aankoms die Maandagmiddag op die toneel  
 15 waar die persone gesterf het, toe die oordrag aan my gemaak  
 16 is deur Luitenant-Kolonel Vermaak, wie ook daar teenwoordig  
 17 was.  
 18 MR BIZOS SC: Now the statements are  
 19 before the Commission, before you, and before us. What  
 20 General Mpmembe feared, that there would be another Tatane,  
 21 came to pass on the 13th, and not only were there two  
 22 policemen but a couple of other people killed as well.  
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 24 ek weet nie of die oordrag so nie – ek lees dit in  
 25 Luitenant-Kolonel Merafe se verklaring, paragraaf 17. Ek

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1 weet nie of die oordrag so gemaak was deur Generaal Mpembe  
 2 en wat hy daarby bedoel het nie; het hy bedoel dat daar nie  
 3 moet iemand doodgaan nie? Ek weet werklik nie, en ek dink  
 4 ook nie mens kan die twee tonele met mekaar vergelyk nie.

5 MR BIZOS SC: Well, have you heard the  
 6 expression that violence begets violence?

7 GENERAAL-MAJOOR ANNANDALE: Die Engelse  
 8 een, nee. Is dit geweld lei tot geweld? Dit het ek al  
 9 gehoor.

10 MR BIZOS SC: Have you heard of the  
 11 expression?

12 GENERAAL-MAJOOR ANNANDALE: Ek het nou  
 13 net gesê, Voorsitter, in Afrikaans ja, het ek al die  
 14 uitdrukking gehoor, geweld lei tot geweld.

15 MR BIZOS SC: Would you agree that if  
 16 General Mpembe's view prevailed on that afternoon, there  
 17 may not have been any violence at all either against police  
 18 or protesters on the 13th?

19 MR SEMENYA SC: Objection, Chair.

20 CHAIRPERSON: Mr Semanya, I see you've  
 21 turned your light on.

22 MR SEMENYA SC: Yes, if this is reference  
 23 to the 13th, the facts are that General Mpembe's view  
 24 prevailed.

25 CHAIRPERSON: Yes, Mr Bizos, that seems

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1 to be the defect in your question, is his view prevailed  
 2 and that led to a disagreement later because, as I  
 3 understand it, which we read in the statements, he was  
 4 blamed for the deaths that followed because he didn't  
 5 disarm the people when his colleague thought they should  
 6 have been disarmed. So I don't think your question's  
 7 factual basis is correct.

8 MR BIZOS SC: The fact is that Mr Mpembe  
 9 wanted to lead the people to the koppie and that they  
 10 should not be dispersed. It's clear, if that view  
 11 prevailed there would not have been any violence.

12 CHAIRPERSON: No, I'm sorry. I'm sorry.  
 13 It's more complicated than that. As I read it, Lieutenant-  
 14 Colonel Merafe's view was that the strikers should be  
 15 disarmed there and then and General Mpembe didn't want them  
 16 disarmed for reasons he gave.

17 MR BIZOS SC: Yes.

18 CHAIRPERSON: And they went on. There  
 19 was then an attempt, it was feared they'd go into the  
 20 informal settlement and in order to prevent them from,  
 21 discourage them from going into the informal settlement, as  
 22 I understand it, stun grenades were used and so forth, and  
 23 then there was effectively an interaction – as the witness  
 24 puts it – which led to the deaths of these people, as have  
 25 been mentioned. But the fact is that the view that

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1 Lieutenant-Colonel Merafe expressed was not given effect  
 2 to. What Major-General Mpembe wanted to happen, happened.  
 3 The people weren't disarmed and they proceeded further. So  
 4 as I see it, subject – I'm not going to rule against you  
 5 until I've heard you, but subject to what you may say, it  
 6 seems to me prima facie at least that Mr Semanya is right.

7 MR BIZOS SC: No, with respect, Mr  
 8 Chairman, perhaps we should also look at Mr Mpembe's  
 9 objections in the other exhibit that was recently put, that  
 10 an attempt to disperse people and to disarm them would lead  
 11 to bloodshed. I submit that Mr Mpembe properly –

12 CHAIRPERSON: Are you referring to what  
 13 he said on the evening of the 15th, I think it was?

14 MR BIZOS SC: Yes, that his attitude was  
 15 the same, or substantially similar on the 13th, but he was  
 16 blamed because his view did not prevail on the 13th and  
 17 unhappily did not prevail on the 15th.

18 CHAIRPERSON: Mr Bizos, I'm sorry, that's  
 19 not the way I understand it. We haven't heard the full  
 20 story yet of what happened on the 13th. We've just got  
 21 statements.

22 MR BIZOS SC: Yes.

23 CHAIRPERSON: But what appears from the  
 24 statements that you've put it is that General Mpembe's view  
 25 prevailed in the sense that the people were not disarmed.

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1 They then proceeded in the direction of the informal  
 2 settlement. The police then in an endeavour to dissuade  
 3 them from going to the informal settlement, stun grenades  
 4 were used. There was then an interaction, as the Major-  
 5 General puts it, and a number of people died. So it's an  
 6 oversimplification to say that General Mpembe's view did  
 7 not prevail and therefore that led to bloodshed. What  
 8 exactly led to the bloodshed is something we will hear  
 9 evidence about later, I take it, but I don't think it could  
 10 be put as starkly as you've done by way of a fair question  
 11 to the witness, but Mr Semanya, I've just put my  
 12 understanding of the matter -

13 MR SEMENYA SC: That's what the  
 14 statements say, Chair.

15 CHAIRPERSON: So Mr Bizos, I'm afraid I  
 16 must rule against you. I think your question may well have  
 17 to be –

18 MR MSIMANG: Can I assist, before you  
 19 rule against Mr Bizos?

20 CHAIRPERSON: Yes. Yes, Mr Msimang?

21 MR MSIMANG: If you look at Baloyi,  
 22 GGG16, paragraphs 8 and 9, there he clearly indicates that  
 23 as they were escorting the minors in the direction of the  
 24 mountain, he moved with other members in the Nyala and  
 25 tried to curb the miners from moving in that direction.

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1 CHAIRPERSON: Yes, that's not relevant to  
 2 the objection. The point is that that paragraph in fact  
 3 supports what's been put already, that the senior colonel  
 4 referred to in para 7 is obviously Colonel Merafe, he said  
 5 that it's better to disarm them there. The general didn't  
 6 agree, told us to follow them. Mr Baloyi then said,  
 7 Lieutenant Baloyi then said that stun grenades should be  
 8 used to disperse them, and then he goes on with paragraph  
 9 8. The point at the moment under debate is whether General  
 10 Mzembe's view prevailed on the 13th or not, and it's quite  
 11 clear from all the statements we have that it did prevail,  
 12 that the – and we know that from what we've heard before –  
 13 the strikers were not disarmed by the railway line; they  
 14 were allowed to proceed with their weapons, so that General  
 15 – so it's incorrect to say that if General Mzembe's view  
 16 had prevailed, things would have been different. The facts  
 17 are that General Mzembe's view did prevail. So the  
 18 question I'm afraid is not a fair one and I disallow it.  
 19 Mr Bizos, that doesn't mean you can't approach the matter  
 20 in another way on the basis of the correct facts, but all  
 21 I'm saying is the way you put it, that because General  
 22 Mzembe's view didn't prevail, there was bloodshed on the  
 23 13th, that doesn't seem to me to be correct. But anyway, I  
 24 don't want to stop you on the line because I think I know  
 25 where you're going, but that question I didn't like.

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1 MR BIZOS SC: Our understanding of the  
 2 evidence as a whole is that General Mzembe was against the  
 3 idea of dispersing and disarming both on the 13th and the  
 4 subsequent occasion when he said that this plan will lead  
 5 to bloodshed, and I may as well make the whole submission  
 6 known to you, the Commission, is this; we are going to  
 7 contend, Mr Chairman, that General Mzembe was sidelined.  
 8 CHAIRPERSON: Well, may I suggest that  
 9 you put the questions to the witness about that –  
 10 MR BIZOS SC: Yes.  
 11 CHAIRPERSON: But all I'm saying is you  
 12 can't put questions to him based upon what I have –  
 13 MR BIZOS SC: Very well.  
 14 CHAIRPERSON: - considered to be a  
 15 misstatement of what happened on the 13th, and that's Mr  
 16 Semanya's objection too, which has been upheld – Mr Bizos  
 17 continues, what do you say about the contention that  
 18 General Mzembe was sidelined? Do you agree with that?  
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 20 nee, ek stem nie saam nie. Hy was die oorhoofse  
 21 bevelvoerder en hy was deurlopend betrokke, maar hy sal vir  
 22 homself kan kom getuig.  
 23 MR BIZOS SC: At the risk of being  
 24 repetitive, because this was canvassed by our learned  
 25 friend Mr Budlender, but if you look at the GG4, page 674

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1 and 675, and portions of 676 of GG4 – GGG4, you will see  
 2 that General Mzembe was completely against the  
 3 implementation of the plan for the 16th.  
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 5 nee –  
 6 MR BIZOS SC: For the sake of  
 7 completeness, this is why he was pushed out and put on a  
 8 private helicopter and did nothing on the 16th to command.  
 9 CHAIRPERSON: Mr Bizos, that's two  
 10 questions in one. The first one was that it appears from  
 11 GGG4 that he was against the plan.  
 12 MR BIZOS SC: Yes.  
 13 CHAIRPERSON: What page in particular are  
 14 you referring to there?  
 15 MR BIZOS SC: Let me read it, Mr  
 16 Chairman. 674 –  
 17 CHAIRPERSON: That's page 5 of the  
 18 exhibit, yes, and which line are you reading from?  
 19 MR BIZOS SC: At the bottom of 674, line  
 20 28, "Now I need to do my job and also call me to" –  
 21 CHAIRPERSON: "You all also" –  
 22 MR BIZOS SC: - "you also call me to  
 23 remove firearms. I cannot do there and disarm people. It  
 24 would be bloodshed. So then I need to go in a specific  
 25 house, disarm them. That is the only way," and at line 8,

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1 "Beating this elephant bit by bit because me going there to  
 2 the mountain, disarming people, is going to be bloodshed.  
 3 It is going to be bloodshed. That one I can assure you.  
 4 Those blankets they have and those things, I saw being cut  
 5 by police officers in front of me; they did that, so now  
 6 that is what I am saying to the leadership, are calling  
 7 upon," and then at line 22, "If you were there, President,  
 8 you could count how many people, between 3 000 and 4 000.  
 9 So if you charge those people with a number of police you  
 10 have, with what they have, cut the people, they are also  
 11 psyched up; definitely anyone would come up with that  
 12 whatever thing, they will have to act and we are also not  
 13 prepared to use less bullets, and I know that you do not  
 14 want us to shoot, shoot. Here is that the police are  
 15 shooting, are killing people, and we do not want to go that  
 16 route, but at the same time we are also not prepared that  
 17 our members should die, but we have a duty to disarm."  
 18 [12:46] Then the last three lines on page 676, "I cannot  
 19 go to the mountain. It is not, it has never been  
 20 strategically in my training; I have not taught because I  
 21 must disarm somebody, how can I do" –  
 22 CHAIRPERSON: "How do I de-arm" -  
 23 MR BIZOS SC: - "de-arm somebody with an  
 24 axe and I have a firearm? It will never work. There is no  
 25 training in the whole world to deal like that."

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1 CHAIRPERSON: Major-General, were you  
2 present when that discussion took place between, according  
3 to this transcript between Major-General Mpembe and Mr  
4 Zokwana and Mr Mathunjwa?  
5 GENERAAL-MAJOR ANNANDALE: Voorsitter,  
6 ja ek was teenwoordig.  
7 MR BIZOS SC: Would you agree that he  
8 made it clear that he was against the implementation of the  
9 plan?  
10 CHAIRPERSON: Mr Semenya, you want to say  
11 something?  
12 MR SEMENYA SC: That is also factually  
13 incorrect, Chair. At this meeting there was no discussion  
14 of the plan. Secondly, the evidence is that the plan was  
15 signed - we have the document – by General Mpembe.  
16 MR BIZOS SC: - language speaks for  
17 itself. Let the witness answer, please.  
18 COMMISSIONER TOKOTA: But Mr Bizos, this  
19 was said in the context of him persuading the two  
20 presidents to go and talk to the people on the koppie –  
21 MR BIZOS SC: No.  
22 COMMISSIONER TOKOTA: - not in the  
23 context of implementing the plan. Isn't that so?  
24 MR BIZOS SC: No, Mr Chairman. It was on  
25 the 15th, the meeting was on the 15th.

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1 COMMISSIONER TOKOTA: Yes, between him  
2 and the two presidents to go and persuade the people. He  
3 says, "I don't want to go there. Go and talk to your  
4 people, otherwise there'll be bloodshed." He's saying this  
5 in the context of persuading them to go to the mountain and  
6 persuade them to lay off the arms, not so?  
7 MR BIZOS SC: Mr Chairman, we would  
8 submit that the interpretation that we have put on these  
9 statements clearly indicate that he was against the plan.  
10 He was speaking on the 15th and this was going to take place  
11 on the 16th.  
12 COMMISSIONER HEMRAJ: Mr Bizos, there  
13 were so many elements to that plan besides just this one  
14 aspect that you're referring to. Are you really suggesting  
15 that what General Mpembe was doing was discussing this  
16 entire plan with the presidents of two unions where there  
17 was so much trouble between the unions members? Is that  
18 what you're suggesting?  
19 MR BIZOS SC: What General Mpembe said,  
20 and he also alluded to it in his statement after the event,  
21 rather cryptically, that if he was in charge what had  
22 happened would not have happened, that should be taken into  
23 consideration as well as to what he meant. We submit that  
24 this and his statement makes it quite clear that he was  
25 against the implementation of the plan.

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1 CHAIRPERSON: Mr Bizos, I wonder whether  
2 it's appropriate for us to have this debate now. I'll tell  
3 you why I say that. General Mpembe is going to give  
4 evidence. There's a dispute now with another witness,  
5 admittedly who was present, as to what exactly General  
6 Mpembe said and whether what he said amounted to  
7 disapproval of a plan which he had apparently signed. I'm  
8 not sure that it is as simple as it's been put to you, but  
9 I think it may be premature for us to have this debate, and  
10 inappropriate, because General Mpembe's going to come and  
11 he's going to tell us, and what is put here, what is  
12 transcribed here is obviously going to be discussed. The  
13 way I read the document, for what it's worth, is Mr Zokwana  
14 said that he wanted the people to be disarmed. That was  
15 his plea in the passage we're looking at, that the people  
16 should be disarmed, at the foot of 672. I take it that  
17 that last two lines is Mr Zokwana speaking. "Our feeling  
18 is either those guys are disarmed or dispersed. As long as  
19 they continue to stay in that mountain people are going to  
20 continue to do their rallies," and he goes on about that.  
21 So he wants them disarmed, and he goes on to say, "What we  
22 are fearing of losing," on page 673, line 6, "What we are  
23 fearing of losing lives, disarm these guys. We're going to  
24 lose lives of innocent people," and so forth, and then  
25 General Mpembe then is speaking to him, Zokwana, and he's

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1 saying to him – and it may well be that you're right, but  
2 we'll hear this from General Mpembe, that he's saying to  
3 him, "You give us the information, we'll go and get the  
4 arms from their homes." That's the passage that appears  
5 further on, top of page 675, and it may well be, but he's  
6 saying, "This idea of disarming them in the field when  
7 they've got axes isn't going to work. There's no training  
8 that can solve that." But we are dealing with a transcript  
9 where it's got lots of passages marked as inaudible, so  
10 it's not quite clear what exactly was said. We'll be  
11 better able to deal with this point when General Mpembe  
12 gives evidence. The witness has said that your main  
13 allegation is because he was opposed to the plan, he was  
14 sidelined, and is not correct, he says he wasn't sidelined,  
15 he was in charge the whole time. That's his answer.  
16 Whether that's right or wrong, we will possibly discover  
17 later in the light of further evidence, but is there any  
18 point at this stage in traversing the matter with this  
19 witness, based upon an incomplete transcription of a  
20 discussion that had taken place on the night of the 15th?  
21 MR BIZOS SC: Mr Chairman, I accept that,  
22 but may I, with respect, answer the suggestion by the  
23 Commissioner that it related to the past. The context is  
24 clear that they were speaking about what has to happen.  
25 CHAIRPERSON: That may be so, Mr Bizos,

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1 but I mean is there – I don't want to stop you debating  
 2 with my learned colleague –  
 3 MR BIZOS SC: Yes.  
 4 CHAIRPERSON: - but again, isn't the  
 5 debate premature? Aren't we going to be in a better  
 6 position to follow the argument and in fact find out what  
 7 actually happened later when General Mpmembe gives evidence?  
 8 There may be something in what you say; it may be there  
 9 isn't, but we can't decide that now, can we? And you can't  
 10 therefore ask questions –  
 11 MR BIZOS SC: Well, don't let's make a  
 12 decision on it, but what I want to put to the General is  
 13 this; you say that Mpmembe was in overall command at the  
 14 time that the people were killed at Marikana.  
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 16 nie net ek sê so nie; die feite sê so. Daar is telkens  
 17 verwys daarna. Generaal Mpmembe homself het 'n handtekening  
 18 gesit as oorhoofse bevelvoerder, so ek weet nie hoekom is  
 19 dit in dispuut nie.  
 20 MR BIZOS SC: Whilst the killing was  
 21 taking place, he was sent up in a helicopter, a private  
 22 helicopter.  
 23 CHAIRPERSON: Is that correct, Major-  
 24 General? Was he sent or did he send himself?  
 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 Generaal Mpmembe het aan my meegedeel dat hy nou in 'n  
 2 helikopter gaan vertrek en altwee polisiehelikopters was  
 3 reeds in die lug, so Voorsitter, nee, daar was nie iemand  
 4 wat gesê het, "Generaal Mpmembe, nou gaan jy in 'n  
 5 helikopter klim en jy gaan vlieg nie." Hy het gesê hy gaan  
 6 dit nou self doen.  
 7 MR BIZOS SC: An overall commander, in  
 8 his statement GGG12, paragraph 51, says this, "At all times  
 9 while I was in the helicopter, which was a period of about  
 10 20 minutes or less, was accessible by radio both to the  
 11 operational commander, Brigadier Calitz, and to the JOC.  
 12 As overall commander I could only give direction when  
 13 direction was sought either from the JOC or from the  
 14 operational commander. Neither sought direction." Is this  
 15 the language of an overall commander that he could give  
 16 direction only if he was asked by others?  
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 18 ek weet nie wat moet die taal wees van 'n oorhoofse  
 19 bevelvoerder nie.  
 20 CHAIRPERSON: Mr Bizos, the second  
 21 sentence of para 51 says, "as overall commander." So I  
 22 mean I don't see on what possible basis you can use this  
 23 passage to advance the contention that he wasn't the  
 24 overall commander. He says himself in terms, "as overall  
 25 commander." He admittedly says he was subject to

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1 difficulties because, communication difficulties –  
 2 MR BIZOS SC: Yes.  
 3 CHAIRPERSON: But that's a different  
 4 matter, but you say he was displaced, as it were, as  
 5 overall commander, and that's demonstrably shown to be  
 6 incorrect by his own words in the second sentence of para  
 7 51.  
 8 MR BIZOS SC: Yes, Mr Chairman, if I say  
 9 "displaced," I did not intend it. He was sidelined, Mr  
 10 Chairman.  
 11 CHAIRPERSON: If the sidelining took  
 12 place because he was in a helicopter –  
 13 MR BIZOS SC: Yes.  
 14 CHAIRPERSON: - and we've had the  
 15 evidence, and I don't know if there's anything in this  
 16 statement that says that that's incorrect, that he elected,  
 17 he chose himself to go in the helicopter, presumably  
 18 because he thought that that was the better way to deal  
 19 with the situation. He deals a little bit with that in the  
 20 – where does he say – oh, he says himself, look at  
 21 paragraph 48, "I remained at the JOC," he says. "Later I  
 22 informed Major-General Annandale," which is what the  
 23 General has just told us, "that I wanted to fly over the  
 24 area to get a view of what was happening." So here the man  
 25 himself says I decided to get into a helicopter, not

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1 because I wanted to be sidelined, or I was sidelining  
 2 myself, but because I wanted to get a view of what was  
 3 happening. So the contention that you put up isn't  
 4 supported by the documents on which you rely. But perhaps  
 5 you'd like to think about it and we will continue with the  
 6 –  
 7 MR BIZOS SC: I just want to draw  
 8 attention, Mr Chairman, with respect, with paragraph –  
 9 MR MAHLANGU: Just switch on, Mr Bizos.  
 10 MR BIZOS SC: - that people had been shot  
 11 and died at the scene when I arrived at the JOC. I  
 12 enquired whether the scene was being attended to by, and  
 13 Brigadier Van Zyl confirmed so. Brigadier Pretorius  
 14 confirmed that the IPID had also been informed and Major-  
 15 General Naidoo had confirmed that he was taken, the  
 16 emergency medical services based at forward holding area.  
 17 I want to put a question, Mr Chairman, finally. The  
 18 overall commander didn't know what was happening on the  
 19 ground and he was not informed by any of the people that  
 20 took the decisions to shoot.  
 21 CHAIRPERSON: I'm sorry, Mr Bizos, I'm  
 22 not sure that that question is a correct question because  
 23 the evidence as we have it is that no-one, as I understand  
 24 it, took a decision to shoot. The evidence seems to be  
 25 that the shots were fired by people in the line without any

1 order having been given, and so each one seems individually  
 2 to have taken a decision in circumstances that are  
 3 obviously going to be explored in depth, but it isn't as if  
 4 one of the commanders on the ground said shoot, and Major-  
 5 General Mpmembe's complaint could have been I wasn't  
 6 consulted about that decision, because there was no such  
 7 decision, no such order to shoot. The facts are different.  
 8 So I'm not sure if that's a good question, but in any  
 9 event, the passage you referred to is preceded by paragraph  
 10 51 in which his statement is that he could only give  
 11 direction when he was in the helicopter if direction was  
 12 sought, and direction wasn't thought. That's the high-  
 13 water mark of it, isn't it?

14 MR BIZOS SC: Well, what I want to put to  
 15 the witness, Mr Chairman, that it is passing strange that  
 16 the overall commander is on a helicopter and nobody  
 17 communicates with him not only shall we shoot, but it is  
 18 not even reported to him immediately that in fact 16 people  
 19 have been killed. What sort of overall commander was this?

20 CHAIRPERSON: I suggest you take up that  
 21 matter on Monday morning at 10 o'clock with the witness.  
 22 We will now adjourn until Monday –

23 COMMISSIONER HEMRAJ: Sorry, you also  
 24 need to check, Mr Bizos, if the operational commanders or  
 25 the commanders on the ground knew that General Mpmembe was

1 in the air at the time, because it was reported to the JOC.  
 2 Maybe you want to check that fact when you go into the  
 3 question.

4 MR BIZOS SC: Yes.

5 CHAIRPERSON: Alright, we'll now take the  
 6 adjournment till 10 o'clock on Monday.

7 [COMMISSION ADJOURNED]

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