

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 182

Lukmos
—communications—

10 FEBRUARY 2014

TRANSCRIPT PAGES 21854 TO 22007

1 **[PROCEEDINGS ON 10 FEBRUARY 2014]**

2 **[09:20] CHAIRPERSON:** The Commission resumes.

3 Provincial Commissioner, you are still under oath.

4 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

5 **CHAIRPERSON:** Mr Bizos, I understand you

6 have further questions in cross-examination.

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

8 In your evidence before the Commission you have testified

9 that your main concern and the goal of the SAPS operation

10 at Marikana was to disarm the strikers. You were not

11 concerned with dispersing the unprotected strike. Is that

12 correct?

13 **GENERAL MBOMBO:** That is correct, Mr

14 Chairperson.

15 **MR BIZOS SC:** Now you know that you made

16 this clear to the SAPS generals under your command that

17 that was what was required of them.

18 **GENERAL MBOMBO:** That is so, Mr Chairperson.

19 **MR BIZOS SC:** And on day 178, page 21362,

20 you said, "I then saw it fit that the commander of the

21 police in the area to tell the police that the main thing

22 that I wanted, that I wish for in whatever they were doing

23 was that the weapons be taken away from the strikers

24 because the weapons were the main issue, the main thing

25 that caused fear amongst the people. It was also suspected

1 that the weapons were used in killing the people that were
2 already killed." Do you agree with that?

3 **GENERAL MBOMBO:** That is so, Mr Chairperson.

4 **MR BIZOS SC:** And then the examination of

5 Mr –

6 **CHAIRPERSON:** Mr Bizos, sorry to

7 interrupt you. What you said, you read out from the record

8 is now on the screen. I do not know whether the witness

9 would like to just check on the screen that she is

10 satisfied that what she said has been correctly

11 transcribed.

12 **MR BIZOS SC:** Well, you have heard the

13 reference and if you want to confirm that what I am putting

14 to you is correct, you can raise that, Commissioner.

15 **GENERAL MBOMBO:** Thank you, Mr Chairperson.

16 **MR BIZOS SC:** Then on day 178, 21350,

17 line 8, Mr Semenya, "You then agree that the option of the

18 voluntary" –

19 **CHAIRPERSON:** Mr Bizos, let us wait to get

20 the page on the screen so we can follow.

21 **MR BIZOS SC:** Sorry.

22 **CHAIRPERSON:** What page is it?

23 **MR BIZOS SC:** Page 21350.

24 **CHAIRPERSON:** Yes, and line?

25 **MR BIZOS SC:** 8.

1 **CHAIRPERSON:** 8 - Thank you.

2 **MR BIZOS SC:** You follow, "You then agree

3 that the option of the voluntary surrender of weapons was

4 preferable and that it must be given a chance, correct?"

5 **GENERAL MBOMBO:** That is so, Mr Chairperson.

6 **MR BIZOS SC:** Mr Semenya, "You made it

7 plain though that if the promise does not come to pass the

8 strikers would have to be disarmed, right?"

9 **GENERAL MBOMBO:** That is so.

10 **MR BIZOS SC:** "That is correct," you

11 said. You adhere to that, and then Mr Semenya, "But you

12 continue to say that you left the implementation of the

13 decision to disarm the strikers and how that disarming

14 would be done to the commanders." Is that correct?

15 **GENERAL MBOMBO:** That is what I said, Mr

16 Chairperson.

17 **MR BIZOS SC:** And "that you relied on the

18 collective experience to carry out the operation given the

19 experience and also the extending operating procedures."

20 Correct?

21 **GENERAL MBOMBO:** The standing, I am not

22 sure the extending. The standing operating procedures,

23 yes. Yes, that is so, Mr Chairperson. It is standing operating

24 procedures.

25 **CHAIRPERSON:** I think she is right. The

1 word "extending" is presumably a misprint. Mr Semenya, can
2 you remember what she said or can you help us, Mr Semenya?

3 **MR SEMENYA SC:** Standing operating
4 procedures, Chairperson.

5 **CHAIRPERSON:** Standing, yes.

6 **MR SEMENYA SC:** Standing.

7 **CHAIRPERSON:** Yes, it must be.

8 **MR BIZOS SC:** Well, subject to that
9 correct, do you agree?

10 **GENERAL MBOMBO:** That is so, Mr Chairperson.

11 **MR BIZOS SC:** But if the people on the
12 koppie had disarmed and handed over their weapons they
13 would have been entitled to remain on the koppie and
14 continue their strike action against Lonmin. You as SAPS
15 had no concern if the strike continued and the group would
16 not have needed to be dispersed if they handed in their
17 weapons because you as the SAPS were not mandated nor
18 interested in involving yourselves in a labour dispute. Is
19 that what you said?

20 **GENERAL MBOMBO:** That is so, Mr Chairperson.

21 **MR BIZOS SC:** General, we find it
22 difficult to reconcile your evidence with what really you
23 said, what was said to have been said by you, and also with
24 the other evidence. The slip of the tongue, if what you
25 said in your evidence so clearly that you were not

1 concerned about stopping the strike, how did the slip of
2 the tongue come about?

3 **GENERAL MBOMBO:** Mr Chairperson, I am not sure
4 how I explained the issue of the slip of the tongue because
5 a slip of the tongue when one is talking is something
6 normal, even if it is not acceptable, but it is normal.

7 **MR BIZOS SC:** I do not want to traverse
8 the ground that was traversed by our learned friend Mr
9 Budlender, but what I want to remind you of is that you as
10 the Provincial Commissioner were responsible for whatever
11 may have happened in your area of operation. Do you agree
12 with that?

13 **GENERAL MBOMBO:** I agree with you, Mr
14 Chairperson.

15 **MR BIZOS SC:** Now the telephoning and
16 discussing with the National Commissioner, which was your
17 prerogative, is correct. The involvement of the Minister
18 or politicians should not have influenced you in any way
19 because it is your responsibility. Is that right?

20 **GENERAL MBOMBO:** That is correct, Mr
21 Chairperson, and they did not influence me in any way.

22 **MR BIZOS SC:** Well, we will argue about
23 that in due course, but I just want your comments. Do you
24 agree that military commanders, political leaders and other
25 civilians in position of authority are responsible for what

1 happens and what their subordinates do?

2 **GENERAL MBOMBO:** I did not get the

3 question clearly, Mr Chairperson.

4 **CHAIRPERSON:** I am sorry, before you carry

5 on, someone has got a cell phone that hasn't been turned

6 off. I want that cell phone turned off immediately and I

7 want everyone else here to make sure that their cell phones

8 are turned off, and I will order the person who has – the

9 person whose cell phone it is does not have to leave; he

10 must just turn it off. Obviously, it is an important phone

11 call he wants to make, but those who have cell phones

12 please turn them off because it is very disturbing, wastes

13 time, and it is very difficult for the witness and for

14 counsel to concentrate and for the rest of us to listen if

15 we have these disturbances. Please tell us your question,

16 Mr Bizos.

17 **MR BIZOS SC:** Well, I am putting to you,

18 do you realise that you as the Provincial Commissioner had

19 a primary responsibility that nothing went wrong?

20 **GENERAL MBOMBO:** Mr Chairperson, as I have

21 already said, I know that and I am aware that working of the

22 police in this province depends on me. I therefore take

23 responsibility of what the police do whilst working under

24 my command.

25 **MR BIZOS SC:** Yes, and we will come to

1 the questions of what they did, what your knowledge was,
2 but in the meantime let us continue along this line.
3 Throughout the SAPS presentations in exhibit L and the
4 evidence of your SAPS commanders, the dual aims of the
5 dispersal and disarmament are consistently claimed as the
6 purpose of the SAPS operation at Marikana on the 14th of
7 August. You agree?

8 **GENERAL MBOMBO:** I am not sure if I
9 understand the questions correctly, Mr Chairperson.

10 **MR BIZOS SC:** Well, I will repeat it.

11 Throughout the SAPS presentation in exhibit L and the
12 evidence of your SAPS commanders, the dual aims of the
13 dispersal and disarmament are consistently claimed as the
14 purpose of the SAPS operation at Marikana from the 14th of
15 August onwards. Do you agree that that is a fair summary?

16 **GENERAL MBOMBO:** I agree with that, Mr
17 Chairperson. As I have said earlier on, our aim was to disarm and
18 retrieve the weapons.

19 **MR BIZOS SC:** Listen to what is said in
20 exhibit L72, the operation plan. "Negotiations, the SAPS
21 had to deploy one of POPS monitoring contingents with a
22 negotiation component to engage in dialogue, seeking a
23 peaceful disarming and dispersion solution. This would
24 allow the SAPS to move closer to the crowd of protesters
25 gathered at the koppie in order to monitor their behaviour

1 and to engage in dialogue to negotiate a peaceful
2 dispersion and laying down of arms." Do you agree with
3 that statement in exhibit L?

4 **GENERAL MBOMBO:** I agree with that
5 statement, Mr Chairperson.

6 **MR BIZOS SC:** And in exhibit L75, "Stage
7 2, a show of force seeking a peaceful" –

8 **CHAIRPERSON:** Sorry, Mr Bizos, we have not
9 got that on the screen yet. It would help if you waited
10 until we got it on the screen. I do not want to be
11 difficult, but it would help me.

12 **MR BIZOS SC:** I will wait, Mr Chairman.

13 **CHAIRPERSON:** Thank you.

14 **MR BIZOS SC:** Have you had a look on what
15 is set out in L72?

16 **CHAIRPERSON:** I am sorry, could we please
17 have slide 75 of exhibit L on the screen? Thank you.

18 **MR BIZOS SC:** "A show of force seeking a
19 peaceful disarming and dispersion resolution." You agree
20 with that?

21 **GENERAL MBOMBO:** I see it, Mr Chairperson, and
22 I agree with it.

23 **MR BIZOS SC:** In JJJ92 the interview is –
24 JJ92, in response to a question by a reporter as to how the
25 group was breaking the law you did not refer to the weapons

1 but rather to the illegal gathering. Do you agree with
2 that?

3 **CHAIRPERSON:** What page and what line are
4 you referring to? This is, is it 192 or just 92?

5 **MR BIZOS SC:** 192, I am sorry.

6 **CHAIRPERSON:** We have 192 on the screen.

7 **MR BIZOS SC:** Double J, and not –

8 **CHAIRPERSON:** Yes, and what page are you
9 referring to?

10 **MR BIZOS SC:** JJJ192.

11 **CHAIRPERSON:** Yes, page?

12 **MR BIZOS SC:** It is a record. It is a
13 video.

14 **CHAIRPERSON:** No, no, I understand, but
15 what we have on the screen is a transcript. So what page
16 of the transcript?

17 **MR BIZOS SC:** We do not have that noted,
18 but it is to the effect that –

19 **CHAIRPERSON:** No, Mr Bizos, I understand
20 that you have a summary of it in your notes, but to be
21 fair to the witness I think she has entitled to have her
22 words in front of her. It it is the –

23 **MR BIZOS SC:** The reference that we have
24 noted is eNCA JJJ92.

25 **CHAIRPERSON:** It is not 192, but 92?

1 **MR BIZOS SC:** 92.

2 **CHAIRPERSON:** I see, alright. Well, that

3 will help us, and then I understand what you say that that

4 is in fact a video clip –

5 **MR BIZOS SC:** Yes.

6 **CHAIRPERSON:** - with the audio as well.

7 **MR BIZOS SC:** Yes, yes.

8 **CHAIRPERSON:** And so I understand you

9 cannot provide a page.

10 **MR BIZOS SC:** Yes. Yes.

11 **CHAIRPERSON:** Did they actually –

12 **MR BIZOS SC:** You did not refer to

13 weapons, but rather to the illegal gathering.

14 **CHAIRPERSON:** I am sorry to interrupt you,

15 Mr Bizos. It is also transcribed, this, but it is quite a

16 short interview, isn't it? So perhaps we can find the

17 relevant passage.

18 **MR BIZOS SC:** Yes.

19 **CHAIRPERSON:** But unfortunately we

20 do not have Ms Pillay here; she would tell us instantly

21 what the exhibit number is of the transcript.

22 **MR BIZOS SC:** Can we just assume that

23 there is no reference to the weapons, but rather to the

24 illegal gathering for the purposes of –

25 **CHAIRPERSON:** Here's Ms Pillay. I

1 mentioned her name, and by some strange telepathic
2 coincidence she arrives. What we are looking for, Ms Pillay
3 – Sorry, welcome, good morning – we are looking for the
4 transcript to the eNCA interview between this witness and a
5 representative of ETV. Can you wave your magic wand and
6 tell us what the transcript exhibit number is?

7 **MS PILLAY:** Chairperson, if I can just have a
8 few minutes, I can find it for you.

9 **CHAIRPERSON:** Mr Bizos, might it not be
10 advisable to move on to another topic in the meanwhile and
11 when Ms Pillay gives us the transcript reference we can
12 find the passage and your cross-examination, (a), will be
13 more effective; and (b), will be fairer to the witness.

14 **MR BIZOS SC:** Very well, Mr Chairman.

15 We'll leave that in abeyance. The evidence of your
16 generals is that the illegal gathering was of a major
17 concern to the SAPS and that the key aim of the operation
18 was to disperse it. Do you agree with that summary?
19 Assume for the moment that we have summarised the position
20 correctly, that they were concerned about the illegal
21 gathering.

22 **GENERAL MBOMBO:** Mr Chairperson, I want to
23 explain that they had a concern and it was understandable
24 because the gathering was not legal, although our aim was
25 to get the weapons.

1 **[09:40] MR BIZOS SC:** Now the dialogue process,
2 or what SAPS has termed the negotiations process, which in
3 fact lasted just under a day, not a week, from 4:30pm on
4 Tuesday until about 12pm on Wednesday. It is clear that
5 SAPS commanders understood their role and purpose to be to
6 instruct the people to disperse. Would you agree – assume
7 that to be correct?

8 **GENERAL MBOMBO:** I did not get you
9 clearly, Mr Bizos.

10 **MR BIZOS SC:** I am sorry I did not hear.

11 **GENERAL MBOMBO:** I did not get the
12 question clearly.

13 **MR BIZOS SC:** I want you to assume that
14 your generals and your subordinates engaged in negotiations
15 for a short period of time, from 4:30 on Tuesday until
16 about 12pm on Wednesday - noon.

17 **CHAIRPERSON:** 12pm is midnight, 12 noon
18 you mean?

19 **MR BIZOS SC:** 12 noon or midday, yes,
20 sorry. Would you assume that to be correct?

21 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
22 whether the length of time had any influence in this,
23 because when you talk to people, you can see if you are
24 progressing or not.

25 **MR BIZOS SC:** Yes, you see it does matter,

1 because the Standing Orders provide that there must be
2 meaningful negotiations over whatever period may be
3 necessary in order to avoid confrontations, and what I am
4 putting to you is that it would appear on the evidence so
5 far given before the Commission that the negotiations, if
6 they can really be called negotiations proper, lasted for a
7 very short period of time. Would you agree with that?

8 **GENERAL MBOMBO:** I do not agree, Mr
9 Chairperson, as I say I am not sure what influence the time would
10 have in the discussions.

11 **MR BIZOS SC:** You see it seems if in fact
12 the aim of the negotiations was to persuade the group to
13 disarm, but to allow them to continue their strike, then
14 not only should this have been made very clear, but that
15 this was something that would have constituted a real
16 negotiation in which the concerns of the group, with
17 relation to their vulnerability to attack and the nature of
18 the weapons to be confiscated, could have been engaged and
19 constructively negotiated. Would you agree with that?

20 **GENERAL MBOMBO:** Mr Chairperson, as you had
21 outlined earlier on, what our Standing Order allows us to
22 do, according to the way I see it and the way I know, the
23 police tried to follow the Standing Orders, and again as I
24 see it and as I know, their circumstances that they were
25 facing there would demand of them to look beyond the

1 Standing Order. As I am saying, there were also problems
2 of people's lives being at risk.

3 **MR BIZOS SC:** Well, were the people not
4 entitled to be told in clear and unmistakable language what
5 the purpose of the police was - that they wanted them to
6 disarm?

7 **GENERAL MBOMBO:** Mr Chairperson, I will not be
8 clear about the details of the negotiations there where
9 they were taking place, but what I know by the negotiations
10 the idea was to have the people disarm peacefully and
11 disperse.

12 **MR BIZOS SC:** You were the leader and you
13 were given the orders and the order was that they must
14 disarm. Is that correct?

15 **GENERAL MBOMBO:** I did not hear the
16 question.

17 **MR BIZOS SC:** Did you give the order that
18 they should be disarmed?

19 **GENERAL MBOMBO:** Mr Chairperson, I had given
20 the order for the people to disarm. What remained then
21 depended on the people on the ground how that is affected.

22 **MR BIZOS SC:** Did you also say that there
23 were to leave the koppie?

24 **GENERAL MBOMBO:** That was our aim, Mr
25 Chairperson, if they had disarmed peacefully on the koppie, they

1 would then leave their weapons there so that we could
2 continue doing our job in peace.

3 **MR BIZOS SC:** You wanted them not only to
4 be disarmed, but they must leave the koppie?

5 **GENERAL MBOMBO:** It was supposed to be
6 like that. As I said, if it was according to our request
7 with them - our negotiations with them for them to leave to
8 weapons on the koppie, they would then leave the koppie
9 after that so that we collect the weapons.

10 **MR BIZOS SC:** Was that made clear?

11 **GENERAL MBOMBO:** As I said, Mr Chairperson, I am
12 not sure about how the details of the negotiations took
13 place, because I was not there.

14 **MR BIZOS SC:** Why would you want them to
15 leave the koppie if your intention was not to put an end to
16 strike? Did you and your fellow officers consider the
17 gathering of the people on the koppie as something that was
18 not pleasing to the employers and they showed the strength
19 of coming together, about 3 000 of them, in order to get a
20 better wage? Why must they leave the koppie? Do you
21 understand the question?

22 **GENERAL MBOMBO:** Mr Chairperson, I am not sure
23 if what I am explaining is understood. What I am saying is
24 our aim in talking to the strikers was for them to hand
25 over the weapons to us, and our thinking if they give us the

1 weapons by leaving them on the koppie, we would then remain
2 there collecting them. It would be better if they had left
3 whilst we are doing that, whilst we are collecting the
4 weapons. That does not mean they were not allowed to come
5 back and gather there if they wanted to.

6 **MR BIZOS SC:** Now, first of all, not
7 everybody there was armed. Would you agree with that?
8 Despite some of the statements of some of your colleagues,
9 not everybody was armed.

10 **GENERAL MBOMBO:** I want to agree with you
11 there, because I am not sure how many were armed.

12 **MR BIZOS SC:** Well, the idea that there
13 were 3 or 3 and a half thousand armed people was in the
14 statements of some of your colleagues, but during cross-
15 examination and after viewing the material, it appeared
16 that the majority of the people on the koppie were not
17 armed. Do you agree with that?

18 **GENERAL MBOMBO:** As I say, Mr Chairperson, I
19 already told the Commission that I am not sure how many were
20 armed.

21 **MR BIZOS SC:** Would you accept the
22 proposition that I am putting to you that if you were well-
23 informed, as you should have been, the majority of people
24 on the koppie were not armed?

25 **CHAIRPERSON:** Mr Bizos, she said she is

1 not sure. I do not know if you take it any further than
2 that. It may be that you have got enough for the purposes of
3 the point you want to make.

4 **MR BIZOS SC:** Well, I will put the – why
5 should the people that were not armed be called upon to
6 leave the koppie?

7 **GENERAL MBOMBO:** Mr Chairperson, because of the
8 reason that I am putting forward that I am not sure how many
9 people were armed. I am also certain that the police who
10 were there would not be sure how many were armed.

11 **MR BIZOS SC:** Let me read to you what the
12 evidence of General Mpembe, in exhibit GGG12, paragraph 27
13 –

14 **CHAIRPERSON:** Let us wait to get it on the
15 screen. GGG12, paragraph? Paragraph 27, as I understand.
16 There we have it on the screen, thank you very much. You
17 may proceed, Mr Bizos.

18 **MR BIZOS SC:** Will you have a look at it
19 as to what he said and then I will have number of questions
20 for you.

21 **CHAIRPERSON:** You see under SAPS'
22 strategy, you see that section? There are a number of
23 bullet points. The first one is to communicate to the
24 group on the koppie to try to resume negotiations with the
25 protestors to disarm and leave the koppie. And then the

1 next bullet point says, "Protestors had to be asked to
2 leave their dangerous weapons on the koppie and they
3 voluntarily dispersed." Then the third one reads,
4 "After the anticipated voluntary departure, those refusing
5 to leave would be searched and the whole area be swept for
6 dangerous weapons thereby protecting life and property."

7 And then the – those are the paragraphs, or bullet points I
8 think that Mr Bizos is specifically drawing your attention
9 to.

10 **MR BIZOS SC:** And paragraph 27, Mr Chairperson.

11 **CHAIRPERSON:** Yes, I was reading from
12 paragraph 27.

13 **MR BIZOS SC:** Yes.

14 **CHAIRPERSON:** I read under the headings
15 SAPS' strategy, which is part of that paragraph, I read the
16 first two bullet points and the first half of the third.

17 **MR BIZOS SC:** Yes. General Mpembe was
18 the commander-in-chief, so to speak.

19 **GENERAL MBOMBO:** That is so, Mr Chairperson.

20 **MR BIZOS SC:** Appointed by you?

21 **GENERAL MBOMBO:** That is so.

22 **MR BIZOS SC:** To take responsibility for
23 what he said and what he may have done?

24 **GENERAL MBOMBO:** That is correct, Mr
25 Chairperson.

1 **MR BIZOS SC:** Here I am going to suggest
2 to you that what he says in paragraph 27 indicated the
3 police really wanted, for the benefit of the employer, that
4 people should not gather in such large numbers at the
5 koppie in order to show solidarity for the demands of R12
6 500. This was the – this could only be the reason why you
7 wanted them not to gather on the koppie.

8 **GENERAL MBOMBO:** I do not agree with
9 that, Mr Chairperson.

10 **MR VAN AS:** Sorry, Mr Chairperson -

11 **CHAIRPERSON:** Mr van As, are you
12 objecting to Mr Bizos' question?

13 **MR VAN AS:** There's no basis for putting
14 that to the witness on the evidence before the witness.
15 Firstly, one must bear in mind that the strikers, or those
16 who were Lonmin employees, were participating in an
17 unprotected strike, which had already been interdicted by
18 the Labour Court.

19 **CHAIRPERSON:** You are now arguing the
20 matter. What Mr Bizos is putting is what he is suggesting
21 was the thought processes and motivation of the police in
22 acting what as did, not necessarily suggesting that your
23 client, Lonmin, is responsible for that, if that was indeed
24 the motivation of the police. He is merely probing the
25 motivation of the police in acting as they did. Therefore, I do not

1 I think there is any point – any substance, and objecting is

2 overruled. Carry on, Mr Bizos.

3 **MR BIZOS SC:** General Annandale - GGG1,

4 at paragraph 8 reads as follows, "The negotiators were

5 tasked to encourage the protestors to return to their

6 working stations, where after the mine management would

7 engage in negotiations about labour related matters."

8 Isn't this an attempt to put an end to the strike,

9 according to what General Annandale said the purpose was?

10 **GENERAL MBOMBO:** Mr Chairperson, I am not sure

11 what it has to do anything, this statement.

12 **MR SEMENYA SC:** Chairperson, I think the

13 context to that statement was that the strikers themselves

14 said they want to speak to the employer, and here it is

15 communicated back that the employer's interest to talk to

16 you would be if you went back to your workstations. That is

17 the context.

18 **MR BIZOS SC:** Would you allow me to lead

19 –

20 **CHAIRPERSON:** Sorry, you put the passage

21 to the witness, I am not sure that I heard her answer.

22 Perhaps the answer she gave could be repeated, otherwise if

23 she hasn't answered it yet, perhaps she could give her

24 answer now. What do you say about the point that Mr Bizos

25 is putting to you? That according to General Annandale,

1 one of the tasks of the negotiators was to encourage the
2 protestors to return to the working stations, where after
3 the mine management would engage in negotiations about
4 labour-related matters. Mr Bizos suggests that that
5 indicates that the police were endeavouring to bring the
6 strike to an end by encouraging the strikers to go back to
7 the workstations. That is Mr Bizos' point, if I understand
8 him. Am I right, Mr Bizos?

9 **MR BIZOS SC:** That is so.

10 **CHAIRPERSON:** Now, what comment do you
11 make in regard to that point?

12 **[10:00] GENERAL MBOMBO:** Mr Chairperson, I am not sure
13 what that was leading to, but what our aim was for the
14 workers to talk to their employers, they had to go back to
15 their stations. But our aim was also to get the weapons
16 from them.

17 **CHAIRPERSON:** Yes, the mere fact that
18 they went back to their working stations wouldn't
19 necessarily mean going back to their working stations to
20 work. Is that right?

21 **GENERAL MBOMBO:** That is correct, Mr
22 Chairperson.

23 **CHAIRPERSON:** Can I approach the matter
24 from a slightly different angle? Assuming the strikers had
25 said to the negotiators you ask us to lay our weapons down

1 and to leave the koppie, we have got another suggestion.

2 We are willing to lay our arms down, we will bring our arms

3 forward and put them in front of the Nyala and then we will

4 go back to the koppie without our arms. Would that be

5 satisfactory to you, the police? I assume the answer, well

6 let me ask you what would the police answer to such a

7 suggestion from the strikers have been?

8 **GENERAL MBOMBO:** Mr Chairperson, that angle was

9 looked at, we agreed that if they were prepared to do that

10 that is what was going to be done.

11 **CHAIRPERSON:** Was that communicated to

12 them, or do not you know?

13 **GENERAL MBOMBO:** I am not sure, Mr Chairperson.

14 **MR BIZOS SC:** Well let us have a look what

15 Lieutenant-Colonel McIntosh says in exhibit HHH14. He was

16 the chief negotiator appointed by you, is that right?

17 **GENERAL MBOMBO:** That is correct, Mr

18 Chairperson.

19 **MR BIZOS SC:** Do you hold yourself

20 responsible for the role that he may have played in these

21 events?

22 **GENERAL MBOMBO:** Mr Chairperson, I already said

23 I am the Commissioner of Police in that province, whatever

24 the police do in their duties that is done under my command

25 and I take responsibility for what they do according to the

1 powers vested in me by the Constitution.

2 **CHAIRPERSON:** Mr Bizos, what is the

3 paragraph in Colonel McIntosh's statement to which you

4 refer?

5 **MR BIZOS SC:** There are two paragraphs.

6 **CHAIRPERSON:** And what are the numbers?

7 **MR BIZOS SC:** Paragraph 7 and paragraph

8 14, Mr Chairperson.

9 **CHAIRPERSON:** Paragraph 7 starts "later I

10 informed them that the SAPS want a solution to the problem

11 and that we want them to disperse peacefully, as the

12 gathering was illegal." And he also requested them to

13 leave their arms on the koppie and that we will collect it

14 when they left. "I specifically informed them that the

15 police do not want to fight with them or hurt them, but

16 that we want a peaceful solution to the problem. And we

17 guarantee their safety." And then 14, 14 reads –

18 **MR BIZOS SC:** "We informed them that the

19 mine management stated that there is a two year wage

20 agreement in place and that the strike is unprotected. But

21 the mine will talk to the unions again when the workers lay

22 down their weapons and return to normal duties." Was that

23 your attitude and did you authorise your negotiator to

24 convey this to the workers?

25 **CHAIRPERSON:** Mr Bizos, that is two

1 questions. The part relates simply to a conveying to the
2 strikers of what the employer had to say, without
3 necessarily indicating the police agreeing with it. The
4 second point is a different one. Let us take the questions
5 one by one. It appears from what appears in paragraph 14
6 of the statement that after the police had conveyed to the
7 employers what the strikers wanted, they wanted someone to
8 come and discuss with them their wage demand. That the
9 employers had said they did not want to talk to them before
10 they put down their weapons and returned to work and the
11 employer also said that there is a two year wage agreement
12 in place with all the unions. The strike is unprotected
13 and they would talk to the unions again when the workers
14 lay down their weapons and returned to normal duties. Now
15 if that is what the employer said as an answer to what the
16 strikers had to say, was there any objection to the police
17 negotiators repeating that to the strikers as being what
18 the employer had to say?

19 **GENERAL MBOMBO:** Mr Chairperson, I see no
20 reason for the negotiators not to pass over that
21 information if that is what they repeat, that message.

22 **CHAIRPERSON:** Mr Bizos's next question
23 relates to the attitude of the police in that regard, so
24 perhaps you can now put the second question to the witness.

25 **MR BIZOS SC:** Yes. Was it the business

1 of the employer or the hope of the negotiator to rely on
2 the alleged fact that the gathering was illegal and
3 therefore they must go away from the mountain? Would it be
4 that - a proposition would have had an effect of actually
5 preventing the people that had gathered from the strength
6 that they had, strength in numbers, we will withdraw our work
7 until our demand was met? Surely, it is not the police
8 business to disperse such a gathering and not for them to
9 decide on the legality or illegality as part of the
10 negotiation process.

11 **CHAIRPERSON:** You are putting that
12 proposition even where a number of the gatherers, a
13 significant number of the gatherers are armed.

14 **MR BIZOS SC:** That it should be treated
15 as a separate issue. The right to strike legally or
16 illegally is not -

17 **CHAIRPERSON:** I am sorry to interrupt you.
18 It is not a question of the right to strike legally or
19 illegally. It is the right to strike in circumstances which
20 are protected and the right to strike in circumstances
21 which are not protected, that is the one side of the case.
22 The other side of the case is if in pursuance of the right
23 to strike they have a gathering but the gathering is
24 accompanied by a significant number of dangerous weapons,
25 that introduces a new factor with which the police have to

1 deal surely.

2 **MR BIZOS SC:** Yes, what we are leading up

3 to, Mr Chairman, is this. I will put the question, which will

4 make it easier for the Commissioner to see the distinction

5 that we are making. The people did not gather in mass

6 early in the morning. They came along in small groups, do

7 you agree with that, was that in accordance with the

8 information that you had?

9 **GENERAL MBOMBO:** That is how I heard it,

10 yes, Mr Chairperson.

11 **MR BIZOS SC:** It may be that some were

12 armed, but it would appear that the majority were unarmed.

13 **GENERAL MPBOMBO:** That could be the case,

14 Mr Chairperson.

15 **MR BIZOS SC:** Now if the assistance of

16 the police was to be limited to disarming people did it

17 occur to you or any of your underlings that early in the

18 morning as the small groups were coming to say you are

19 unarmed, you are welcome, go to the koppie. You put your

20 arms down before they got into a big number somewhere along

21 the way where they were walking to the mountain and wasn't

22 that a proper way for the police to take steps in disarming

23 people? And not to couple it with no only must you disarm

24 yourself but you must disappear from the koppie?

25 **GENERAL MBOMBO:** Mr Chairperson, firstly I want

1 to request the Commission to the effect that there is some
2 noise at the back, I think it is the earphones, you can pick
3 up the Advocate's voice there. I have got a question.

4 **CHAIRPERSON:** Sorry, I did speak about
5 this matter last week and said those who have not got the
6 earphones on must please turn them off because if the
7 earphones are not on someone's ears but on the desk then
8 one can hear sounds of voices coming from the earphones and
9 – I can hear that now as I speak. And that causes
10 disturbance and makes it difficult for the witness to
11 concentrate and difficult for us to concentrate on her
12 answers.

13 **GENERAL MBOMBO:** Thank you, Mr Chairperson.
14 Now to answer the questions that was asked, I want to say
15 the people who went to the koppie to go and negotiate, talk
16 to the people who were there their aim was for us to get
17 the weapons peacefully from them. Also the statement you
18 just put, Mr Advocate, that they could have been disarmed
19 on the way or the weapons taken from them on the way to the
20 koppie, I do not deny that it could have been done and been
21 successful. But there were promises, indications that we
22 could get hold of the weapons on the koppie when they were
23 all together on the koppie.

24 **MR BIZOS SC:** Did you or any one of your
25 senior officers raise the question that it is foolhardy to

1 try and disarm among 3000 people, that it is really
2 completely contrary to the principles of crowd management
3 as contained in the reports of the experts on crowd
4 management? Did anyone suggest that this was a foolhardy
5 object and there was an obvious simpler solution of gaining
6 the disarming portion of the police duty? Did anybody
7 suggest it?

8 **GENERAL MBOMBO:** I do not remember
9 suggesting such a thing, but my hope was that all the
10 people directly involved with the details of this plan must
11 have looked at all the angles to see if there were easier
12 angles to address this issue.

13 **GENERAL MBOMBO:** But you as the senior
14 officer responsible, did you not think that this simple,
15 peaceful solution - not thought of by you and none of your
16 senior officers contemplated it and it was not discussed at
17 any level?

18 **GENERAL MBOMBO:** Mr Chairperson, I did not say
19 it was never discussed, what I am saying is I was never
20 involved in such a discussion.

21 **MR BIZOS SC:** One would have expected
22 that at the JOC meetings on Tuesday and Wednesday and even
23 early on Thursday, that simple proposition that I have put
24 to you is so obvious, are you telling us that all the
25 senior officers, it did not occur to any senior officers to

1 put it forward as a proposal at any of the JOC meetings?

2 **CHAIRPERSON:** Mr Bizos, the difficulty is

3 this witness wasn't at those JOCCOM meetings as I

4 understand it.

5 **MR BIZOS SC:** Well some of them, Mr

6 Chairperson.

7 **CHAIRPERSON:** Well let us find out. Which

8 JOCCOM meetings did you attend? I know you were there for

9 part of the time at the 1:30 meeting on Thursday. Were you

10 there at any of the JOCCOM meetings on the Tuesday or the

11 Wednesday?

12 **GENERAL MBOMBO:** It was only that of the

13 16th at 1:30, Mr Chairperson, that I attended.

14 **CHAIRPERSON:** The thing was I was

15 proposing to take a comfort break at about this stage.

16 Would it be convenient if I did it now or do you want you

17 round it off?

18 **MR BIZOS SC:** I will continue along the

19 line after the adjournment.

20 **CHAIRPERSON:** Yes, very well. We'll take

21 a five minute comfort break now.

22 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

23 **[10:24] CHAIRPERSON:** As soon as the interpreter

24 returns, the Commission will resume, but in the meanwhile,

25 you are still under oath, Provincial Commissioner.

1 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

2 **CHAIRPERSON:** I understand that Adv.

3 Pillay succeeded in finding the exhibit number for which Mr

4 Bizos was looking, namely the exhibit number of the

5 transcript of the eNCA interview. So I take it when the

6 present point is finished he will be able to revert to that

7 point. The interpreter is now with us. Mr Bizos

8 **[microphone off, inaudible]** remind you to turn your

9 microphone on, Mr Bizos.

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

11 On Monday the 13th at midday you were at the JOC meeting.

12 Is that correct?

13 **GENERAL MBOMBO:** I was not at the JOC

14 meeting on Monday the 13th. I was at a briefing that was

15 given to me when I arrived.

16 **MR BIZOS SC:** But you attended a meeting

17 and you discussed matters at midday on Monday the 13th? Is

18 that correct?

19 **GENERAL MBOMBO:** Yes, Mr Chairperson, because I

20 was being briefed.

21 **MR BIZOS SC:** And you were also at a

22 meeting in the evening on Monday.

23 **GENERAL MBOMBO:** That is correct, that is

24 when we were briefing the National Commissioner.

25 **MR BIZOS SC:** So you were present there,

1 and on Tuesday the 14th you were at a JOC meeting according
2 to paragraph 17 of – on the 14th there was a briefing
3 session.

4 **GENERAL MBOMBO:** That was also not a JOC
5 meeting, Mr Chairperson. I was being briefed there.

6 **MR BIZOS SC:** When you are being briefed,
7 you can also brief in return, cannot you?

8 **GENERAL MBOMBO:** That is correct.

9 **MR BIZOS SC:** Yes, and you met with
10 Naidoo and Mpembe, and Annandale on the phone, and passed
11 by the JOC, according to the evidence, on the same day, on
12 Wednesday. There were lots of opportunities on those days,
13 as there were on the 16th and even at the 13:30 meeting. So
14 you had lots of opportunities to discuss with your fellow
15 officers this simple alternative way of solving the
16 problem, but not you nor any of them suggested it.

17 **GENERAL MBOMBO:** That is so, Mr Chairperson.

18 **MR BIZOS SC:** Now when you were asked why
19 things went wrong, you mentioned a few and we will come to
20 the much longer list in due course during this cross-
21 examination. But is it a coincidence that none of you
22 thought of the simple and safe solution?

23 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
24 what you mean.

25 **MR BIZOS SC:** What I am saying is that you

1 had plenty of opportunity to discuss reasonable solutions
2 to the problem that you were facing. Was it a coincidence
3 that none of you thought of this simple and safe solution?

4 **GENERAL MBOMBO:** I cannot be sure, Mr
5 Chairperson, how it happened.

6 **MR BIZOS SC:** You are not so sure as to
7 how it happened, as to why it did not happen?

8 **GENERAL MBOMBO:** Yes.

9 **MR BIZOS SC:** You know, the expression
10 favoured by you and your colleagues about hindsight, permit
11 me to use the expression followed by them. In hindsight
12 do not you think that that was a simple solution and it was
13 a grievous fault that no-one thought about it?

14 **GENERAL MBOMBO:** It could have been like
15 that, Mr Chairperson.

16 **MR BIZOS SC:** I beg your pardon?

17 **GENERAL MBOMBO:** It could have been like
18 that.

19 **MR BIZOS SC:** And you take responsibility
20 for the failure to take that simple step?

21 **GENERAL MBOMBO:** As I have already said, Mr
22 Chairperson.

23 **MR BIZOS SC:** You take responsibility for
24 it?

25 **CHAIRPERSON:** It is quite clear that she is

1 not seeking to evade responsibility of any kind. She said
2 over and over again that people acted under her
3 instructions, under her command, and even if she hadn't
4 commanded them to do things specifically, she accepts
5 responsibility for what happened. As I understand it she is
6 very commendably facing her responsibilities.

7 **MR BIZOS SC:** Well, I just want clarity
8 that this does not fall away. It was a simple thing that
9 if it happened could have saved the lives of the people
10 that were killed and injured. Do you take responsibility
11 for that?

12 **GENERAL MBOMBO:** I already said so, Mr
13 Chairperson -

14 **MR BIZOS SC:** Thank you.

15 **GENERAL MBOMBO:** - that what was done by
16 the police working in the province, whether good or bad,
17 whether present or not, the commanding officer was me
18 there. I therefore have to take responsibility for the
19 problems or mistakes made by the people working under me.

20 **MR BIZOS SC:** Yes, thank you for that.

21 But you see, the other – I just want to give references
22 that it was not only McIntosh but Colonel Scott, and I can
23 give the references without reading them, just for the
24 record so that we can have easy access when we prepare the
25 argument, in HHH20, paragraph 7.21.1, and again in FFF18,

1 paragraph 10, and again Scott, exhibit FFF18, paragraph 21.

2 Let me read that. "During discussions in the JOC the

3 possible courses of action of the protesters would either

4 honour their commitment to lay down their weapons and

5 disperse peacefully, the next day return to work to follow

6 the set channels through the unions to address their

7 demands." So it would appear that certainly Colonel Scott

8 was concerned that people should go back to work as one of

9 the objectives of the people in high authority, and not

10 only to just disarm them. Would you agree with that?

11 **GENERAL MBOMBO:** I am not sure about that,

12 Mr Chairperson, but I know one thing though, that our aim was to

13 get the weapons.

14 **MR BIZOS SC:** No, but you see there is so

15 much evidence that it was not the only objective and the

16 reason why simple solutions of solving that problem was

17 because of another aim of actually breaking the strike.

18 **GENERAL MBOMBO:** As I have already said

19 earlier on, Mr Chairperson, that I know that although their

20 strike was illegal, they also had a right to strike if they

21 had issues with their employer and we only had one aim. We

22 had to get the weapons that were a problem to us, that

23 caused fear amongst the people and other people had already

24 been killed.

25 **MR BIZOS SC:** The attempt to put into

1 effect the third tactical plan in phase 3 certainly did not
2 achieve its purpose. They did not lay down their arms and
3 they did not disperse, they were shot down.

4 **CHAIRPERSON:** Mr Bizos, I think that

5 question should be reformulated. Remember the evidence is

6 clear that what the – or the police evidence is clear that

7 what they intended to do was that they were given warnings

8 to the people to put down their arms, I think two warnings

9 with an interval in between, and thereafter they were going

10 to proceed with the dispersal operation. The only part of

11 stage 3 that in fact was implemented was the uncoiling of

12 the wire. The later portion, the beginning of the warning

13 hadn't happened yet. So in the circumstances I think you

14 should reformulate the question. The question seems to

15 suggest that they did what they intended to do, namely gave

16 the warning, set out to disperse the people, and with the

17 disastrous results that we know about. But as I have

18 endeavoured to indicate, it is a little bit more complicated

19 than that, but I suggest you could capture that by

20 reformulating your question.

21 **MR BIZOS SC:** How would your problem have

22 been served if they dispersed with their weapons?

23 **GENERAL MBOMBO:** I did not get the

24 question clearly, Mr Chairperson.

25 **MR BIZOS SC:** If the intention was to

1 disperse them and surrender their weapons, what would have
2 been the position if the attempt to disperse them was that
3 they did disperse, but run away with their weapons? How
4 would your purposes have been served?

5 **GENERAL MBOMBO:** We had the chance to try
6 again, Mr Chairperson.

7 **MR BIZOS SC:** To try what? To try
8 again –

9 **CHAIRPERSON:** “We would have had a chance
10 to try again.” That is what she said.

11 **MR BIZOS SC:** Try what?

12 **GENERAL MBOMBO:** To try and get the
13 weapons from them.

14 **MR BIZOS SC:** If they dispersed, what
15 were the police going to do? Were they going to chase them
16 all the way home with their weapons?

17 **GENERAL MBOMBO:** Mr Chairperson, as I am saying
18 we would get a chance again to try and get the weapons from
19 them.

20 **MR BIZOS SC:** Where and how?

21 **GENERAL MBOMBO:** That would all depend on
22 the information we shall have had at that time and how the
23 people doing the operation would have seen things.

24 **MR BIZOS SC:** Let us assume that they all
25 run away from the koppie with their arms. Would you have

1 expected them to come again and gather with their arms?

2 Was that part of the plan?

3 **GENERAL MBOMBO:** Mr Chairperson, you will

4 remember the plan had various stages. As you say, if the

5 plan was implemented and the people dispersed go to their

6 respective places, as you say, there was a follow-up plan

7 that would have been implemented.

8 **MR BIZOS SC:** What was the follow-up

9 plan?

10 **GENERAL MBOMBO:** They had already asked

11 me to sign a cordon and search document.

12 **MR BIZOS SC:** A what?

13 **GENERAL MBOMBO:** A cordon and search.

14 **MR BIZOS SC:** So you were going to go to

15 their homes and try and search them there?

16 **GENERAL MBOMBO:** That is one of the things

17 we would have tried also, Mr Chairperson.

18 **MR BIZOS SC:** Was this discussed as a

19 possibility?

20 **GENERAL MBOMBO:** It was in our plan, Mr

21 Chairperson.

22 **MR BIZOS SC:** Was that going to be a

23 fourth phase?

24 **GENERAL MBOMBO:** That is correct –

25 **CHAIRPERSON:** It is the sixth phase, Mr

1 Bizos.

2 **MR BIZOS SC:** Or sixth.

3 **CHAIRPERSON:** It was called, in stage 6,

4 I think, of the plan, and she signed the – I forget the

5 section number and so – section 13 I think of the Police

6 Services Act. What's the name of the act, Mr Chaskalson?

7 You remember? Anyway, under the relevant legislation,

8 section 13, the Provincial Commissioner is empowered to

9 authorise what amounts to a warrant to search over a

10 certain period in a defined area, and this is what she did.

11 **MR BIZOS SC:** At your meetings was there

12 a discussion about the number of people that you had to

13 deal with? Because we have evidence which suggests that

14 you wanted to deal with 3 or 4 - in some instances in a

15 statement 4 000 people.

16 **[10:44]** Or merely 2 to 300 of heavily armed people, what

17 was your discussions? What were you going to put right?

18 **GENERAL MBOMBO:** I did not get the last

19 part of the question.

20 **MR BIZOS SC:** The number of heavily armed

21 people that had to be disarmed, according to the evidence

22 before the commission, varies from statements that you had

23 to do it were 3 000 people and later on it was really that

24 you had to disarm 300 heavily armed people. What was the

25 discussion? What was your task?

1 **GENERAL MBOMBO:** Mr Chairperson, the people on
2 the ground were saying that the people appeared to be
3 heavily armed with the – in the front of the koppie and
4 they estimated the number of those people to be between 300
5 to 400.

6 **MR BIZOS SC:** Now you are a Xhosa and a
7 proud Xhosa and justifiably so. What weapons did you
8 expect people to surrender?

9 **GENERAL MBOMBO:** We were expecting them
10 to hand over all the weapons that they had there that could
11 cause harm to people.

12 **MR BIZOS SC:** Well is a knopkierie
13 weapon that you – were you going to gather all the
14 knopkieries?

15 **GENERAL MBOMBO:** You will say, Mr Chairperson,
16 I am a proud Xhosa and whilst growing up I have seen people
17 being killed by knopkierie.

18 **MR BIZOS SC:** Yes, but you have seen, I
19 am sure, 100s of 1 000s of people carrying knopkieries who
20 did not kill anybody.

21 **GENERAL MBOMBO:** I do not have that
22 evidence, Mr Chairperson.

23 **MR BIZOS SC:** You do not have?

24 **GENERAL MBOMBO:** That evidence.

25 **MR BIZOS SC:** Isn't the knopkierie a

1 symbol of manliness of Xhosa males?

2 **GENERAL MBOMBO:** That is correct, Mr

3 Chairperson, the males do carry a stick or kierie in our
4 homeland.

5 **MR BIZOS SC:** Doesn't mean that you are
6 going to kill people?

7 **GENERAL MBOMBO:** That is correct, Mr

8 Chairperson, but that does not mean if you forcefully use it, it
9 will not cause that harm.

10 **MR BIZOS SC:** Now, the carrying of some
11 of the very dangerous weapons which we saw was it the
12 people in the crowd that started carrying those weapons in
13 the beginning or after a number of them had been seriously
14 injured and a couple of them killed on the 13th?

15 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
16 where is the counsel going to, but from what I have seen
17 already from the 13th they had these weapons.

18 **CHAIRPERSON:** Do you know whether the
19 people had their weapons on the 12th when the security
20 guards were killed?

21 **GENERAL MBOMBO:** I did not see that
22 clearly, Mr Chairperson, but from what we see how the security
23 guards were killed it appears that these weapons were used.

24 **MR BIZOS SC:** It was not only security
25 guards that were killed from the 10th onwards, there were

1 also strikers who were attacked and killed. Not so?

2 **GENERAL MBOMBO:** That is correct, Mr

3 Chairperson.

4 **MR BIZOS SC:** And the people that became

5 – that carried those real dangerous weapons proclaimed that

6 they carried them for self-protection because they

7 themselves –

8 **CHAIRPERSON:** It was for protection, self

9 protection, I thought you said something else.

10 **MR BIZOS SC:** Say what?

11 **CHAIRPERSON:** I thought you said –

12 **MR BIZOS SC:** For their protection –

13 **CHAIRPERSON:** - self-protection –

14 **MR BIZOS SC:** For their protection. They

15 carried them for their protection and not for offensive

16 purposes. You were aware of that? Was that the

17 information given to you at the various meetings at JOC or

18 the informal gatherings that you may have held by your

19 senior police officers?

20 **GENERAL MBOMBO:** I hear what you say, Mr

21 Chairperson.

22 **MR BIZOS SC:** Did it come to your notice

23 that the strikers said that we required these weapons, not

24 in order to attack people, but to defend ourselves?

25 **GENERAL MBOMBO:** I have heard mention of

1 that being made.

2 **MR BIZOS SC:** If they had been unlawfully

3 killed or assaulted, were they entitled to arm themselves

4 in a manner, which may have protected them?

5 **GENERAL MBOMBO:** According to me I do not

6 think it is supposed to be like that.

7 **MR BIZOS SC:** It is unfortunate but to put

8 the blame only on protestors or those participating in the

9 strike is an unfair conclusion. Did you have that in mind

10 and did you try to negotiate possibly the safety of

11 everyone including the protestors?

12 **GENERAL MBOMBO:** Our aim, Mr Chairperson, was

13 to negotiate especially concentrating on protecting

14 everybody that was there.

15 **MR BIZOS SC:** Yes. And protecting

16 everyone that was there, the danger of having to use lethal

17 force was that seriously discussed at your meetings?

18 **GENERAL MBOMBO:** I think so, Mr Chairperson.

19 **MR BIZOS SC:** Yes. Were you familiar

20 with the standing orders?

21 **GENERAL MBOMBO:** That is so, Mr Chairperson.

22 **MR BIZOS SC:** You were familiar with the

23 provisions of the constitution?

24 **GENERAL MBOMBO:** That is so.

25 **MR BIZOS SC:** Of the legislation?

1 **GENERAL MBOMBO:** That is correct.

2 **MR BIZOS SC:** Of the decisions of the

3 courts that life is sacrosanct even for those that are the

4 worst among us, to quote a constitutional court judge?

5 **GENERAL MBOMBO:** That is so, Mr Chairperson.

6 What I know is what you have already said that all the

7 citizens of this country are protected in the constitution

8 or their life is protected. Actually I wanted to say they

9 have the right to life.

10 **MR BIZOS SC:** Yes. You were responsible

11 for the resources that were going to be used in this

12 operation that was put together by Mr Scott.

13 **GENERAL MBOMBO:** I did not get the

14 question, Mr Chairperson.

15 **MR BIZOS SC:** You were party to the plan

16 drawn by Mr – Colonel Scott.

17 **GENERAL MBOMBO:** From what I know Colonel

18 Scott drew up the plan together with a team that was

19 assisting him. I was not part of that team.

20 **MR BIZOS SC:** You approved of the plan.

21 **GENERAL MBOMBO:** Yes, as it was narrated

22 to me, yes, I did the person who had to affix his signature

23 there was General Mpembe.

24 **MR BIZOS SC:** Yes. Now the resources

25 that were needed were the resources that had to be gathered

1 and provided under your authority and on your initials.

2 **GENERAL MBOMBO:** That is correct, Mr

3 Chairperson.

4 **MR BIZOS SC:** Who ordered the 4 000 sharp

5 bullets?

6 **GENERAL MBOMBO:** I do not know, Mr Chairperson.

7 **MR BIZOS SC:** You are in charge of

8 resources. We have been informed that somebody ordered

9 4 000 bullets. You – when did you hear that this order had

10 been placed? You are the head of the resource department.

11 **GENERAL MBOMBO:** Mr Chairperson, I do not

12 dispute what the advocate SC is saying that all the

13 resources in the province were dependent on me or I had the

14 authority over it. But I do not have knowledge of the day

15 to day running or procurement of the resources, what was

16 taken together with what and what was used.

17 **CHAIRPERSON:** When did you – I take it

18 you heard at some stage about that – what we have been told

19 that somebody ordered 4 000 extra bullets to be delivered

20 at Marikana. Did you hear that?

21 **GENERAL MBOMBO:** I heard, Mr Chairperson, when

22 they were looking for the diaries, I heard that one of

23 member's diaries was saying that.

24 **CHAIRPERSON:** Yes and then apparently

25 when they came, Brigadier – I am not sure if they actually

1 came and certainly Brigadier Pretorius indicated that they
2 weren't required and sent them back. Did you hear that
3 too?

4 **GENERAL MBOMBO:** I heard that as well, Mr
5 Chairperson, from Brigadier Pretorius.

6 **CHAIRPERSON:** Did you only hear about
7 that after the shootings on the 16th or did you hear about
8 that before the shootings took place on the 16th?

9 **GENERAL MBOMBO:** I heard about it, Mr
10 Chairperson, almost at the end of last year if it was not around
11 about June, July but that was past 2012.

12 **MR BIZOS SC:** We cannot read the name of –
13 it is in the diary in J – JJJ186 on page 16, it is the –
14 it is the diary of Mr Merafe.

15 **CHAIRPERSON:** He is a colonel he? Or a
16 lieutenant-colonel –

17 **MR BIZOS SC:** He is a colonel, yes.

18 **CHAIRPERSON:** Yes. But the witness says
19 she only heard about that last year, in 2013. She thinks
20 the middle of the year, possibly even later. Am I
21 understanding you correctly?

22 **GENERAL MBOMBO:** That is so, Mr Chairperson.

23 **CHAIRPERSON:** Let us see what it says in
24 the diary – the diary's been put on the screen for us to
25 look at.

1 **MR BIZOS SC:** The last page of the
2 exhibit, page 16, Mr Chairperson. The 16th of August.

3 **CHAIRPERSON:** I do not think – is that
4 right? Because he wasn't there of course, was he – there
5 it is. Against the – against 15:30. Can you, is your
6 ability to read the diary better than mine? I cannot make
7 out the first part.

8 **MR BIZOS SC:** Lieutenant – it is not
9 legible. It seems to start with a K.

10 **CHAIRPERSON:** It seems quite – Mr Tokota
11 who knows these things tells me it is Lieutenant Kgwadibana
12 and then it goes on, "send 4 000 rounds of R5 to Marikana
13 for Lonmin conflict." That is what's written there in
14 Lieutenant-colonel Merafi's diary. He of course wasn't
15 there at the time because he went to Klipgat for the
16 memorial service of the late Warrant Officer Lepaaku who
17 had been killed on the 13th. Anyway you say you only heard
18 about that last year – last year some time.

19 **GENERAL MBOMBO:** That is so, Mr Chairperson.

20 **CHAIRPERSON:** And you – I think you said
21 that Brigadier Pretorius told you that she sent them back,
22 did I understand that correctly too?

23 **GENERAL MBOMBO:** That is correct, Mr
24 Chairperson. After I heard about it I wanted to know what
25 happened, how it all happened and that is when the Brigadier

1 Pretorius explained to me that she or he sent them back.

2 **CHAIRPERSON:** She, Brigadier Suzette

3 Pretorius. She sent them back.

4 **GENERAL MBOMBO:** She sent them back.

5 **MR BIZOS SC:** How does the budget work?

6 You are in charge of the budget having your background as

7 set out in your CV. It must be a matter of some concern

8 that things are not ordered without your knowledge.

9 **GENERAL MBOMBO:** Mr Chairperson, I have the

10 greatest of respect for Advocate SC for many reasons. I

11 did answer this question that I am not responsible for the

12 day to day running, how many toilet papers were issued, how

13 much water was drunk because I have people I work with at

14 different levels who take care of those things.

15 **MR BIZOS SC:** You do not credit us with

16 much intelligence, General.

17 **CHAIRPERSON:** Is that a question or a

18 sarcastic comment.

19 **MR BIZOS SC:** Well -

20 **CHAIRPERSON:** - sarcastic comment. I

21 do not think sarcastic comments are appropriate.

22 **[11:04] MR BIZOS SC:** Ordering 4 000 bullets for

23 an operation is quite different to the day-to-day things

24 that you have mentioned in your evidence. You are in a

25 situation where you were in control of what is going to

1 happen on matters that may have been life or death to
2 people. How did anyone without your authority or without
3 discussing with you, could take the initiative without your
4 authority to order 4 000 rounds of live ammunition?

5 **GENERAL MBOMBO:** Mr Chairperson, it was not
6 important that I be consulted about how much ammunition had
7 to be acquired. It was a job of the people who were at the
8 operation on the ground to see to it how much and what kind
9 of ammunition is needed. I did not know what ammunition
10 they had or how much of it they had.

11 **MR BIZOS SC:** Surely when this ammunition
12 was ordered the person or persons that ordered it, coupled
13 with the fact that mortuary vehicles were ordered to be
14 present on the 16th, did you know anything about that?

15 **GENERAL MBOMBO:** I heard lately about
16 that, Mr Chairperson.

17 **MR BIZOS SC:** And if I were to tell you
18 that we are going to submit that you remained ignorant for
19 some reason or other of this, may be your fault that you
20 remained ignorant or not, that that had in mind that a
21 battle was going to be fought on the morning of – or on the
22 16th, a battle was going to be fought. Did you get the
23 impression from anyone among your senior officers that a
24 battle was being prepared?

25 **GENERAL MBOMBO:** According to me, Mr

1 Chairperson, we were not going through a battle.

2 **MR BIZOS SC:** No, now that you are made

3 aware of these bullets, mortuary vans, those are things for
4 battles, not for settling disputes.

5 **CHAIRPERSON:** What do you say about that,
6 Provincial Commissioner?

7 **GENERAL MBOMBO:** Firstly, Mr Chairperson, we do
8 not have mortuaries in our operations. It is possible
9 whoever requested for them had their own reasons.

10 **CHAIRPERSON:** So are you saying that
11 whoever asked for four hearses, or mortuary vehicles, and
12 whoever asked for 4 000 rounds of ammunition for the Lonmin
13 conflict, as it is described in the diary, that is either the
14 same person or different people, but whoever asked for
15 those things thought that there was going to be what is
16 described here by Colonel Merafe in his diary, a conflict,
17 some kind of battle. That does seem – that is really what
18 Mr Bizos is putting to you. That does seem a fair
19 inference, doesn't it? But you were not aware of a request
20 for the mortuary vehicles or the 4 000 rounds of
21 ammunition. Is that your evidence?

22 **GENERAL MBOMBO:** Totally not, Mr Chairperson.

23 I was not aware of these things. I only became aware of
24 them later when they came up.

25 **CHAIRPERSON:** Yes. Do you agree with Mr

1 Bizos's contention that whoever was responsible for these
2 requests – whether it was one person or more we may found
3 out later – seemed to think that there might well be a
4 battle with a fair amount of bloodshed so that four hearses
5 would be required and 4 000 extra rounds of ammunition
6 would be required? Would you agree with – that is Mr
7 Bizos's inference. Would you agree with that?

8 **GENERAL MBOMBO:** I do not agree with
9 that, Mr Chairperson. That is why I am saying the people who made
10 these requests, individually or separately might have
11 reasons why they made such requests.

12 **CHAIRPERSON:** I understand that, but what
13 Mr Bizos says is those people, he suggests that those
14 people, the reasons that they would have had would have
15 been a foresight that there was a strong possibility that
16 there'd be something approximating to a battle with a lot
17 of dead bodies for which four hearses were required, and a
18 lot of action which required 4 000 extra rounds of
19 ammunition. That is Mr Bizos's point, as I understand it.
20 You agree with that?

21 **MR SEMENYA SC:** To that, Chairperson –

22 **GENERAL MBOMBO:** I do not agree.

23 **MR BIZOS SC:** Why do you not agree?

24 **CHAIRPERSON:** No, Mr Bizos, Mr Semanya
25 wants to raise an objection.

1 **MR SEMENYA SC:** Well, the question calls
2 for the witness to second-guess the mind of those who would
3 have made those requests, Chairperson.

4 **CHAIRPERSON:** Yes, that is so. I suppose
5 the answer is that, it is covered by rulings I have given in
6 the past that if it is an inference that we are as able to
7 make, to draw as the witness, then we shouldn't really ask
8 the witness because her answer takes the matter no further.
9 It is open to you to argue that the inference is an
10 appropriate one.

11 **MR BIZOS SC:** Yes.

12 **CHAIRPERSON:** Whether you need to press
13 the witness to agree with the inference is the point in
14 issue now, and we have repeatedly in the past said if it is
15 an inference we can draw as we – I mean the Commissioners
16 and counsel arguing before us – then it is a matter that the
17 witness shouldn't be pressed on. That is essentially what
18 Mr Semanya is saying.

19 **MR BIZOS SC:** Yes, I am mindful of the
20 rulings, but I am entitled to ask more questions on this
21 issue in order to buttress up the argument that we are
22 going to make, and I am entitled to put questions to the
23 witness of the improbability that the person who was in
24 charge of the whole operation would have been kept in
25 ignorance in order to challenge her credibility, Mr

1 Chairman.

2 **CHAIRPERSON:** Well, that is another

3 matter, but before you proceed with that, Adv. Hemraj wants

4 to make a point.

5 **COMMISSIONER HEMRAJ:** General, any

6 requisition for official ammunition would need to be done

7 on prescribed forms, wouldn't they?

8 **GENERAL MBOMBO:** That is correct, Mr

9 Chairperson.

10 **COMMISSIONER HEMRAJ:** Mr Chaskalson, are

11 any of these forms to hand? I'd be very interested in

12 seeing when this requisition was made, given that this

13 entry in this diary is made at 15:30 on the 16th.

14 **MR CHASKALSON SC:** Commissioner, we

15 aren't in possession of any of those forms. We'll ask SAPS

16 to make available to us all the –

17 **COMMISSIONER HEMRAJ:** Mr Semenya, could

18 you assist us?

19 **MR SEMENYA SC:** To the extent that we

20 can, Commissioner, yes, we will.

21 **COMMISSIONER HEMRAJ:** Would you please

22 do? I'd like to see the date and time on that requisition.

23 I'd be most interested.

24 **MR SEMENYA SC:** We will indeed.

25 **CHAIRPERSON:** Now while we are busy with

1 this point, before we take the tea adjournment let me ask
2 you a couple of questions that are relevant. You told us
3 that you were concerned when you heard about this - you
4 said you heard it last year - which is one of the reasons
5 why you spoke, as I understood you, to Brigadier Suzette
6 Pretorius. That is correct, isn't it? And she told you
7 that she actually cancelled the order, sent the bullets
8 back. Is that correct?

9 **GENERAL MBOMBO:** Yes, Sir.

10 **CHAIRPERSON:** Right, now did you ask her
11 who had requested the ammunition, or did she tell you
12 without you asking her?

13 **GENERAL MBOMBO:** I asked her, Mr Chairperson.

14 At the time she did not know who exactly requested them.

15 **CHAIRPERSON:** And in regard to the
16 request to the mortuary for hearses, I think originally
17 they, eventually they only agreed to have one on standby,
18 but the request was for four. Do you know who made that
19 request?

20 **GENERAL MBOMBO:** Mr Chairperson, when I
21 enquired about it after hearing, I discovered that it was
22 Brigadier Van Zyl who ordered them.

23 **CHAIRPERSON:** Did you speak to Brigadier
24 Van Zyl about it, ask him what made him make a request of
25 that sort?

1 **GENERAL MBOMBO:** I asked him, Mr Chairperson,

2 what was the purpose of that.

3 **CHAIRPERSON:** And what was his reply?

4 **GENERAL MBOMBO:** Mr Chairperson, he said he did

5 not say they should be four in number and he also did not

6 say they should come to Marikana. He just said there

7 should be one available from, saying that from the

8 experience they had on the 13th when people were injured and

9 killed and there was a struggle in getting those services.

10 **CHAIRPERSON:** Now in the case of previous

11 operations, Public Order operations that you have been aware

12 of, have you ever heard of a request of that kind for 4 000

13 extra rounds of ammunition to be sent to the scene, or is

14 this the first occasion which you encountered something of

15 that kind?

16 **GENERAL MBOMBO:** This was the first

17 encounter, Mr Chairperson. I have never heard of it.

18 **CHAIRPERSON:** And have you ever heard of

19 hearses being requested before a Public Order operation

20 takes place?

21 **GENERAL MBOMBO:** I have never heard of it,

22 Mr Chairperson.

23 **CHAIRPERSON:** I see. I think we will take

24 the tea adjournment now.

25 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

1 **[11:48] CHAIRPERSON:** The Commission resumes.

2 Provincial Commissioner, you are still under oath.

3 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

4 **CHAIRPERSON:** Mr Bizos.

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

6 Our learned friend will show the clip that we have agreed

7 to.

8 **MS PILLAY:** Chairperson, we do not have a

9 transcript of JJJ92, which is the footage which Mr Bizos

10 relies on, so we have agreed that they would play the piece

11 that he wishes to cross-examine on.

12 **CHAIRPERSON:** I must confess, I thought

13 it had been transcribed, but I am obviously incorrect. But

14 anyway, so the section that Mr Bizos relies on will now be

15 played to us. Is that correct?

16 **[VIDEO SHOWN]**

17 **MR SEMENYA SC:** No, but in all fairness,

18 it must be played to the end. We are only a second away,

19 because there is a vital part of that –

20 **CHAIRPERSON:** I uphold Mr Semanya's

21 objection. Let us carry on to the end of the tape.

22 **[VIDEO SHOWN]**

23 **CHAIRPERSON:** May I say that if I was

24 incorrect in thinking there is a transcript of that, a

25 transcript should be prepared because I think it will be

1 important for us.

2 **MS PILLAY:** Chairperson, we will attend to

3 that.

4 **MR BIZOS SC:** General, you seem to be

5 concerned about the illegality and when asked by the

6 questioner what are they doing wrong your answer was they

7 have not got permission to gather in this way. Were you

8 there in such great force in order to prevent an illegal

9 gathering from taking place or breaking up the strike?

10 **GENERAL MBOMBO:** Chairperson, as I have

11 already said earlier that yes, the gathering was illegal,

12 but that was not the most important issue for us. I was

13 responding to the question by the reporter. I was saying

14 to him what worries us is that the people gathered there

15 have weapons.

16 **MR BIZOS SC:** But the alleged illegality

17 of the gathering was one of the reasons why you wanted to

18 break the gathering up?

19 **GENERAL MBOMBO:** If those people who had

20 gathered there, because it is illegal, had dangerous

21 weapons that could be used in the community, it becomes a

22 responsibility of the police, Mr Chairperson, to protect

23 everybody, including themselves.

24 **MR BIZOS SC:** The direct answer to the

25 reporter was because it is illegal gathering, but as my

1 learned friend insisted you later finished up and talking
2 about the illegal arms. But the main reason that you gave
3 was because it was an illegal gathering, and I am asking you
4 is it the business of the police to go with automatic
5 weapons and all the other paraphernalia in order to use
6 force and kill people in order to break up an illegal
7 gathering?

8 **GENERAL MBOMBO:** The business of the
9 police, Mr Chairperson, as I have already stated, is to
10 protect the citizens from any person who looks, who is
11 dangerous or looks like being dangerous. The fact that
12 they were carrying dangerous weapons, which could cause
13 death caused us as members of the police, Chairperson, to
14 see that we have a responsibility to protect people.

15 **MR BIZOS SC:** If there were other ways of
16 disarming them, the fact that they were gathering would not
17 be a reason for bringing a massive force armed with lethal
18 weapons in order to disperse them, if there was an
19 alternative way of disarming them.

20 **GENERAL MBOMBO:** If they were not armed,
21 Mr Chairperson, and if we did not know that they are using
22 these weapons, that they have indeed used these weapons to
23 kill people –

24 **MR BIZOS SC:** I do not think it is an
25 answer to the question, but I will leave it at that on that

1 issue. We want to discuss the orders that you actually
2 gave, Commissioner. In your evidence you said that you
3 gave the order to disperse, disarm, and arrest, and your
4 generals had to operationalize it, and this despite the
5 fact that, we will submit, the instruction is inconsistent
6 with sound crowd management policy and Standing Order 262.

7 Now you were very familiar with this and were you familiar
8 with a background on section 1, "The purpose of the order
9 is to regulate" - and not control, regulate - "crowd
10 management during gatherings and demonstrations in
11 accordance with democratic principles of the Constitution
12 in acceptable international standards." Do you agree with
13 that?

14 **GENERAL MBOMBO:** I agree with it,
15 Chairperson.

16 **MR BIZOS SC:** A number of your colleagues
17 have indicated in answer to questions by us and our learned
18 friends, is that these democratic principles do not take
19 into consideration that the experts will have given reports
20 as to what ought and ought not to be done from foreign
21 shores, and that we are Africans and we must find African
22 solutions. Do you agree with that?

23 **MR SEMENYA SC:** Chairperson, I am not aware of
24 those contentions.

25 **CHAIRPERSON:** I do not remember that being

1 put by any of the witnesses either. If you can quote
2 chapter and verse it will be a different matter, but my
3 recollection is the same as Mr Semenya's.

4 **MR BIZOS SC:** Annandale said so, Mr
5 Chairman. I have not got the specific reference, but it is,
6 I submit and we will lead evidence to it, that this is a
7 prevalent view in the South African Police. I will amend the
8 question. Is this the view of a substantial number of
9 police officers in South Africa that these orders,
10 provisions in the Constitution, can be ignored because we
11 are in Africa? Is this a point of view shared –

12 **MR SEMENYA SC:** Chairperson, objection. There
13 is no view held by substantial people that the
14 constitutional principles do not apply.

15 **MR BIZOS SC:** Please, I am going to ask
16 not to drop his voice. I cannot hear him.

17 **MR SEMENYA SC:** Chairperson, the objection is
18 that there is no evidence that there is substantial number
19 of members of the South African Police Force who hold the
20 view that the principles of the Constitution do not apply.

21 **MR BIZOS SC:** There will be evidence by
22 experts, Mr Chairman, that the political rhetoric, which we
23 have referred to before, by high-ranking police officers
24 and some politicians have imbued this view to be held among
25 others in the police who found it necessary to remilitarise

1 the police after Mr Mandela's presidency came to an end,
2 and I am entitled in my submission to have the view of the
3 Commissioner and to test her credibility as to whether she
4 agrees or disagrees with that.

5 **CHAIRPERSON:** Why do not you put the
6 question on a conditional basis; if there is such a view,
7 do you agree with it, or something of that sort? That
8 would eliminate the objection. Mr Semanya, as far as I can
9 recall, based on the evidence we have heard, is right in
10 saying there is been no evidence that that is a view held in
11 the service, but – not the force, service, Mr Semanya – but
12 if you put the question on a conditional basis as I have
13 suggested you will get the answer you want, I think, and we
14 can then carry on.

15 **MR BIZOS SC:** Yes. You have heard what I
16 have suggested, that if there is any such position in the
17 South African Police, or a substantial number of the
18 police, including senior commissioners, Minister of the
19 Police, that actually have expressed themselves that we
20 have to be – forceful in
21 order to bring about peace and tranquillity in South
22 Africa, if there is such a view among the police, or among
23 previous commissioners, or a Minister of Police, do you
24 agree or disagree with it?

25 **GENERAL MBOMBO:** I disagree with that,

1 Chairperson.

2 **MR BIZOS SC:** Yes, and you are aware that

3 during the period 1944 to – I beg your pardon, '94 –

4 **CHAIRPERSON:** You are 50 years out. It is

5 '94.

6 **MR BIZOS SC:** Yes. '94, to almost '99,

7 1910, there were – 1990, there was an about-turn in

8 relation to the demilitarisation of the police. Are you

9 aware of that?

10 **GENERAL MBOMBO:** Yes, Sir.

11 **MR BIZOS SC:** Do you subscribe to the

12 view that those that claimed for the demilitarisation of

13 the police were wrong, and those that are now in the police

14 force and some of the politicians controlling the police

15 force are of the view that demilitarisation of the police

16 is justified?

17 **GENERAL MBOMBO:** I am not sure if I

18 understand the question clearly.

19 **MR BIZOS SC:** There is a debate going on,

20 which as a senior police officer you should be aware of,

21 that there is a considerable section of the population,

22 including the police, including some politicians, that if

23 we are not "forceful" we will not reduce crime, we will

24 not be able to defend democracy, and so on, and so forth.

25 Which camp are you in? Do you yearn for the years '94 to

1 '99 when you were not demilitarised, and do you prefer now,
2 the militarised view? Which of the two?

3 **GENERAL MBOMBO:** Chairperson, as far as I
4 know the police was demilitarised '94, or in 1994, and as
5 far as I know we have to work in accordance with the
6 Constitution, how the Constitution wants us to do. I am
7 still there, Mr Chairperson, I am holding it there.

8 **MR BIZOS SC:** Now there are certain
9 orders that I want to deal with and ask you whether they
10 were complied with or not. In order 11 of the execution of
11 the conduct of the police, "The degree of force must be
12 proportional to the seriousness of the situation and the
13 threat posed in terms of situational appropriateness." You
14 know the meaning of proportional, do not you?

15 **GENERAL MBOMBO:** Just clarify the
16 question, Sir.

17 **[12:07] CHAIRPERSON:** What are you reading from,
18 Mr Bizos?

19 **MR BIZOS SC:** 11 -

20 **CHAIRPERSON:** Because what you are reading
21 from is from the screen.

22 **MR BIZOS SC:** 11.3B.

23 **CHAIRPERSON:** I am sorry?

24 **MR BIZOS SC:** 11.3B.

25 **CHAIRPERSON:** I see, that is now on the

1 screen, yes. Thank you.

2 **MR BIZOS SC:** The degree of force must be
3 proportional to the seriousness of the situation and the
4 threat posed in terms of situational appropriateness. Do
5 you understand that term? Sectional -

6 **GENERAL MBOMBO:** I understand this, Sir.

7 **MR BIZOS SC:** Now you know the meaning of
8 the word proportional?

9 **GENERAL MBOMBO:** I do.

10 **MR BIZOS SC:** The net result of the plan
11 that you approved of and your co officers executed led to
12 34 deaths, 76 seriously injured and not a single scratch on
13 any policemen that say that they shot these people in self
14 defence. Do you accept that as a fact?

15 **GENERAL MBOMBO:** I would not be able to
16 say I agree to that as a fact, Sir.

17 **MR BIZOS SC:** I beg your pardon?

18 **GENERAL MBOMBO:** I would not say -

19 **MR BIZOS SC:** You would not agree what?

20 With what? Do you accept the facts that 34 people were
21 killed -

22 **MR SEMENYA:** The witness should not be
23 battered, Mr Chairperson.

24 **CHAIRPERSON:** Mr Bizos, do not you think
25 you should give the witness a chance to finish her answer?

1 She's turned her light on, so let her speak and then when
2 she is finished you can proceed.

3 **MR BIZOS SC:** Yes. What did you want to
4 say, Ma'am?

5 **GENERAL MBOMBO:** I was saying,
6 Chairperson, that I cannot agree to that as a fact or not a
7 fact. The people who were there I believe have explained
8 thoroughly what happened.

9 **MR BIZOS SC:** You are the commissioner,
10 the question is do you accept the fact that there were 34
11 people killed by the police?

12 **GENERAL MBOMBO:** According to explanation
13 given to me, yes it is so.

14 **MR BIZOS SC:** Do you accept that 76 were
15 seriously wounded as a fact?

16 **GENERAL MBOMBO:** That is the explanation
17 I received, Chairperson.

18 **MR BIZOS SC:** Do you accept that never
19 mind percentages, but a significant proportion of those
20 were killed and those who were injured were shot either in
21 the back or the side?

22 **GENERAL MBOMBO:** I am not very certain of
23 those details, Mr Chairperson.

24 **MR BIZOS SC:** You will not – you are not
25 what?

1 **GENERAL MBOMBO:** Not certain of those

2 details.

3 **MR BIZOS SC:** Not what – I am sorry, she is

4 –

5 **CHAIRPERSON:** She's not certain of those

6 details.

7 **MR BIZOS SC:** You are not certain.

8 **CHAIRPERSON:** Of those details.

9 **MR BIZOS SC:** Will you accept that as a

10 fair summary of the ballistics and medical evidence that is

11 before the commission? Will you accept that?

12 **GENERAL MBOMBO:** I would accept it.

13 **MR BIZOS SC:** You accept it. If those

14 facts are true and if it is true that no police officer, on

15 the 16th, got any scratch, do you say that if the amount of

16 force used was proportional?

17 **MR SEMENYA:** That is the question for the

18 commission to answer, Chairperson.

19 **MR BIZOS SC:** No, it is not, with respect,

20 Mr Chairman.

21 **GENERAL MBOMBO:** She says no.

22 **CHAIRPERSON:** You know, there are two

23 points really, Mr Bizos. The first one is that we

24 repeatedly said that questions of law or even disputed

25 factual questions which depend upon the – an opinion which

1 can as easily be arrived at by the members of the
2 commission as the witness, then we won't allow the witness
3 to give us the benefit of his or her opinion but we will
4 draw inferences – the necessary inference ourselves from
5 the facts. That is the first point. The second point is
6 I am not sure that it is a principle of the law in self
7 defence, I am sure it isn't, that you cannot have a
8 successful invocation of the defence's self-defence unless
9 you, yourself, can show some kind of injury. I have never
10 heard that doctrine before. I am not aware of any case
11 that is laid it down or any text book writing that states
12 it. Your question is based upon that proposition that
13 unless the police had some scratches themselves, they
14 couldn't be said to be acting in self-defence. Now that
15 sounds to me to be a point that cannot really be persevered
16 in.

17 **MR BIZOS SC:** It shows –

18 **CHAIRPERSON:** You have to reformulate the
19 question. Avoid the point the problem of asking the
20 witness to express an opinion on a matter we have to
21 decide, in respect of which she has no special expertise.
22 Avoid that and do not base a question on an assumption that
23 you cannot bring a defence of self-defence unless you are
24 injured as well.

25 **MR BIZOS SC:** No. It is not – it is not

1 universally true, Mr Chairman, with this difference
2 relating to my learned friend's objection. That a National
3 Commissioner that the witness, the generals, the colonels
4 all passed judgement on the self-defence evidence and made
5 that public then I am entitled to –

6 **CHAIRPERSON:** Mr Bizos, they did that but
7 it doesn't bind us and if we disagree with them based upon
8 – I say if we disagree with them based on the evidence
9 we have heard and the arguments that are put before us, we
10 will not hesitate to say so. And the fact that they said
11 it will, as far as I am concerned, cut no ice.

12 **MR BIZOS SC:** Mr Chairman, with respect,
13 to put up a self-defence story on paper after 9 days where
14 the witness and others have produced a document like
15 Exhibit L, I am entitled, Mr Chairman, to ask them now that
16 they – these facts have emerged do they still support the
17 version put on Exhibit L and we are entitled to –

18 **CHAIRPERSON:** I have not a problem with
19 that question. I did not understand you to ask it
20 previously. If you are asking it now I have not got a
21 problem with it. Clearly if the police put up a version
22 and you say, do you in the light of extra information
23 that is come to hand –

24 **MR BIZOS SC:** This is what –

25 **CHAIRPERSON:** - since then do you persist

1 in that explanation. That question is permissible.

2 **MR BIZOS SC:** Yes. This is what I am

3 leading to, Mr Chairman. Having regard to the facts that I

4 have summarised for you and you said well if they are true,

5 do you believe that it was correct for the police to put

6 out the version that they did that proportional force was

7 used in self-defence or have you changed your mind as a

8 result of the information that has come to the fore to

9 contradict what you made yourself a party to with Exhibit

10 L?

11 **GENERAL MBOMBO:** I have not changed, Mr

12 Chairperson, because I am standing by the explanation I got from

13 the police.

14 **MR BIZOS SC:** This statement was made

15 within an hour or two after the tragedy, are you aware of

16 that?

17 **CHAIRPERSON:** Mr Bizos, I am missing

18 something. What statement are you referring to?

19 **MR BIZOS SC:** The statement that the

20 killings were in self-defence.

21 **CHAIRPERSON:** Yes, well I think you

22 should give the witness reference to who made the statement

23 and details of the statement so she can deal with it.

24 **MR BIZOS SC:** Well let us start with you.

25 In your evidence on Thursday you said that on the 16th of

1 August you were in the JOC but as a consequence of a
2 combination of going to the ladies room waiting outside,
3 you did not hear the casualties at either scene one or
4 scene 2 until after it occurred. You agreed that that is
5 correct?

6 **GENERAL MBOMBO:** That is so.

7 **MR BIZOS SC:** That you agreed with

8 Advocate Budlender that the failure of the JOC or General
9 Annandale to inform you of these events was disgraceful.

10 Do you recall that?

11 **GENERAL MBOMBO:** I recall that, Mr Chairperson.

12 **MR BIZOS SC:** And although you sent an

13 SMS to the National Commissioner at 16:02 you cannot recall
14 what it said although this was seconds after the shootings

15 and more or less simultaneous with Brigadier –

16 **CHAIRPERSON:** No. Not seconds after the

17 shootings. The shootings were some minutes before.

18 **MR BIZOS SC:** Sorry.

19 **CHAIRPERSON:** It was I think seconds

20 after certain information had been received in the JOC and

21 after Brigadier Pretorius, I think it is, had contacted –

22 **MR BIZOS SC:** After – yes.

23 **CHAIRPERSON:** - sent an SMS to –

24 **MR BIZOS SC:** It is more or less

25 simultaneous with Brigadier Pretorius reporting IPID

1 Exhibits – in Exhibits LLR and KK4. Do you –

2 **CHAIRPERSON:** I take it that you accept

3 that, that is what your –

4 **MR BIZOS SC:** Yes.

5 **CHAIRPERSON:** - your evidence says.

6 **MR BIZOS SC:** And in your evidence you

7 spent a bit of time trying to collect information of what

8 had occurred and at about 17 minutes past 4, that is 15

9 minutes after the shootings, you did call National

10 Commissioner –

11 **CHAIRPERSON:** No, more than 15 – sorry,

12 Mr Bizos, more than 15 minutes after the shootings. 15

13 minutes after the SM that she sent to the National

14 Commissioner and after the SMS that Brigadier Pretorius

15 sent to IPID. Anyway, I am sorry to interrupt you but

16 you have got to correct these.

17 **MR BIZOS SC:** - and spoke for about 7

18 minutes. Can you recall what evidence you collected to

19 give to the National Commissioner?

20 **GENERAL MBOMBO:** As I said earlier, Sir,

21 I wanted to make sure exactly what had happened before

22 making the report.

23 **MR BIZOS SC:** You see, the reason I am

24 asking you these questions is according to the evidence of

25 the National Commissioner Phiyega, she heard from you at -

1 and for the reference is Marikana is transcript day 64

2 pages 6833 line 7 to 25 and that perhaps can go up.

3 **CHAIRPERSON:** I think repeat the page

4 number again so we can see it on the transcript.

5 **MR BIZOS SC:** Page 6833, line 7 to 25, Mr

6 Chairperson.

7 **CHAIRPERSON:** We now have 6833, what line

8 again?

9 **MR BIZOS SC:** 7, line 7 to 25.

10 **CHAIRPERSON:** Yes, alright. Well let us

11 just look at that. General Phiyega says, "later that day

12 of the 16th Lieutenant General Mbombo informed me about the

13 tragedy that had just occurred and Mr Semenya says more or

14 less what time did it happen? General Phiyega says, that

15 time is around late afternoon, maybe 3, 4 that time. It

16 could've been even – it could have even been much later,

17 around 3, 4 that 3, 4, 5 that time. Mr Semenya, what did

18 she say about the tragedy? And General Phiyega said, she

19 said that the protestors had charged the police line with

20 an assortment of dangerous weapons. She also relayed that

21 the police had also been fired at and the police had shot

22 and killed a number of protestors which later turned out to

23 be 34 and that they had done so in private defence. I was

24 also informed, she continues, that there were other people

25 who were injured. She also stated that 250 protestors had

1 also been arrested." Is that the passage to which you
2 refer, Mr Bizos?

3 **MR BIZOS SC:** Yes, Mr Commissioner. And
4 do you agree that it was within a very short period after
5 the tragedy you reported to the National Commissioner that
6 the killings and the wounds were in self-defence?

7 **CHAIRPERSON:** It is actually private
8 defence is the words used by the National Commissioner and
9 I take it in the context that by the expression private
10 defence she meant both self-defence and private defence.

11 **MR BIZOS SC:** Yes.

12 **GENERAL MBOMBO:** I was reporting, Mr
13 Chairperson, as it had been related and reported to me.

14 **MR BIZOS SC:** So you reported the
15 conclusion or conclusions of the reason why the tragedy
16 occurred to the National Commissioner?

17 **GENERAL MBOMBO:** As reported to me, Mr
18 Chairperson, yes.

19 **MR BIZOS SC:** Who reported to you?

20 **GENERAL MBOMBO:** As I said earlier here,
21 Sir, that General Annandale talking to General Naidoo were
22 trying to find those details.

23 **MR BIZOS SC:** The orders provide that
24 there has to be a recording, audio recording of what was on
25 radio between the members of the police and specifically

1 that any operation has to be videoed. Do you recall that

2 there – that is a provision in the standing orders?

3 **GENERAL MBOMBO:** Yes, that is true, that

4 is how it is supposed to be.

5 **MR BIZOS SC:** Why do you think that is

6 expected of the police and why – what was the purpose of

7 the standing orders?

8 **GENERAL MBOMBO:** To be of assistance in

9 matters such as this commission and other matters.

10 **MR BIZOS SC:** But also that the

11 commission and that the widows and children and parents

12 should have a record of why the police behaved in the

13 manner in which they did. A record is necessary for that

14 purpose, would you agree?

15 **GENERAL MBOMBO:** That is one of the

16 purposes, yes.

17 **MR BIZOS SC:** An important part – the

18 legislature and the drafters will – must have been serious

19 when they said that events have to be recorded on radio, on

20 video as they are reported standing orders which are

21 provided for which you knew about.

22 **GENERAL MBOMBO:** It is so, Chairperson.

23 **MR BIZOS SC:** Do we have any radio

24 records of the conversations between you, the other members

25 of JOC and the commanders on the field? Is there any radio

1 recording?

2 **GENERAL MBOMBO:** I think, Mr Chairperson,
3 that the witnesses from the police that have previously
4 given evidence here and including myself, and I gave
5 evidence - evidence in Chief. I explained the challenges
6 and the difficulties we had pertaining to the radios.

7 **MR BIZOS SC:** Is it yet another
8 coincidence that the radios were not working properly? Is
9 that a coincidence?

10 **GENERAL MBOMBO:** I wouldn't be certain of
11 that, Sir.

12 **MR BIZOS SC:** I beg your pardon?

13 **GENERAL MBOMBO:** I am not certain of that,
14 Sir.

15 **MR BIZOS SC:** Not a coincidence? You are
16 not certain whether it was a coincidence. Was it also a
17 coincidence that 4 minutes of what was recorded is missing?
18 The vital 4 minutes when the shooting took place, or the 4
19 minutes or thereabouts is missing, is that also a
20 coincidence?

21 **GENERAL MBOMBO:** I have no knowledge of
22 that, Mr Chairperson.

23 **[12:27] MR BIZOS SC:** And also is it a
24 coincidence that the radio was silent for about ten
25 minutes, four minutes?

1 **GENERAL MBOMBO:** I am not very certain of

2 that.

3 **MR BIZOS SC:** You know you are senior,

4 well educated, clever people, do you believe coincidences

5 of non-recording were just coincidence, it happened?

6 Nobody's able to explain why and you expect the Commission

7 to say that there was – well the evidence is not there.

8 And not draw the inference which we are going to suggest

9 that there was deliberate interference with both the radio

10 and the videotaping.

11 **GENERAL MBOMBO:** According to me,

12 Chairperson, if we had all the gadgets that senior counsel

13 now refers to this would have been of very great assistance

14 to us in trying to explain ourselves to this honourable

15 Commission. I take it these were not things that were done

16 deliberately because we are supposed to do this in terms of

17 law and in terms of our standing orders.

18 **MR BIZOS SC:** At the Potchefstroom

19 meeting was it discussed that you had to do a debriefing in

20 terms of the orders?

21 **GENERAL MBOMBO:** Chairperson, I think I

22 have already mentioned that the this question about

23 debriefing this was handled not in Potchefstroom, before

24 then.

25 **MR BIZOS SC:** There was no record of any

1 meeting indicating that you were at all concerned as to how
2 this strange coincidence which could have corroborated the
3 version of the police was no longer there.

4 **GENERAL MBOMBO:** If you could just repeat
5 that, Sir.

6 **MR BIZOS SC:** You know when you got
7 together you were obliged by the order to do a debriefing,
8 you know that.

9 **GENERAL MBOMBO:** I know that,
10 Chairperson, yes.

11 **MR BIZOS SC:** Did you ask please give us
12 the written records, the minutes, the tapes, the radio
13 conversations so that we can have a proper debriefing and
14 did anybody raise that question in that form?

15 **GENERAL MBOMBO:** Because, Chairperson, we
16 were not in the debriefing.

17 **MR BIZOS SC:** It is not only in order to
18 comply with the rules, your meeting was in order to try and
19 help the Commission to find the truth like it says.

20 **GENERAL MBOMBO:** It is so. As you say,
21 Sir.

22 **MR BIZOS SC:** Did anybody say what
23 happened, why did the radio not work during this vital
24 period? Why did the video machine not work? Why were no
25 minutes in relation to it anywhere, did anybody raise that

1 question?

2 **GENERAL MBOMBO:** I think, Chairperson,

3 those were things that were looked at.

4 **MR BIZOS SC:** They were raised?

5 **GENERAL MBOMBO:** I said that. I think

6 that amongst quite a number of things that were looked at.

7 **MR BIZOS SC:** No, no, no these three

8 specific things. None of them appear in L, in exhibit L.

9 You put exhibit L together, there is no evidence in L as to

10 why there were these unfortunate coincidences.

11 **GENERAL MBOMBO:** I would not be very

12 sure, Mr Chairperson, as to why they were not there.

13 **MR BIZOS SC:** It leads us to the

14 conclusion that we have to submit to the Commission that

15 they are not accidentally absent, but they were

16 deliberately not put into operation or were destroyed or

17 manipulated later in order to hide the truth from the

18 Commission rather than helping it.

19 **MR SEMENYA SC:** Chairperson, there is no basis

20 for that proposition being put to the witness. If Mr Bizos

21 has we would gladly welcome to have a look at it too.

22 **CHAIRPERSON:** Mr Bizos, what do you say

23 about Mr Semanya's objection?

24 **MR BIZOS SC:** Mr Chairman, if we argue

25 this our learned friend will say it wasn't put to the

1 witnesses. It is legitimate, Mr Chairman, to put what
2 appear high degree of probabilities to the witnesses and
3 ask them what their comment in relation thereto is.

4 **MR SEMENYA SC:** Chairperson, for instance that
5 we destroyed evidence, it cannot be argued without any
6 foundation to it.

7 **MR BIZOS SC:** It is one of the
8 alternatives for the high degree of improbability, Mr
9 Chairman, that it was an accident or it just happened.

10 **CHAIRPERSON:** Mr Bizos, this issue has
11 been debated in the past in this Commission and the rulings
12 that I have given have been as follows and if there is direct
13 evidence it must be put. If the argument is going to be
14 raised later, based on circumstantial evidence then the
15 circumstances which will be relied on, which it will be
16 contended give rise to the inference must be put to the
17 witness also. So I am not sure that you have put in terms the
18 circumstances upon which you will rely in support of the
19 inference which you would argue. And I think those should
20 be put to the witness so she can deal with this point that
21 you are putting to her.

22 **MR BIZOS SC:** Well, Mr Chairman, with
23 respect, am I entitled to an answer to the question from
24 the witness or not?

25 **CHAIRPERSON:** You are entitled to an

1 answer from the witness but the witness need only answer a
2 question based upon contention that a certain submission
3 will be made. If the submission is not based on direct
4 evidence the witness is entitled to be told what
5 circumstances will be relied on to support the inference so
6 that she can deal with it. She cannot just deal with an
7 inference in the air as it were, she is got to have a basis,
8 direct or circumstantial to deal with it in answering the
9 question.

10 **MR BIZOS SC:** Well let me put it in
11 another way to the witness which I think will satisfy my
12 learned friend. Do you agree that if you and the other
13 members of the police force saw to it that there were
14 minutes that the radios did record and there were not
15 missing portions of the tape, the work of the Commission
16 would have been very much more easy to be made in the
17 interests of justice? Would you agree with that?

18 **GENERAL MBOMBO:** I agree with you there,
19 Sir.

20 **MR BIZOS SC:** I beg your pardon.

21 **GENERAL MBOMBO:** I do agree with you
22 there.

23 **MR BIZOS SC:** You do agree. Now you
24 heard the songs of praise immediately or almost immediately
25 or very shortly after the event by the National

1 Commissioner and by the Operational Commander that things
2 happened and the police did not have to answer to any –

3 **CHAIRPERSON:** Sorry to interrupt you, Mr

4 Bizos, you are actually running two things together. I am

5 not sure if that is appropriate. Mr Bizos is referring

6 firstly to two speeches I think that were made. One media

7 conference addressed by the National Commissioner and

8 thereafter a speech that she made some days later. And

9 he is also referring to a speech made on the 18th of August

10 about Brigadier Calitz and to various members of the

11 service who were present. Now were you present when the

12 National Commissioner gave the media conference that he is

13 referring to? That was on the 17th at Marikana, were you

14 present there, did you hear what she said?

15 **GENERAL MBOMBO:** I was present, Chairperson.

16 **CHAIRPERSON:** Were you present, I think

17 it was the 20th, I may be wrong on that, when she addressed

18 a number of members of the service and spoke about what had

19 happened and gave her views about standards of

20 professionalism being complied with and so on? Were you

21 present there, did you hear what she said?

22 **GENERAL MBOMBO:** I was there,

23 Chairperson, yes.

24 **CHAIRPERSON:** Were you present on the 18th

25 at Marikana when Brigadier Calitz addressed a number of

1 members of the service and gave his views also about the
2 line having been held and that things were done in the way
3 they should have been? I am summarising rather loosely, but
4 I think you know what I am referring to. Were you present
5 when he gave that address?

6 **GENERAL MBOMBO:** I was not present,
7 Chairperson.

8 **MR BIZOS SC:** In exhibit FFF5, media
9 statement from the South African Police Service Corporate
10 Communication, National Media Centre. There the
11 Commissioner says what the police version is, one of the
12 police versions that were put "and the militant group
13 stormed towards –

14 **CHAIRPERSON:** I think you must say where
15 it is so that the relevant section can be put on the screen
16 for us all to watch.

17 **MR BIZOS SC:** The second page, the last
18 two paragraphs when the police started deploying -

19 **CHAIRPERSON:** Yes, that is now at the top
20 of the screen.

21 **MR BIZOS SC:** "When the police started
22 deploying the barbed wire the group of protestors armed
23 with general weapons and firearms hastily flanked the
24 vehicles deploying the wire. They were met by members of
25 the police who tried to repost the advance with water

1 canon, teargas, as well as stun grenades. The attempt was
2 unsuccessful and the police members had to employ force to
3 protect themselves from the charging group. The dispersion
4 action had commenced at this time and the armed protestors
5 were driven from their stronghold to a high bushy ground in
6 the close vicinity. The police members encircled the area
7 and attempted to force the protestors out by means of water
8 canons, rubber bullets and stun grenades. The militant
9 group stormed towards the police, firing shots and yielding
10 general weapons. Police retreated systematically and were
11 forced to utilise maximum force to defend themselves. The
12 death toll of the protestors currently stands at 34 with
13 more than 78 require – the total number arrested was 259."

14 **CHAIRPERSON:** You said you were present
15 when the National Commissioner read that statement out at
16 a media conference on the 17th at Marikana, that is correct
17 is it?

18 **GENERAL MBOMBO:** It is so, Chairperson.

19 **CHAIRPERSON:** Now what do you want to ask
20 the witness about it, Mr Bizos?

21 **MR BIZOS SC:** Yes, now part of that
22 information came from you to the Commissioner.

23 **GENERAL MBOMBO:** We received this
24 information, Mr Chairperson, from the people who were in
25 front there at the koppie.

1 **MR BIZOS SC:** The Commissioner heard part
2 of this from you.

3 **GENERAL MBOMBO:** Yes, as the person who
4 had to give the report to the National Commissioner of
5 police, you are right.

6 **MR BIZOS SC:** You reported that and the
7 National Commissioner took it for granted that what you and
8 other policemen may have told them was the absolute truth.

9 **GENERAL MBOMBO:** It is so.

10 **MR BIZOS SC:** And when you gathered there
11 did you question the veracity of the statements that you
12 had heard from certain police officers? Did you ask why
13 there were no records, did you wait for the medical or
14 ballistics –

15 **CHAIRPERSON:** Mr Bizos, that is about
16 three or four questions together. I think to be fair to
17 the witness you should put them singly so she can deal with
18 each one as you ask it.

19 **MR BIZOS SC:** Yes. Did you raise the
20 question as to the veracity of any of the statements of
21 fact that you made about what happened?

22 **GENERAL MBOMBO:** Chairperson, the police
23 were explaining. We did ask questions to get some clarity
24 on some of the reports they were making.

25 **MR BIZOS SC:** Did you hear the main –

1 Calitz say that the police did 110%?

2 **CHAIRPERSON:** No, no she said she wasn't

3 present on that occasion. I asked her, that was his

4 address on the 18th of August, she said she wasn't present

5 at that. It might be appropriate to ask her whether she

6 saw the video thereafter and when she did so and so on, but

7 she says she wasn't there on the 18th.

8 **MR BIZOS SC:** Has anything happened since

9 Potchefstroom to put any doubt in your mind as to the

10 correctness of the version that was put out?

11 **GENERAL MBOMBO:** I am not sure if I

12 understand the question clearly, Mr Chairperson.

13 **MR BIZOS SC:** Have you been following the

14 proceedings?

15 **GENERAL MBOMBO:** That is correct, yes.

16 **MR BIZOS SC:** Have you heard the evidence

17 that was given by your colleagues?

18 **GENERAL MBOMBO:** That is correct, Sir,

19 yes, Sir.

20 **MR BIZOS SC:** Was anything said by any of

21 them that cast doubt in your mind as to the truthfulness or

22 otherwise of the version that was put out?

23 **GENERAL MBOMBO:** Mr Chairperson, it is not

24 for me, Mr Chairperson, to either criticise or praise. The

25 Commission will be of assistance to all of us, to help all

1 of us. That is my hope.

2 **[12:47] MR BIZOS SC:** Now I think we are entitled

3 to know that any conviction that you may have, a decision

4 that you have made about what happened when you were at

5 Potchefstroom and thereafter has been shaken in any way by

6 what evidence has been led before the Commission up to now?

7 **GENERAL MBOMBO:** As I say, Sir, truly as

8 I was following the sessions of this Commission it is not

9 for me, Sir, to make a finding either for or against.

10 **MR BIZOS SC:** Now when asked what

11 mistakes may have been made by my learned friend, Mr

12 Semenya, you –

13 **CHAIRPERSON:** You mean when asked by Mr

14 Semenya what mistakes were made –

15 **MR BIZOS SC:** Yes, sure. When you were

16 asked by Mr Semenya as to what mistakes may have been made

17 you said that the radio was one of the difficulties. You

18 recall that?

19 **GENERAL MBOMBO:** I recall that, yes.

20 **MR BIZOS SC:** Now what do you think, why

21 did you think that the trouble that may have occurred in

22 relation to the operation of the radio was a mistake by

23 anyone?

24 **GENERAL MBOMBO:** If you could just

25 clarify the question again, Sir, please.

1 **MR BIZOS SC:** Why did you mention the
2 radio as one of the, or the malfunction of the radio as one
3 of the mistakes?

4 **GENERAL MBOMBO:** In the manner in which I
5 was told it was because of the malfunction of the radios
6 the police could not communicate with each other there as
7 during this operation.

8 **MR BIZOS SC:** I see, and if you were in
9 the JOC, which you were outside, what advice or procedure
10 would you have advanced towards the police with the
11 numerous guns in their hands shortly before the shooting?

12 **GENERAL MBOMBO:** As I say, because of the
13 breakdown in the communication systems that we had this
14 created problems. I am sure that at the JOC, as you are
15 mentioning, Chairperson, if the people could hear what was
16 happening over there they could have given some advice if
17 necessary.

18 **MR BIZOS SC:** Now we have a statement
19 from Colonel Sepale. We do not have the exhibit number, Mr
20 Chairman.

21 **CHAIRPERSON:** Is it a statement that is
22 been provided by the police service?

23 **MR BIZOS SC:** Yes.

24 **CHAIRPERSON:** Well, according to my notes
25 the latest exhibit that we have is LLL6. If this is not,

1 or unless Ms Pillay can tell us, is this already an
2 exhibit?

3 **MS PILLAY:** Chairperson, I have not been able to
4 find it as an existing exhibit, so I think it will be LLL7.

5 **CHAIRPERSON:** Yes. LLL7, who is the
6 deponent?

7 **MR BIZOS SC:** Colonel Sepale.

8 **CHAIRPERSON:** Will you spell his surname,
9 please?

10 **MR BIZOS SC:** S-E-P-A-L-E, and we have a
11 reference, LLL7.

12 **CHAIRPERSON:** That is an exhibit number
13 we have just given it. Yes, so exhibit LLL7 will be the
14 affidavit by Colonel Sepale.

15 **MR SEMENYA SC:** Chairperson, I do not know if
16 the document was ever given to the witness for her
17 consideration.

18 **CHAIRPERSON:** Is it a long document, Mr
19 Semenya? I have not seen it either. Is it a long document?

20 **MR BIZOS SC:** It is referred to, Mr
21 Chairman, in Mr Hendricks's supplementary –

22 **CHAIRPERSON:** Alright. Well, I do not
23 know, I do not mean if it was referred to, is it a long
24 document? If the witness requires some time to study it,
25 then –

1 **MR BIZOS SC:** No, we want to quote, Mr

2 Chairman -

3 **CHAIRPERSON:** Yes, now I -

4 **MR BIZOS SC:** There's one paragraph -

5 **CHAIRPERSON:** I understand. Alright,

6 well let us -

7 **MR BIZOS SC:** It is only over a page, but

8 there is one paragraph that I want to put to the witness.

9 **CHAIRPERSON:** Yes, I understand. Has the

10 machine operator got a copy of it, so can we see it on the

11 screen? Otherwise what we can do is we can take the lunch

12 adjournment five minutes earlier than I intended and during

13 that time the witness and we, the Commissioners, can look

14 at the document so we will be better able to deal with it

15 when we resume. So I suggest we do that and let us try to

16 reassemble at about 20 to 2 so we make up the five minutes,

17 and if we could please be given copies of the document and

18 the witness as well, then we will all be equipped to deal

19 with it once we resume. We now take the lunch adjournment.

20 **MR BIZOS SC:** Thank you, Mr Chairman.

21 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

22 **[13:48] CHAIRPERSON:** The Commission resumes.

23 Provincial Commissioner, you are still under oath.

24 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

25 **CHAIRPERSON:** Mr Bizos. Yes, during the

1 adjournment we were given copies of the statement of
2 Colonel Sepale, which has already been admitted as exhibit
3 LLL7. I should have asked, Provincial Commissioner, have
4 you seen the statement of Colonel Sepale?

5 **GENERAL MBOMBO:** I did not see it, Mr
6 Chairperson. I do not have it.

7 **CHAIRPERSON:** I understand that the
8 passage that they want to put to you in fact consists of
9 two paragraphs at the end and my impression of reading
10 through the statement is that those paragraphs can more or
11 less be dealt with by themselves. So am I correct in
12 thinking – I was told during the adjournment it is
13 paragraphs 6 and 7. Is that right, Mr Bizos?

14 **MR BIZOS SC:** It is paragraph 2 – yes,
15 let us start with paragraph 5, Mr Chairman.

16 **CHAIRPERSON:** Do you want to deal with it
17 now or do you want give Mr –

18 **MR BIZOS SC:** Let me read it to her.

19 **CHAIRPERSON:** Alright.

20 **MR BIZOS SC:** Yes.

21 **CHAIRPERSON:** Well, you have got a copy of
22 the statement, have you, Provincial Commissioner?

23 **GENERAL MBOMBO:** I received it, Mr Chairperson,
24 here it is.

25 **CHAIRPERSON:** Now Mr Bizos wants to deal

1 with paragraphs 5, 6 and 7, so let us go through them
2 together first and then he'll ask you about them. 5 says,
3 "All the radios in that day were working fine as we could
4 hear from the radio in the caravan that the members posted
5 on the ground were giving situation report to the JOC. Out
6 of 100 hand radios that we used in the operation a total of
7 85 hand radios were booked from the radio control register
8 and the OB in the morning of the 16th August 2012. The
9 members from Pretoria POPS, Johannesburg POPS, Pretoria
10 NIU, Pretoria TRT, and other North West provincial stations
11 booked out the hand radios as per the attached copies of
12 radio control register and OB." We weren't given the
13 attached copies. I do not think anything turns on that.
14 Para 6 goes on, "The reasons why the members were
15 issued with the hand radios was to cater for all members
16 from other provinces like Gauteng who use TETRA radio
17 system, not UHF analogue system that is used in the North
18 West. This issue was also communicated during the morning
19 briefing where the section commanders and the Nyala drivers
20 were urged to book out the radio from the ICT technician's
21 caravan. The simple reason was TETRA radios would not
22 communicate with UHF radio system because TETRA is digital
23 and UHF is analogue."
24 Then paragraph 7, "During the whole operation
25 there were no recordings done as the voice logger was not

1 installed on the sites or the radio control room." Those
2 are the paragraphs, Mr Bizos, that you rely on. Is that
3 correct?

4 **MR BIZOS SC:** Yes.

5 **CHAIRPERSON:** To which you are going to
6 refer the witness.

7 **MR BIZOS SC:** Yes, paragraph 4, "On the
8 same day at about 15:15 I received a call from JOC with
9 regard to the faulty hand radio of Brigadier Calitz, which
10 I immediately proceeded to spot where Brigadier Calitz was
11 standing. I immediately noticed that the power line was
12 the hampering factor with the hand radio signal and I
13 decided to install a base radio which transmits more power
14 than a hand radio. After the installation the base radio
15 which was converted to mobile radio was tested through JOC
16 and was working fine thereafter. We went back to the
17 caravan JOC."

18 **CHAIRPERSON:** So you have now seen the
19 relevant paragraphs that are going to be referred to. So
20 Mr Bizos, please proceed with your cross-examination. If
21 there is any extra information you require or anything of
22 that kind you can ask for it then, but I doubt whether it
23 will **be necessary, but carry on, Mr Bizos.**

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

25 The Colonel was an expert in the operation of radios, as

1 appears from his statement.

2 **GENERAL MBOMBO:** That is so, Mr Chairperson.

3 **MR BIZOS SC:** Reading the statement as a

4 whole it would appear that there was no reason why there

5 was no communication between JOC and the commanders.

6 **GENERAL MBOMBO:** I do not see it like

7 that, Mr Chairperson, according to this statement, because when

8 he was doing the tests he did those tests before the

9 operation started.

10 **MR BIZOS SC:** Yes, but he says that on

11 the 16th they appeared to be in order. He was at JOC and he

12 could hear from 80 hand radios, so there was communication

13 between JOC, or if the JOC members were there and prepared

14 to listen, between the people or in the field and the

15 people at the JOC gathering.

16 **CHAIRPERSON:** Someone has headphones that

17 are not on his or her head but are on quite loudly and so

18 we can hear what's being said and it interferes with the

19 audibility of what's happening.

20 **MR BIZOS SC:** The Colonel does not

21 mention the four-minute silence, does he?

22 **GENERAL MBOMBO:** Mr Chairperson, according to

23 what I was told it is true that the radios were tested, but

24 when the operation had started, that is when problems

25 cropped up, not that the people at JOC and the others could

1 not hear, but they could not communicate with the radios.

2 I do not have knowledge about this technical things, but we

3 were told that there was a blockage, it would block, you

4 could only hear the two people talking, other people could

5 not communicate.

6 **MR BIZOS SC:** Well, can you explain why

7 at the end of paragraph 4 the Colonel should say that the

8 base radio which was converted to mobile radio was tested

9 through JOC and was working fine thereafter and was back in

10 the, to the –

11 **CHAIRPERSON:** No, "Thereafter we went

12 back to the caravan at JOC."

13 **MR BIZOS SC:** - the caravan at JOC. All

14 the radios were working fine, in paragraph 5. It doesn't

15 say anything about the four-minute silence or any of the

16 other reasons that have been advanced as to why there was

17 no communication and why there was no record.

18 **GENERAL MBOMBO:** Mr Chairperson, I also do not

19 know why it doesn't mention that.

20 **MR BIZOS SC:** Why would it not be turned

21 on? Didn't you want to record because of the provision of

22 the Standing Orders that there must be evidence of what is

23 happening? Why would it not have been switched on?

24 **GENERAL MBOMBO:** I agree with you that is

25 what the Standing Order says, but I do not know what

1 happened.

2 **MR BIZOS SC:** Shouldn't you have known

3 what was happening? Communication was vital, particularly

4 as you knew that come 4 o'clock there would be D-day?

5 **GENERAL MBOMBO:** Everything that was

6 happening there, including the communication, was vital, as

7 you say.

8 **MR BIZOS SC:** You know I want to put to

9 you that you were a police officer in Transkei; you served

10 as an ordinary constable for a short period. For eight

11 years thereafter you were in the security police of the

12 Transkei. Is that correct?

13 **GENERAL MBOMBO:** That is correct, Mr

14 Chairperson.

15 **MR BIZOS SC:** Who trained the security

16 police of the Transkei when you became a security police

17 person?

18 **GENERAL MBOMBO:** I do not know if you are

19 asking about the person who trained me personally.

20 **MR BIZOS SC:** No, not you personally.

21 You couldn't have been the only security police person.

22 Were you trained in the security police of the Transkei by

23 the security police from South Africa?

24 **GENERAL MBOMBO:** Firstly, Mr Chairperson, my

25 job at the time was in the administration. I was not

1 trained as a security officer.

2 **MR BIZOS SC:** But you say that you joined

3 the security police, in your statement.

4 **GENERAL MBOMBO:** That is so, Mr Chairperson, I

5 was doing the administration of the security branch.

6 **MR BIZOS SC:** Of the security branch.

7 Who was in charge of the security branch in Transkei?

8 **GENERAL MBOMBO:** At the time when I was

9 working there, I forgot, it was Major General, I forgot his

10 name. I cannot recall the name.

11 **MR BIZOS SC:** You remained in the

12 security police of the Transkei during the troubled years

13 of the early 90s after the release of Mr Mandela. Is that

14 right?

15 **GENERAL MBOMBO:** Yes, I was still working

16 for the Transkei forces, but I was not with the security

17 branch.

18 **MR BIZOS SC:** I do not understand why you

19 want to distance yourself from your fellow security

20 policemen.

21 **CHAIRPERSON:** There's still disturbance

22 coming from one set or a number of sets of earphones which

23 are obviously not being used by the people to whom they'd

24 been issued and they're on the desk; the sound is coming

25 from them and it is very disturbing. I'd be grateful of

1 that could be attended to.

2 **MR BIZOS SC:** I will repeat the question.

3 The early 90s were troubled times in South Africa and in

4 Transkei and the other so-called Bantustans.

5 **GENERAL MBOMBO:** I hear what you are

6 saying.

7 **MR BIZOS SC:** Do you agree that they were

8 troubled times, and more particularly on the control of

9 gatherings within South Africa and in the Bantustans?

10 **GENERAL MBOMBO:** I can say I hear what

11 you said, but I am not sure if that was indeed the case.

12 **MR BIZOS SC:** I beg your pardon? The

13 last bit?

14 **GENERAL MBOMBO:** I am not sure if that was

15 indeed the case.

16 **MR BIZOS SC:** Oh, I see. Did you not

17 follow what was happening in South Africa; there was talk

18 in certain circles that your employer, the Transkei

19 government and that Matanzima may soon come to an end?

20 **GENERAL MBOMBO:** Mr Chairperson, I cannot

21 remember if there were such talks. It is possible there

22 were such talks.

23 **MR BIZOS SC:** I will tell you why I am

24 putting all this to you, because unfortunately during those

25 years there was a tendency among the police to shoot at

1 people gathered and the top officers removed themselves
2 from the scenes so that there could be no responsibility.

3 Did you hear about that in the early 90s?

4 **GENERAL MBOMBO:** I do not remember such

5 acts, Mr Chairperson, in the forces that I was working for.

6 **MR BIZOS SC:** Did you hear about the

7 massacre in the neighbouring Gqozo-led Ciskei?

8 **GENERAL MBOMBO:** I remember hearing about

9 it, Mr Chairperson.

10 **MR BIZOS SC:** Where people were shot at,

11 live ammunition caused the death of many?

12 **GENERAL MBOMBO:** I remember hearing that,

13 yes.

14 **MR BIZOS SC:** Was there close cooperation

15 between the Transkei and the Ciskei?

16 **GENERAL MBOMBO:** Not concerning the

17 matter you are talking about, Mr Chairperson.

18 **MR BIZOS SC:** No, but generally, they

19 were fellow Bantustan leaders. Was there doubt about their

20 future and possibly even your future as a police officer in

21 the security police?

22 **GENERAL MBOMBO:** I did not get the

23 question, Mr Chairperson.

24 **MR BIZOS SC:** Were there not talks among

25 your fellow police officers that soon the Ciskei and the

1 Transkei is going to disappear, what is going to happen to
2 us, the policemen employed by them and more particularly
3 those that were in the security police of those Bantustans?

4 **[14:08] GENERAL MBOMBO:** Mr Chairperson, maybe there
5 were such talks but I do not remember encountering them.

6 **MR BIZOS SC:** Were you not concerned
7 about your future as a security police woman, a future
8 South Africa?

9 **GENERAL MBOMBO:** I did have such a
10 concern, Mr Chairperson.

11 **MR BIZOS SC:** Yes. Now you see what I am
12 – why I am asking you these questions is that during that
13 troubled period there were massacres in South Africa and
14 particular in Boipatong and Sebokeng. And there was a
15 common factor in relation to the behaviour of the senior
16 officers that they actually distanced themselves at the
17 last minute before the shootings. It became a pattern. It
18 became, if I may use the word, a stratagem of the South
19 African police that were in those years against the
20 fundamental changes that are going to take place – were
21 going to take place in South Africa. Did you know about
22 that?

23 **GENERAL MBOMBO:** Mr Chairperson, it could be
24 the case but I do not have that much knowledge about those
25 things.

1 **MR BIZOS SC:** And the similarity is
2 something that I must put to you that in the commissions of
3 inquiry held there was an invariable defence. Yes, we were
4 supposed to command and control. Yes, we were to record
5 what happened during the vital period. But we were absent
6 for this reason or another for the time being and we knew
7 that we had to record but somehow or other the record was
8 wiped clean. Did you hear that as a habitual defence of
9 the police at the time?

10 **GENERAL MBOMBO:** I do not have knowledge
11 of those details, Mr Chairperson.

12 **MR BIZOS SC:** Is it a coincidence that
13 those defences about the Vaal Triangle massacres and the
14 defence here are substantially similar?

15 **GENERAL MBOMBO:** I am not sure what the
16 Advocate is trying to say, Mr Chairperson.

17 **MR BIZOS SC:** What I am trying to say is
18 that this stratagem, if – I do not know that you are
19 familiar with the word, Mr Interpreter, a ploy if you like
20 – is not uncommon to the South African police for the
21 leaders to distance themselves and to say sorry, but the
22 radio did not work, the video did not work. You say that
23 it is merely a coincidence, do you?

24 **GENERAL MBOMBO:** According to me the
25 Marikana problem was a problem to all of us.

1 **MR BIZOS SC:** I do not –

2 **GENERAL MBOMBO:** It was our problem, all
3 of us, that we encountered problems with the radios that
4 were not working, that was a problem facing us all in
5 Marikana.

6 **MR BIZOS SC:** I do not know that you
7 understood the question. Is it a coincidence that this
8 well-rehearsed defence after shootings during the apartheid
9 regime happens to substantially correspond with the defence
10 of the police before this commission?

11 **GENERAL MBOMBO:** I do not agree with
12 that, Mr Chairperson.

13 **MR BIZOS SC:** It is not a coincidence?

14 **GENERAL MBOMBO:** I do not agree that this
15 all was done deliberately.

16 **MR BIZOS SC:** That all this was done
17 what?

18 **GENERAL MBOMBO:** Deliberately.

19 **MR BIZOS SC:** I see. But it is not only
20 deliberately that may have responsibility for the leaders
21 and that is did you foresee – did you foresee on the
22 morning of the 16th that there may well be reason for very,
23 very careful management and the control of or the
24 management of the crowd must be by the leaders and not the
25 leave it to commanders to exercise supposedly individual

1 judgment. That the leaders expected trouble, they

2 should've been there in order to prevent it.

3 **GENERAL MBOMBO:** That is not how we work,

4 Mr Chairperson.

5 **MR BIZOS SC:** Did you foresee that there

6 would be loss of human life on the 16th?

7 **GENERAL MBOMBO:** As I have said earlier

8 on, all those things, the risks that were possible could've

9 been there when looked at but we ensured that we will try our

10 level best to prevent any loss of life.

11 **MR BIZOS SC:** You could better do that if

12 you were present and exercised control over your more

13 junior officers.

14 **GENERAL MBOMBO:** That is how you put it,

15 but it is not how we work.

16 **MR BIZOS SC:** You see the other strange

17 fact is that there were cameras on the helicopters, were

18 there not?

19 **GENERAL MBOMBO:** There were cameras given

20 to the people in the helicopters for them take photos.

21 **MR BIZOS SC:** For what purpose?

22 **CHAIRPERSON:** She answered the question.

23 She said there were cameras given to the people on the

24 helicopters so that they could take photos. That is the

25 explanation as to why the cameras were given according to

1 the witness.

2 **MR BIZOS SC:** There were specialist

3 cameras which pick up minute things on the ground, very

4 sensitive and they can record that. Did you know that?

5 **GENERAL MBOMBO:** That is so, Mr Chairperson.

6 That is correct.

7 **MR BIZOS SC:** Correct. Is it also a

8 coincidence that those cameras did not pick up any

9 information which would've helped the commission as to

10 who's telling the truth?

11 **GENERAL MBOMBO:** I cannot be sure, Mr

12 Chairperson, as to what happened.

13 **MR BIZOS SC:** We are told they were not

14 working. What is the purpose of sending helicopters up in

15 the air with this sensitive equipment if they are not

16 checked as to whether they will work for the particular

17 purpose?

18 **GENERAL MBOMBO:** You are correct, Sir,

19 that they should've been checked and I am sure that they

20 must have been checked.

21 **MR BIZOS SC:** The water cannon had

22 videos, were those available to you at Rustenburg?

23 **GENERAL MBOMBO:** That is so, Mr Chairperson,

24 that our water cannons can take photos but according to me,

25 at the time of this operation, I was not aware of that.

1 **MR BIZOS SC:** Shouldn't you have been
2 aware of it as the senior responsible officer for this
3 operation?

4 **GENERAL MBOMBO:** If I knew the water
5 cannons were capable of taking photos I would've ensure
6 that they were used because we wanted everything that can
7 give evidence as to what happened there.

8 **MR BIZOS SC:** Is there any explanation as
9 to why that material was provided to the commission only
10 five months after your meeting with Marikana – at – sorry,
11 at Rustenburg?

12 **GENERAL MBOMBO:** As I am saying, Mr
13 Chairperson, I personally did not know that the water cannons
14 were capable of taking photos and I am not sure whether the
15 other people knew about it and what caused the fact there
16 were produced here later.

17 **MR BIZOS SC:** Did you ever enquire why
18 that material was not given to the evidence givers for a
19 period of approximately five months?

20 **GENERAL MBOMBO:** I did not enquire, Mr
21 Chairperson, because when they were sought for it was said that
22 they are available, they can be found.

23 **MR BIZOS SC:** Were there senior officers
24 on one or other of the four helicopters that were up in the
25 air –

1 **MR SEMENYA:** Five.

2 **MR BIZOS SC:** In fact I am corrected, five

3 helicopters. Did you authorise their presence?

4 **GENERAL MBOMBO:** Mr Chairperson, I handed over

5 the operation to the overall commander. As to how many

6 helicopters that were there, that was a function of the

7 overall commander.

8 **MR BIZOS SC:** Did you authorise that

9 senior police officers in your area should be in the

10 helicopters rather than next to their men with the guns and

11 to possibly control them before they used them?

12 **GENERAL MBOMBO:** As I am saying, Mr

13 Chairperson, I did not authorise such a thing. That was a

14 function of the overall commander.

15 **MR BIZOS SC:** When you heard that your

16 senior – how many senior officers were in the helicopters?

17 **GENERAL MBOMBO:** I am not sure, Mr Chairperson.

18 **MR BIZOS SC:** Were they supposed to do

19 what? Did you enquire from the man that you appointed as

20 the operational commander or the overall commander why were

21 there senior police officers on the helicopters? We needed

22 advice and control from people on the ground where the

23 danger lurked, not up in the air.

24 **GENERAL MBOMBO:** I have said already – as

25 you have already said, Sir, they had functions to perform

1 that were given to them by the CJOC.

2 **MR BIZOS SC:** Well what we have heard is

3 that did not communicate with the people on the ground.

4 Only Mr – well what's his name? Vermaak. Vermaak was able

5 to communicate. Why was that?

6 **GENERAL MBOMBO:** I would not know, Mr

7 Chairperson.

8 **MR BIZOS SC:** Helicopters are an

9 instrument of war as well, aren't they?

10 **GENERAL MBOMBO:** I am not very sure about

11 that statement, Mr Chairperson.

12 **MR BIZOS SC:** It was not part of the plan

13 in order to show who was boss, look we have got five

14 helicopters, we have got water cannons, we have got guns, we have

15 got – well we are ready with 4 000 rounds of ammunition,

16 we have got R4s and R5s that are used in order to prevent the

17 – well to deal with criminals and others. This was a dress

18 up that we are the boss. We are going to be in control and

19 you cannot remain on the ground and continue this strike.

20 Was that possibility discussed that we really need this

21 force in order to show our might that you cannot

22 mess around with us, go back to work?

23 **GENERAL MBOMBO:** I do not agree with that

24 statement, Mr Chairperson.

25 **MR BIZOS SC:** Would you agree that if you

1 were a worker below on the ground that this is an inference
2 that may have been drawn by many of the 3 000 people on the
3 ground that were there, unarmed.

4 **MR SEMENYA:** The witness is not a mind
5 reader, Chairperson, with respect.

6 **MR BIZOS SC:** I am sorry, I did not hear
7 the objection?

8 **CHAIRPERSON:** The objection was the
9 witness is not a mind reader. You are asking about matters
10 which she has no direct knowledge. You are asking her to
11 speculate about what other people were thinking. That is
12 the basis of the objection. So what do you say about it
13 and what value are we going to derive from whatever answers
14 she may give?

15 **MR BIZOS SC:** The question, Mr Chairman,
16 on the plan was that we must show a force and I –

17 **CHAIRPERSON:** - show of force but the –

18 **MR BIZOS SC:** - it is an unprecedented,
19 with the greatest respect, for crowd management and our
20 experts say so and we will make reference to their opinions
21 that setting up a warlike situation will have effects on
22 the people below that are not consistent with proper crowd
23 management.

24 **CHAIRPERSON:** Just ask the witness
25 whether she knows anything about that. Provincial

1 Commissioner, you have heard the exchange between me and Mr
2 Bizos and you have heard what Mr Bizos says. He says it is
3 unprecedented to have this kind of show of force directed
4 to the people such as those you were dealing with.

5 **[14:27]** Now do you know anything about that? Are you
6 able to express an expert's opinion, opinion based on your
7 own experience, as to whether this was kind of way of
8 proceeding is usual or appropriate?

9 **GENERAL MBOMBO:** Mr Chairperson, as I have said,
10 I do not agree with the advocate's statement. According to
11 my experience I am not sure there is something to even
12 suggest that or think like that.

13 **MR BIZOS SC:** Isn't it the duty of senior
14 officers to weigh up what effect will our conduct towards
15 the crowd have?

16 **GENERAL MBOMBO:** That is correct, that is
17 our duty.

18 **MR BIZOS SC:** And you did not think this
19 excessive show of force they have been counterproductive?

20 **GENERAL MBOMBO:** I do not see a reason
21 why should they be counterproductive.

22 **MR BIZOS SC:** Sorry?

23 **GENERAL MBOMBO:** I do not see a reason
24 why should it be counterproductive.

25 **MR BIZOS SC:** Have you heard the evidence

1 that the crowd believed that the stun grenades that are
2 said to have been thrown off the helicopters, were thought
3 to be that people were being shot from the air?

4 **GENERAL MBOMBO:** I am not sure as to when
5 that happened.

6 **MR BIZOS SC:** Well, either at scene 1 or
7 most probably at scene 2.

8 **CHAIRPERSON:** No, no, I think it was on
9 the 13th, Mr Bizos.

10 **MR BIZOS SC:** Oh, was it on the 13th?

11 **CHAIRPERSON:** The evidence was that the
12 stun grenades were thrown –

13 **MR BIZOS SC:** I do not – I remember that
14 it was the 13th, but I thought that it was, there was
15 evidence that it was repeated on the 16th.

16 **CHAIRPERSON:** The stun grenade was thrown
17 on the 16th as well. But wasn't it, if my memory – my
18 recollection was, wasn't it one of the scenes that actually
19 people were running away from one of the scenes, I think
20 scene 2, and stun grenades were thrown, and I think Mr
21 Chaskalson was leading that evidence at the time.

22 **MR CHASKALSON SC:** The stun grenades that
23 were thrown on the 16th of which we are aware, that were
24 thrown from helicopters, were thrown some distance to the
25 west of scene 2.

1 **CHAIRPERSON:** Thank you, that was my
2 recollection, and I wasn't sure what the compass direction
3 was. Thank you.

4 **MR BIZOS SC:** Did you know that stun
5 grenades were supplied to the people, to your members,
6 whether they were on the ground or on the air, and what was
7 the reason for it?

8 **GENERAL MBOMBO:** I know, Mr Chairperson, that
9 stun grenades were given to the police in accordance with
10 the way as we give out resources or equipment.

11 **MR BIZOS SC:** Can people be blamed for
12 believing that they are actually being shot from the air,
13 when they see something coming down and it spews out
14 substances which may be mistaken as bullets. Very loud
15 bang and frightening. Why would this be thrown from
16 helicopters? It is surely not in self-defence.

17 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
18 the people who did that would be able to explain why, what
19 the reason for the action was.

20 **CHAIRPERSON:** Provincial Commissioner,
21 were you aware of the fact that stun grenades were in fact
22 thrown, one at least, that I can remember, thrown from a
23 helicopter, were you aware of that on the 16th?

24 **GENERAL MBOMBO:** I do not remember
25 clearly, Mr Chairperson, about the 16th, but I do remember there

1 was such talk on the 13th.

2 **MR BIZOS SC:** We have heard Mr Chaskalson

3 say that -

4 **CHAIRPERSON:** Yes, but the question is,

5 whether she was aware of this? Were you aware of that, and

6 were you aware beforehand that people in the helicopters

7 were supplied with stun grenades to use from the air, if

8 that was in fact the case? Were you aware of that?

9 **GENERAL MBOMBO:** I do not have such

10 knowledge, Mr Chairperson.

11 **CHAIRPERSON:** Under the circumstances, Mr

12 Bizos, is there any point in persisting with this line of

13 cross-examination of the witness? She's not aware of the

14 underlying facts upon which the cross-examination -

15 **MR BIZOS SC:** Well accept that a person

16 who made the decisions about what was to happen on the day

17 can be asked, I submit, did she think, or what effect stun

18 grenades would have had on the people against whom they

19 were thrown? But I will leave the matter there, Mr Chairperson.

20 Now -

21 **CHAIRPERSON:** - move back to your point

22 that you raised a few minutes ago. In regard to paragraph

23 7 of this affidavit, LLL7, during the whole operation there

24 was no recordings done, as the voice logger was not

25 installed on the sites or the control room. Was it

1 important that recordings be made of the radio
2 communications between the various participants in the
3 operation?

4 **GENERAL MBOMBO:** I did not hear the
5 question, Mr Chairperson.

6 **CHAIRPERSON:** Was it important that
7 recordings be made of the communications between - the
8 radio communications between the various participants in
9 the operation?

10 **GENERAL MBOMBO:** Mr Chairperson, it is always
11 important.

12 **CHAIRPERSON:** Alright. Now it appears
13 from the paragraph that the reason that recordings were not
14 made was the fact that the voice logger was not installed
15 on the sites or at the radio control room. Whose
16 responsibility was it to ensure that the voice logger was
17 installed, so that the necessary recordings could be made?

18 **GENERAL MBOMBO:** I think, Mr Chairperson, the
19 people who know better about the radios and how to
20 communicate with the radios is this colonel and the people
21 who were working with him. He is the one who should know
22 why there was no voice logger, or why it was not
23 operational.

24 **CHAIRPERSON:** Yes. You see it was an
25 important omission, was it not, that the recordings were

1 not made? Do you agree with that?

2 **GENERAL MBOMBO:** That is so, Mr Chairperson.

3 **CHAIRPERSON:** And it is, I would imagine,

4 a source of embarrassment to the police after the operation

5 that recordings of the kind that should have been made were

6 not available, is that right?

7 **GENERAL MBOMBO:** A big one, Mr Chairperson.

8 **CHAIRPERSON:** And that was brought to

9 your attention?

10 **GENERAL MBOMBO:** Yes, that was mentioned,

11 Mr Chairperson, when we were listening to all what people had to

12 say about the problems with radio.

13 **CHAIRPERSON:** Now were enquiries not made

14 as to whose fault it was that these recording had not been

15 made and that the voice logger had not been installed?

16 **GENERAL MBOMBO:** There is an explanation,

17 Mr Chairperson, that this Colonel gave when he was being asked.

18 I just cannot remember what exactly he said.

19 **CHAIRPERSON:** Are you saying the point

20 was raised and the Colonel was questioned about it, and he

21 gave an explanation, but you cannot remember, is that what

22 you are saying?

23 **GENERAL MBOMBO:** That is what I am saying,

24 Mr Chairperson.

25 **CHAIRPERSON:** Was that at Potchefstroom

1 during the Roots conference, or afterwards?

2 **GENERAL MBOMBO:** Probably after that, Mr

3 Chairperson.

4 **MR BIZOS SC:** Yes. Lieutenant-Colonel

5 Vermaak is a senior police officer, right?

6 **GENERAL MBOMBO:** That is so, Mr Chairperson.

7 **MR BIZOS SC:** He was in the helicopter on

8 the day? Do you accept that?

9 **GENERAL MBOMBO:** That is correct.

10 **MR BIZOS SC:** He wrote a letter, exhibit

11 HHH68, you are aware of that letter?

12 **GENERAL MBOMBO:** I remember about that,

13 Mr Chairperson.

14 **MR BIZOS SC:** Now he has in paragraph 11

15 set out numerous deficiencies in the planning and execution

16 of what happened on the 16th of a general nature. Some are

17 specific to Marikana and particularly during the period

18 that the lives were lost. You are aware of that?

19 **GENERAL MBOMBO:** As he has tabulated

20 them, Mr Chairperson, that is correct.

21 **MR BIZOS SC:** Have you any reason to

22 doubt his competence to comment on the conduct of the

23 police during this period?

24 **GENERAL MBOMBO:** I do not have a reason,

25 Mr Chairperson, especially when he mentions things that I can

1 also see.

2 **MR BIZOS SC:** Things that?

3 **GENERAL MBOMBO:** That I can also see.

4 **MR BIZOS SC:** Oh, I see. So he expresses

5 opinions. Are you prepared to contradict him just because

6 you think differently? Is that what you are telling me?

7 **CHAIRPERSON:** She's saying the opposite,

8 Mr Bizos –

9 **MR BIZOS SC:** Oh, I see –

10 **CHAIRPERSON:** When you asked, do you

11 challenge anything he said, she said – or are you able to

12 challenge him, she says, "No, particularly not in respect

13 of matters where I see the same thing."

14 **MR BIZOS SC:** Oh, I see –

15 **CHAIRPERSON:** I am sure that is what she

16 said. She's on your side on this point.

17 **MR BIZOS SC:** I did not hear her properly.

18 I thought that she said that I cannot agree with him if I

19 do not think the same. I am sorry –

20 **CHAIRPERSON:** No, no, on this issue,

21 she is on your side, as far as I can make out.

22 **MR BIZOS SC:** I am going to accept that

23 and it is a correct observation. Now, according to him, in

24 paragraph 11, subparagraph 49.1 – paragraph 11.1 – sorry,

25 point 1, "Members do not have commanders with experience in

1 charge of unrest at scenes." Do you agree with that?

2 **GENERAL MBOMBO:** As I said, Mr Chairperson, I am
3 not sure what he is trying to say in this paragraph, but if
4 I may make an example about Marikana, for instance,
5 Brigadier Calitz has got almost the same experience, or
6 maybe even more than Vermaak.

7 **MR BIZOS SC:** But Mr Calitz wasn't there
8 to direct them? Mr Calitz wasn't there to direct. Members
9 do not have commanders with experience in charge of unrest
10 at scenes. In the context of what happened in the opinion
11 of Colonel Vermaak, there were not sufficient commanders
12 with sufficient experience to handle the situation. Do you
13 agree with that?

14 **GENERAL MBOMBO:** Even at that point, Mr
15 Chairperson, I said I am not sure what he means.

16 **MR BIZOS SC:** You are not sure what he
17 means, or you are not prepared to admit that he is correct?

18 **GENERAL MBOMBO:** I am not sure what he
19 means, Mr Chairperson.

20 **MR BIZOS SC:** Yes. Calitz and Mpembe
21 denied that they were in charge. We assume, if we assume
22 that, does that mean that the unnamed commanders that were
23 in charge immediately before the shooting?

24 **MR SEMENYA SC:** My recollection, Chairperson,
25 is both Mr Calitz admitted to have been the operational

1 commander and General Mpmembe admitted to have been the
2 overall commander.

3 **MR BIZOS SC:** They said that they were
4 commanders, but they denied that they were in charge on
5 that day, Mr Chairperson. And what I am putting –

6 **CHAIRPERSON:** Sorry, I do not remember
7 that evidence. I do not remember that evidence, it was
8 contradicting, as far as I can remember. There was a
9 suggestion that Major-General Mpmembe had told Mr Mathunjwa
10 that he wasn't in charge, that this witness was, but that
11 was denied by him.

12 **MR BIZOS SC:** They were not actually in
13 charge, Mr Chairman. They were not in charge on the
14 evidence of both of them, whether they were – they were not
15 present where they had to be in order to be in charge of
16 the operation. You cannot contradict Colonel Vermaak, can
17 you, on that point? —communications—

18 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
19 what he is trying to say here.

20 **CHAIRPERSON:** Shouldn't we wait for
21 Colonel Vermaak to come and then you can ask him the
22 question yourself, if he -

23 **MR BIZOS SC:** No, Mr Chairman, I have to
24 put to her the other points that she should have been
25 concerned about as possible troubles, and we have whole

1 list and I am entitled in my submission, to put to her why

2 she doesn't consider that as a possible fault.

3 **CHAIRPERSON:** I am not stopping you from

4 dealing with all these points, but some of them are matters

5 where she doesn't know what Colonel Vermaak had in mind,

6 and it is difficult for her to comment upon the accuracy or

7 otherwise of the criticisms he makes. That is my

8 understanding.

9 **MR BIZOS SC:** The next point that he

10 makes, "Commanders do not know, or have the legislation

11 under in which they can act." Now, Lieutenant-Colonel

12 Vermaak is an experienced police officer, you trust his

13 judgment, would you agree that his interaction with

14 commanders in the police force under him, he would be more

15 knowledgeable than you are as to the – as to whether or not

16 the commanders that were in charge had knowledge of the

17 legislation in which they act? Can you deny that?

18 **GENERAL MBOMBO:** I do not agree with that

19 statement, Mr Chairperson.

20 **MR BIZOS SC:** How do you know that he is

21 wrong?

22 **[14:47] GENERAL MBOMBO:** Maybe he should explain

23 which commanders he is talking about. According to me the

24 commanders that were at Marikana know under which act they

25 should perform their duties when faced with these problems.

1 **MR BIZOS SC:** You know that Colonel Scott
2 admitted that he was not conversant with Order 262, and
3 he is supposed to have been an expert to draw up a plan. If
4 that was the lack of knowledge of Mr Scott, how can you
5 contradict Colonel Vermaak who says that commanders do not
6 know or have the legislation under which they can act?

7 **CHAIRPERSON:** Mr Bizos, there is a problem
8 with that. Colonel Scott wasn't a commander. The
9 expression "commanders" clearly refers to people other than
10 Colonel Scott. Colonel Scott did not issue any commands.
11 He prepared a draft of a plan which was apparently adopted,
12 but that did not make him a commander. I do not think he can
13 be used as a basis for suggesting that what Colonel Vermaak
14 says in 11.2 is correct.

15 **MR BIZOS SC:** Mr Chairman, if Colonel
16 Scott was not familiar with the provisions of the order and
17 he is called upon by generals to do a plan, to infer that
18 he is not a commander for this purpose is in my respectful
19 submission incorrect. One would have expected that the
20 plan would be put together by commanders who were familiar
21 with the orders and legislation and Colonel Scott's
22 admission that he wasn't aware of it, we are entitled to
23 draw an inference that the unknown commanders probably
24 did not know about the orders or the legislation.

25 **CHAIRPERSON:** Well, that is a point you

1 can argue. I do not know to what extent we can expect to
2 get an answer from this witness on that point, particularly
3 if she did not know – let us ask her this; did you know
4 whether Colonel Scott was aware of the contents of the
5 Order 262?

6 **GENERAL MBOMBO:** That is not how I knew
7 it, Mr Chairperson.

8 **MR BIZOS SC:** Mr Chairman, Colonel Scott
9 said that he briefed the commanders as to how they were to
10 implement –

11 **CHAIRPERSON:** But we are dealing with a
12 different point, whether this witness knew that Colonel
13 Scott wasn't aware of the contents of Standing Order 262,
14 because I can understand if she knew that he did not know
15 about it, there are points that you would want to take,
16 questions you want to ask her in that regard, but if she
17 did not know that then I do not see how the question can
18 help.

19 **MR BIZOS SC:** How can you say that
20 Lieutenant Vermaak is wrong when he says that the
21 commanders did not know? How were the commanders expected
22 to know if the person that drew the plan and briefed them
23 did not know? What were they briefed on?

24 **GENERAL MBOMBO:** From what I knew, Mr
25 Chairperson, Colonel Scott was drawing up a plan together with

1 other commanders of the Public Order.

2 **MR BIZOS SC:** Let us go to the next one,

3 the next opinion of Lieutenant Colonel Vermaak. "Members

4 allow illegal actions and the next day they take actions

5 against, for example illegal strikes. These actions

6 confuse the public and they neglect their responsibility to

7 protect and serve." Do you agree with Colonel Vermaak?

8 **GENERAL MBOMBO:** Mr Chairperson, I cannot agree

9 with something, the source of which I have no knowledge

10 where it happened, who knows about it, how did it happen.

11 **MR BIZOS SC:** Would you agree that if

12 someone in Lieutenant Colonel Vermaak, that he may well be

13 right in this criticism that that was one of the faults

14 that led to the killings?

15 **GENERAL MBOMBO:** Mr Chairperson, that is what

16 he says. I cannot agree with something I have no knowledge

17 of.

18 **CHAIRPERSON:** When you say you cannot

19 agree because you have no knowledge of it, do you also mean

20 to say that you cannot disagree, you cannot agree or disagree

21 because you have got no knowledge of what's being said? Is

22 that a correct summary of your position?

23 **GENERAL MBOMBO:** Mr Chairperson, I cannot agree

24 with what he is saying because I have no knowledge of it. I

25 do not know what he means by it.

1 **MR BIZOS SC:** Now with respect, the
2 learned judge, the Chairman has asked you if you do not know
3 you say I do not know and I cannot comment, but what you are
4 saying is with respect the fault of most members of your
5 force, that you are not prepared to admit that you or your
6 colleagues have done wrong. This is evidence of your state
7 of mind that even about things that you know about you are
8 not prepared to express any unkind thought against your
9 colleagues, they can do no wrong.

10 **GENERAL MBOMBO:** That is not what I said,
11 Mr Chairperson.

12 **MR BIZOS SC:** No, I am saying this is how
13 I interpret what you did say.

14 **GENERAL MBOMBO:** Then I do not want to
15 agree with that interpretation, Mr Chairperson.

16 **MR BIZOS SC:** He says that this was one
17 of the wrong things. You disagree with it. On what basis
18 do you disagree?

19 **MR SEMENYA SC:** Chairperson, maybe -

20 **GENERAL MBOMBO:** Because I do not know
21 what it means.

22 **MR SEMENYA SC:** Chairperson, the observation
23 that Colonel Vermaak must come and explain these things,
24 it is a proper one, particularly the opening line refers to
25 three mines. We do not know whether that, this 11.3 is with

1 reference to Marikana in particular.

2 **CHAIRPERSON:** Mr Bizos, isn't the

3 practical way to proceed the following; the witness said

4 she agreed with some of the things that Colonel Vermaak

5 said, but should you ask her what things she agrees with

6 that Colonel Vermaak said, then we look at the ones that

7 she doesn't say she agrees with and then maybe she cannot

8 express an opinion because she doesn't know the facts, or

9 there may be substantive reasons for disagreeing. Isn't

10 that the practical way to do it?

11 **MR BIZOS SC:** There can be a third

12 matter, that she is not prepared to criticise at any level

13 anyone of her colleagues, and this is what we are

14 interested in getting across to the Commission, with

15 respect, and the police and the public at large, that

16 police officers can do wrong and the time maybe has come

17 for their colleagues to acknowledge that they have done

18 wrong. That is the purpose of my cross-examination, Mr

19 Chairman.

20 **CHAIRPERSON:** I do not understand that.

21 She's already said that she agrees with some of these

22 points of criticism. So it is not correct to say that she

23 valiantly refuses to admit that any of her colleagues can

24 be wrong or refuses to criticise them. That is not what she

25 said. She said some of these points of criticism she

1 agrees with, so I think you should, if I may say so,
2 approach this matter in a more focussed and refined way.
3 **MR BIZOS SC:** Well, I cannot do more than
4 – I have a list; I must put to her and she can have an
5 opportunity to say I agree that Vermaak is right; I
6 disagree with Vermaak, and I do not know, I do not want to
7 express any opinion, and inferences will be drawn from the
8 answers.

9 **CHAIRPERSON:** Alright, well let us proceed
10 on that basis.

11 **MR BIZOS SC:** Thank you, Mr Chairperson. The
12 next point, "Senior officers do planning without any
13 experience in serious incidents and this causes that the
14 SAPS must afterwards explain their actions. Marikana in
15 Lonmin is a very good example where senior management was
16 armed before" –

17 **CHAIRPERSON:** Warned.

18 **MR BIZOS SC:** - warned, I am sorry,
19 "warned before specific actions was taken, but they did not
20 give any attention to the advice." Would you agree with
21 that?

22 **GENERAL MBOMBO:** I am not sure, Mr Chairperson,
23 what he means.

24 **MR BIZOS SC:** Oh, I see. So do you blame
25 the language or the meaning or what is it that you do not

1 know what he means? Well, later on he says that the
2 conduct of the members put you and the National
3 Commissioner in a difficult situation. Do they do that
4 from time to time?

5 **GENERAL MBOMBO:** It does happen
6 sometimes.

7 **MR BIZOS SC:** And then the other,
8 "Officers and members do planning without any knowledge of
9 the Gatherings Act of SO262." Here we have an example.
10 The man that drew up the plan, Colonel Scott, was not
11 familiar with the order. Is that a grievous fault on the
12 part of those that accepted the plan, or did not investigate
13 whether he knew what the order spoke away?

14 **CHAIRPERSON:** This point has been covered
15 already and the witness in fact said when you raised that
16 example specifically to her, with her, that she understood
17 that Colonel Scott had drafted the plan and was then
18 discussed, put to senior officers who had experience of it.
19 So on that basis she dealt with the criticism. So I think
20 that point has been raised. I suggest that you turn to the
21 next one, which is 11.6, after we have taken the tea
22 adjournment, which we will now take.

23 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

24 **[15:18] CHAIRPERSON:** The Commission resumes.
25 Provincial Commissioner, you are still under oath.

1 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

2 **CHAIRPERSON:** Mr Bizos.

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

4 [**Microphone off, inaudible**] properly trained, do you agree

5 with him or not?

6 **GENERAL MBOMBO:** To a certain extent I

7 agree with him, Mr Chairperson.

8 **MR BIZOS SC:** You agree. And may I

9 suggest is there any expert in the history of the massacres

10 in South Africa in the last 30, 35 years, in your

11 department or in the national department, to teach people

12 that are to manage crowds how not to do it? Is there such

13 a person, a specialist to actually educate them properly?

14 **GENERAL MBOMBO:** I am not sure, Mr

15 Chairperson.

16 **MR BIZOS SC:** Well, I would have thought

17 that before engaging people with shotguns and the

18 equivalent of AK47s with a different name, somebody should

19 really have trained people that manage crowds what not to

20 do. Would you agree with that?

21 **GENERAL MBOMBO:** I agree with that, Sir.

22 **MR BIZOS SC:** You agree with that, good.

23 "POPS do not have the capacity, every single action and

24 negotiations were recorded for evidence purposes later when

25 needed. Some of the video footage that was taken during

1 the Marikana Lonmin incidents did not have any value." Now
2 to put it bluntly, to have some recording but the vital
3 moments being missing is not of any value in pursuit of
4 truth, is it?

5 **GENERAL MBOMBO:** The way you put it, Sir,
6 I am not certain -

7 **MR BIZOS SC:** I am sorry, I am not -

8 **GENERAL MBOMBO:** - but I would -

9 **MR BIZOS SC:** You are not certain?

10 **GENERAL MBOMBO:** In the manner in which
11 you put it, Sir, I am not sure what you are trying to say.

12 **MR BIZOS SC:** Well, what it means is
13 this; that recording but switching off or for some reason
14 or other not having the vital period recorded is not really
15 helpful and steps should be taken that nobody should be
16 able to interfere with the recordings and certainly to make
17 a full recording in the interest of truth. I think that is
18 what he means. Do you agree on that basis?

19 **GENERAL MBOMBO:** I agree with you, Mr
20 Chairperson, that the fact that the recording wasn't full
21 became a problem, but I want to say that it wasn't done
22 deliberately.

23 **MR BIZOS SC:** Well, and if it happens
24 often it cannot be very seriously suggested that it was not
25 deliberate. Would you agree with that as a general

1 proposition?

2 **GENERAL MBOMBO:** I do not want to agree

3 totally with you, but I must admit there would be such

4 perceptions.

5 **CHAIRPERSON:** I am surprised you say it

6 wasn't done deliberately. I am not asking that question

7 because I think one can find it was done deliberately, but

8 what surprises me is that you are able, that you consider

9 yourself able to say that it wasn't done deliberately. I

10 mean how do you know? It may have been done deliberately.

11 It may have been an accident. You cannot really tell us one

12 way or the other, can you? You weren't there. Is that

13 right?

14 **GENERAL MBOMBO:** It is so, Mr

15 Chairperson, but the manner, the way in which I was told it

16 looks to me as though it wasn't done deliberately.

17 **CHAIRPERSON:** No, I can understand you

18 were told but presumably you questioned the people

19 concerned about it and they told you it wasn't done on

20 purpose. So I can understand that. Whether they were

21 telling you the truth or not is something which we may have

22 to decide at some stage, but one cannot be certain one way

23 or the other just on their mere say-so, can we? Is that

24 right?

25 **GENERAL MBOMBO:** That is true, Sir.

1 **MR BIZOS SC:** Do you agree that there
2 were no voice recorders when there were commanders
3 negotiating with leaders?

4 **GENERAL MBOMBO:** I agree with that, Sir.

5 **MR BIZOS SC:** This is why we have a
6 conflict of fact here as to what was said by the leaders
7 and what was said by the negotiators, and that could have
8 been easily avoided if it was recorded.

9 **GENERAL MBOMBO:** That is true, Sir.

10 **MR BIZOS SC:** "No members of POP that
11 took photographs from the crowd that could assist the
12 investigation officer to identify them after" –

13 **CHAIRPERSON:** Could we please have - in
14 regard to what's on the screen, yes, thank you. Yes, thank
15 you. Move it over slightly so we can see all the text,
16 thank you.

17 **MR BIZOS SC:** Now our readings say that
18 even when members of a crowd may have firearms, it is not
19 correct to shoot at random at the crowd, and the suggestion
20 is that if in fact there is someone leading the hostile
21 crowd with a gun, or guns, the response is that a
22 sharpshooter not necessarily kills, but disables the
23 carrier of a gun, the threatening gun, which has the effect
24 of frightening the other people that may attack and you
25 actually avoid mass killings. Have you ever heard of that?

1 **GENERAL MBOMBO:** Yes, it is so.

2 **MR BIZOS SC:** Now here you had Monday,

3 Tuesday, Wednesday, early Thursday. If people were

4 suspected of being in possession of a firearm, like the

5 suggestion that the man with the green blanket might have

6 been holding a gun under the blanket, why was that not told

7 to the people that were to manage the crowd, would the

8 leader who is holding a gun or is suspected to have a gun,

9 then you will avoid a massacre? Does it make sense to you,

10 Commissioner?

11 **GENERAL MBOMBO:** It does, Sir. It does,

12 Chairperson.

13 **MR BIZOS SC:** Why wasn't it done?

14 Instead of killing 34 you wound one and you also gain on

15 the facts of this case another great advantage; if the man

16 who said that he could make them impervious to bullets may

17 not be taken seriously if the leader that has a gun is

18 injured, and in that way you avoid a massacre. Does that

19 make sense?

20 **CHAIRPERSON:** Mr Bizos, before the

21 witness answers your question, Mr Semenya has turned on his

22 light.

23 **MR SEMENYA SC:** Chairperson, we would submit

24 the answers of this witness have no value. We know she was

25 not there, she did not witness the operation at all. So

1 her comments add no value to the inquiry, Chairperson.

2 **MR BIZOS SC:** Mr Semenya does not

3 understand the purport of my questioning, Mr Chairman. The

4 purport of my question does not matter whether she was

5 there or not. The question is what steps were taken to get

6 control of the situation without killing 34 people, and our

7 reading tells us that there are ways of dealing with

8 aggressive crowds in order to avoid a massacre, and this is

9 what I am putting to the witness –

10 **CHAIRPERSON:** Your question really deals

11 with what amounts to a detail perhaps, one can call it, of

12 the plan that was devised to deal with the situation.

13 **MR BIZOS SC:** Yes.

14 **CHAIRPERSON:** So it was something that

15 would have arisen or should have arisen or been taken into

16 consideration prior to the actual events of the 16th.

17 **MR BIZOS SC:** That is what I am putting to

18 the witness, Mr Chairman.

19 **CHAIRPERSON:** What do you say about that,

20 Mr Semenya?

21 **MR SEMENYA SC:** Well, Chairperson, even on that

22 basis the witness has told us she does not involve herself

23 in the how. She doesn't know that area. So her answers

24 are not going to be worthy, with respect to her.

25 **CHAIRPERSON:** It does seem, with great

1 respect to the witness, as if her answers - whatever they
2 are - to this question are not going to have very much
3 weight, Mr Bizos.

4 **MR BIZOS SC:** Mr Chairman, hence the
5 responsibility at a planning stage was to put the very
6 questions that I am putting that are in the books, that are
7 in the court cases, that are on proper crowd management,
8 how to avoid massacres, and I submit that this witness has
9 got to answer why, if she is the person responsible, such a
10 step was not envisaged and not carried out. It was not
11 envisaged and it was not carried out. I am entitled to have
12 it from her mouth, Mr Chairman.

13 **CHAIRPERSON:** I am inclined to think the
14 question can be asked. Please proceed, Mr Bizos, but do not
15 make a meal of this point.

16 **MR BIZOS SC:** Well, was this option
17 discussed by you or anyone else that if we see somebody
18 with a gun, take him out, or injure him so that the belief
19 that they are impervious to gunfire can disappear on the
20 facts of this case? Why was this not thought out by you,
21 your senior colleagues, or anyone with responsibility to
22 avoid bloodletting?

23 **GENERAL MBOMBO:** I personally did not
24 discuss such a matter, Mr Chairperson. I cannot say,
25 however, that it wasn't discussed by the others.

1 **MR BIZOS SC:** Yes, I do not know that I
2 want to deal with the next point in the letter about the
3 Nyalas, and –
4 **CHAIRPERSON:** The expenditure may have
5 been caused, it wasn't budgeted for, but that, as is set
6 out in 1.8, but it did not cause the deaths of any of the
7 people who were killed, so we do not have to spend any time
8 on it surely.

9 **MR BIZOS SC:** Yes. Now do you agree that
10 after these examples were read to you, that the two or
11 three faults that you have conceded must be added to the,
12 at least the faults that you, or omissions, the deeds or
13 omissions, the number that you have given has to increase?

14 **GENERAL MBOMBO:** If you could just please
15 clarify the question again, Sir?

16 **MR BIZOS SC:** I am sorry, I was
17 interrupted. I did not hear the –

18 **CHAIRPERSON:** [Microphone off, inaudible]
19 you should repeat the question, or rather she wants you to
20 repeat the question.

21 **MR BIZOS SC:** I see.

22 **CHAIRPERSON:** The interpreter translated
23 her request that you repeat the question.

24 **MR BIZOS SC:** You have made certain other
25 concessions that there was fault on the part of the police.

1 Do you agree that they must be added to the number of three
2 faults that you have mentioned?

3 **GENERAL MBOMBO:** As I said already that
4 the faults that were committed, we admit those.

5 **MR BIZOS SC:** Whilst we are dealing with
6 the question of the lack of communications, there were
7 radio communications on the 13th, were there not, as there
8 should be always? Is that right?

9 **GENERAL MBOMBO:** Just clarify the
10 question once more, Sir.

11 **MR BIZOS SC:** There were radio
12 communications between the persons in the field and
13 elsewhere on the 13th?

14 **GENERAL MBOMBO:** I did not hear any
15 problems that were there pertaining to communication on the
16 13th.

17 **MR BIZOS SC:** Well, were they recorded,
18 and if they were, where is the recording?

19 **GENERAL MBOMBO:** I am not sure as to
20 whether there were any recordings.

21 **CHAIRPERSON:** Mr Bizos, perhaps that is a
22 question we can address to Mr Semenya. Mr Semenya, the
23 question relates to whether there are recordings of radio
24 communications on the 13th. The witness said she is not
25 aware whether there are any, and so the next question is

1 whether you can take instructions on the matter and if
2 there are, make them available, and if there are not, tell
3 us that they're not available. I take it you are not able
4 to give us the answer at the moment, but it is something in
5 respect of which you can take instructions.

6 **MR SEMENYA SC:** I can tidy up my answer
7 with further instructions, but as I know General Mpembe
8 used a cell phone to communicate the events of that day.

9 **MR BIZOS SC:** No, but isn't it a general
10 rule that if there is confrontation between police officers
11 and members of a crowd, that communications with the
12 officer in charge should be recorded on the radio which he
13 is supposed to be connected with?

14 **GENERAL MBOMBO:** I am not denying that,
15 Sir.

16 **MR BIZOS SC:** Was there any –

17 **CHAIRPERSON:** I am sorry, Mr Bizos. You
18 see, Mr Semenya, the evidence was, you remember, that
19 General Mpembe did have a radio and he gave instructions to
20 certain of his men on the day, and in fact on one
21 particular point he said he did not give an instruction on
22 the radio; if he had given the instruction it would have
23 been on the radio. So it would seem that there were some
24 communications to certain of the people with him by radio,
25 although as you say, he was in touch with, communication I

1 I think with Brigadier Calitz by cell phone. Anyway, the
2 question relates to whether there are recordings of radio
3 communications and the answer to that is you will get
4 instructions.

5 **MR SEMENYA SC:** I will get instruction,
6 Chairperson.

7 **CHAIRPERSON:** Yes.

8 **MR SEMENYA SC:** And if we may place on
9 record, this is not a requirement in terms of Standing
10 Order 262 at all. It may be a prudent thing to do.

11 **[15:38] MR BIZOS SC:** Well we will find out whether
12 there was such a recording. Now if we can look at Exhibit
13 HHH8, Mr – paragraph 6, Mr Masenya who took a video on the
14 16th and on photographs his camera also stopped for the
15 recording for the operation, the main operation which would
16 prove guilt or innocence. It stopped. Is this another
17 example of incidental or deliberate cover up?

18 **GENERAL MBOMBO:** Chairperson, if you
19 could see the statement of this person.

20 **MR BIZOS SC:** There at paragraph 6, there
21 you go. Can we read it out aloud please?

22 **CHAIRPERSON:** The police followed, this
23 is an encounter of what happened on the 13th, is it?

24 **MR BIZOS SC:** Yes.

25 **CHAIRPERSON:** Near the railway line.

1 "The police followed them, that is the strikers, and tried
2 to prevent them from entering the nearby settlement. On
3 their way, I changed direction and drove to their front in
4 order to have clear vision so as to continue with recording
5 footage. The video machine we," I take it is to be were,
6 "operating is an old model and at some stage I observed
7 blank footage and I stopped it forthwith. However, I
8 continued to record at a later stage and it was operating
9 efficiently."

10 **MR BIZOS SC:** Another interruption.

11 Deliberate or coincidental?

12 **GENERAL MBOMBO:** I have no idea, Mr

13 Chairperson, but he says over there the instrument that he
14 was using is an old type.

15 **MR BIZOS SC:** Sorry.

16 **GENERAL MBOMBO:** I have no idea, Mr

17 Chairperson, but he says himself in the statement that the
18 instrument he was using is an old type.

19 **MR BIZOS SC:** Old types only decide to be
20 old at vital moments.

21 **CHAIRPERSON:** Mr Bizos, I think you have

22 made your point. The witness cannot tell us. She wasn't

23 there, she doesn't know whether it was coincidental or

24 deliberate. We have the explanation given by the operator

25 of the camera. We've also seen the video in question and

1 noticed the blank – the black screen in certain points. It
2 seems to be quite an important point in the action when
3 suddenly the screen went blank and then the screen came on
4 again as he in fact says but the witness cannot help us as
5 to whether that was a deliberate stopping of the cameras at
6 an inconvenient moment or whether it was coincidental or an
7 accident, can she? So I do not know if there is any point in
8 asking her further about it.

9 **MR BIZOS SC:** Well another example of the
10 coincidence, Mr Chairman, and they mount up, with respect.
11 On the 16th this person was sent away, why would a camera
12 person be sent away from a scene?

13 **GENERAL MBOMBO:** Chairperson, I do not
14 have the details of what happened.

15 **MR BIZOS SC:** You know that journalists
16 and cameramen and women are sometimes prepared to take
17 some risk in order to record the truth, what was it the
18 business for the policemen to send the journalists away
19 from the scene? Any answer?

20 **GENERAL MBOMBO:** I do not know,
21 Chairperson.

22 **MR BIZOS SC:** You have?

23 **GENERAL MBOMBO:** I do not know.

24 **MR BIZOS SC:** You do not know. Very well,
25 let us see. Let us now – have you read the statements of

1 Mr Eddie Hendricks and Gary White?

2 **GENERAL MBOMBO:** Yes, Chairperson.

3 **MR BIZOS SC:** Pardon?

4 **GENERAL MBOMBO:** It is so.

5 **MR BIZOS SC:** It is so. Do you accept

6 their credentials as experts?

7 **GENERAL MBOMBO:** I have no reason not to

8 accept them?

9 **MR BIZOS SC:** Not to accept them. Do you

10 agree that they appear to be well versed in the law and

11 practice of crowd management?

12 **GENERAL MBOMBO:** I see it that way, yes.

13 **MR BIZOS SC:** And I am going to read you a

14 list of their conclusions and ask you whether you agree or

15 disagree with that. They appear to be of the view that the

16 failure to conduct the operation accorded to crowd control

17 management principles and standing orders, this is the

18 conclusion that they have come to. Do you agree or

19 disagree?

20 **GENERAL MBOMBO:** There I do not agree

21 with them, Sir.

22 **MR BIZOS SC:** You do not agree? You want

23 to give any reasons why you disagree with that conclusion?

24 **GENERAL MBOMBO:** Because, Mr Chairperson,

25 our standing orders were followed by the police –

1 **MR BIZOS SC:** Well –

2 **GENERAL MBOMBO:** - in this operation.

3 **MR BIZOS SC:** - they know the standing

4 orders much better than you and me and they have come to

5 the conclusion having taken at face value the evidence

6 given by the police and others, that it was not done in

7 accordance with the principles, management procedures of

8 these standing orders. You disagree? Sorry, you want to

9 say something?

10 **GENERAL MBOMBO:** I thought you were

11 asking a question, Sir.

12 **MR BIZOS SC:** What I am going to put to

13 you that they are well qualified, that they have made this

14 judgment and do you want to give any reasons why you

15 disagree with them?

16 **GENERAL MBOMBO:** That is their opinion,

17 Mr Chairperson.

18 **MR BIZOS SC:** I see. The – they have

19 come to the conclusion that there was lack of adequate

20 intelligence. Do you agree that you were fully informed of

21 what was happening and fully informed as to what has to be

22 done?

23 **GENERAL MBOMBO:** There I agree with them,

24 Chairperson.

25 **MR BIZOS SC:** You agree with that, that

1 there was lack of adequate intelligence?

2 **GENERAL MBOMBO:** That is correct.

3 **MR BIZOS SC:** And would you agree that if

4 you act without adequate intelligence you are likely to

5 contravene the provisions of the orders and the laws?

6 **GENERAL MBOMBO:** Not at all times, Mr

7 Chairperson.

8 **MR BIZOS SC:** That there were

9 insufficient negotiations with the crowd, that is just a

10 conclusion that they have come up to and they deal in

11 detail in the criticisms in their lengthy statements as to

12 what the deficiencies were. You do not know of any

13 deficiencies in the negotiations, do you, that you want to

14 admit or deny?

15 **GENERAL MBOMBO:** I have no idea about

16 that?

17 **MR BIZOS SC:** And that the lack of

18 comprehensive – of a comprehensive plan, particularly for

19 the disperse disarm and arrest phase 3 intervention, do

20 you agree or disagree with them?

21 **GENERAL MBOMBO:** I do not agree with

22 that, Sir.

23 **MR BIZOS SC:** You do not agree. The

24 inadequacy of the briefing prior to the implementation of

25 phase 3, do you agree with that?

1 **GENERAL MBOMBO:** I disagree with that,

2 Sir.

3 **MR BIZOS SC:** Well you couldn't possibly

4 brief them because you were not there, you were not

5 communicating, you were not in the JOC and you do not know,

6 if there was communication, what advice may have been given

7 by you and your senior colleagues which may have avoided

8 the tragedy.

9 **GENERAL MBOMBO:** Chairperson, that is not

10 the way in which we work.

11 **MR BIZOS SC:** Isn't it the way that you

12 should be working?

13 **GENERAL MBOMBO:** Not according to how I

14 know it, Sir, that is not the position.

15 **MR BIZOS SC:** You say that these experts

16 are wrong when you yourself admit that you are not an

17 expert on crowd management.

18 **GENERAL MBOMBO:** As I said earlier, Mr

19 Chairperson, these are only their opinions.

20 **MR BIZOS SC:** Yes. The failure to issue

21 a warning to the crowd before the deployment of the razor

22 wire, is that a fault that the experts express and do you

23 agree or disagree with it?

24 **GENERAL MBOMBO:** Chairperson, I would not

25 say it was failure, whether it did not – whether there was

1 no chance to give that warning.

2 **MR BIZOS SC:** I think the next one you

3 ought to agree with, having regard to what you have already

4 told us. The inadequacy of the record of the operation

5 both audio visually and in documents and minutes, do you

6 agree with that?

7 **GENERAL MBOMBO:** There I agree with them.

8 **MR BIZOS SC:** Because there was no

9 communication between the senior officers and their view

10 that the apparent absence of command and control, do you

11 agree with that?

12 **GENERAL MBOMBO:** Yes, I have already said

13 so, Chairperson.

14 **MR BIZOS SC:** The prominence of

15 specialist tactical units armed with lethal ammunition in

16 the operation outnumbering POP, do you agree with that?

17 **GENERAL MBOMBO:** Just repeat that

18 question again, Sir?

19 **MR BIZOS SC:** Yes, the prominence that is

20 the number – there were more – there were a lot of

21 specialist tactical units which was another name for people

22 that shoot to kill, armed with lethal –

23 **MR SEMENYA:** No, Chairperson, that is not

24 –

25 **MR BIZOS SC:** - ammunition in the

1 operation outnumbering the POP members.

2 **CHAIRPERSON:** I think he has objected to

3 your –

4 **MR BIZOS SC:** But I –

5 **CHAIRPERSON:** - parenthetical reference

6 to the –

7 **MR BIZOS SC:** - question.

8 **CHAIRPERSON:** Yes, if you delete the

9 passage in parenthesis you must ask the question.

10 **MR BIZOS SC:** Yes, I will delete but I

11 will – it is not in my notes but I sometimes get –

12 **CHAIRPERSON:** Engage on a frolic of your

13 own which those instructing you cannot be held responsible

14 for. Alright, never mind, let us get the question.

15 **MR BIZOS SC:** Yes, Sir. The predominance

16 of special tactical units, armed with lethal ammunition in

17 the operation outnumbering POP members, that is the TRTs in

18 particular and the others with lethal weapons outnumbered

19 the POP people and that is not a desirable practice in

20 crowd management.

21 **GENERAL MBOMBO:** I am not sure,

22 Chairperson, as to whether they were outnumbered.

23 **MR BIZOS SC:** Well it is a matter for the

24 evidence and the number of counts of heads. But we will

25 leave it at that. Was there sufficient timely first aid

1 care for those shot at scene 1 and according to them, there
2 was not. What is your view?

3 **GENERAL MBOMBO:** I would not be able to –
4 I do not know much about it, Sir.

5 **MR BIZOS SC:** Yes. Yes. In conclusion
6 I am going to put to you that the conduct of the police on
7 this day and particularly the senior members is not in
8 accordance with that that is expected and it is not what
9 the law provides for and more particularly, it is not
10 particularly helpful. I want to read to you the commission
11 shall enquire into, make findings, report on and make
12 recommendations concerning the following, taking into
13 consideration the constitution, other relevant legislation,
14 policies and guidelines. What do you think the president
15 had in mind when he made that proclamation?

16 **CHAIRPERSON:** I do not know that that is a
17 question you could ask the witness what she thinks the
18 president – her opinion as to what the president had in
19 mind, doesn't really help us to comply with our terms of
20 reference. So I do not think I should allow that question.
21 Mr Semenya, you look as if you want to turn your light on.

22 **MR SEMENYA:** That was the objection I was
23 going to raise.

24 **[15:57] MR BIZOS SC:** Well it is good to be taken
25 with that it – he wanted to – if you wanted to find out the

1 conduct of the South African Police Service in particular,
2 the precise facts and circumstances which gave rise to the
3 use of all and any force and whether this was responsible
4 and justifiable in the particular circumstances, what is
5 your answer as a senior policeman to the President's
6 question? Did you do it? Did you sidestep it, or you were
7 less than prepared to admit what had gone wrong?

8 **GENERAL MBOMBO:** Sir, I do not really
9 understand the question.

10 **MR BIZOS SC:** Well, if you do not
11 understand the question I do not expect you to be able to be
12 of any help to the President, but let us go on to the next
13 one. "To examine the role played by the SAPS through its
14 represented units individually and collectively in dealing
15 with this incident." What do you say to the President
16 about that?

17 **MR MAHLANGU:** Again what was the
18 question, Sir –

19 **MR BIZOS SC:** Are you responsible for
20 what happened?

21 **CHAIRPERSON:** Are you able from your own
22 knowledge to express an opinion on the first question as to
23 whether the police conduct was justified, and the point
24 raised in the present question, are you able from your own
25 knowledge to express an opinion on these matters? You

1 obviously spoke to a number of the members of the service,
2 questioned them about what happened. They made reports to
3 you. Most of them either have come here or will come here
4 or provide affidavits setting out their account of what
5 happened, which we will have to weight up and evaluate. Are
6 you able really to take the matter any further? We will
7 have to do the job based upon the kind of information you
8 received plus a good deal more. So are you able to make
9 any contribution that takes it any further than that?

10 **GENERAL MBOMBO:** Sir, not at all. I
11 cannot have an opinion about this.

12 **MR BIZOS SC:** Did you have a copy of the
13 President's proclamation about the Commission when you met
14 at Potchefstroom?

15 **GENERAL MBOMBO:** Yes, we had.

16 **MR BIZOS SC:** One would have expected if
17 you had to have tried and give direct answers to the
18 President's questions –

19 **CHAIRPERSON:** Mr Bizos, isn't that really
20 a point for argument that you can advance at the end of the
21 hearing? I understand the point that you are making, that
22 presumably there will be an answer from your learned friend
23 for the police service, but can this witness really take it
24 any further? It is an argument you can advance. Your
25 learned friend will respond and mustn't we then decide it?

1 **MR BIZOS SC:** Yes. I will accept that –

2 **CHAIRPERSON:** I do not want to hamper your

3 cross-examination, but to be fair to the witness –

4 **MR BIZOS SC:** No, no, I accept this and I

5 want to put a concluding question, if I may. Has there

6 been any meeting of the senior officers ever since this

7 Commission started its sitting, and the record is made

8 available and the exhibits and statements contradicting the

9 police, has there been a meeting of the people responsible

10 to question whether or not they did anything wrong? Has

11 there been such a meeting?

12 **GENERAL MBOMBO:** No, there hasn't been

13 such a meeting, Chairperson.

14 **MR BIZOS SC:** Are they not concerned

15 about the criticisms that are floating all over the country

16 about your conduct?

17 **MR BIZOS SC:** I think they are very much

18 concerned, just as much as I am very concerned.

19 **MR BIZOS SC:** Has anyone suggested that

20 we should meet in order to honestly discuss what we and our

21 colleagues did and make a statement for the benefit of the

22 Commission and for the people, the mothers, wives,

23 husbands, children of the victims?

24 **GENERAL MBOMBO:** We have not reached that

25 point, Chairperson.

1 **MR BIZOS SC:** Well, it is not for me to
2 make any directive towards you, but perhaps you should
3 convey to your senior colleagues that there may be an
4 appropriate time for such a meeting. Thank you, Mr
5 Chairman, I have no –

6 **CHAIRPERSON:** Thank you, Mr Bizos. Mr
7 Gotz, it is now after 4 o'clock. I am not sure whether AMCU
8 or the counsel for AMCU or the families will be next, but I
9 think that there is been a slight change since the original
10 programme was worked out and I understand that Lonmin would
11 like to cross-examine next, but we won't call upon their
12 representative now because I understand, firstly it is after
13 4 and I understand their counsel will be here tomorrow
14 morning. So – senior counsel –

15 **MR GOTZ:** That is acceptable to us, Chairperson.

16 **CHAIRPERSON:** Yes, I am sure it will be.

17 So we will – may I enquire, Provincial Commissioner, have
18 you got the list of documents upon which Lonmin will rely
19 in their cross-examination?

20 **GENERAL MBOMBO:** It is so, Chairperson.

21 **CHAIRPERSON:** You have received it, and
22 have you also received the documents from AMCU and the
23 families, and also the injured and arrested persons, have
24 you got those?

25 **GENERAL MBOMBO:** They are there, Mr

1 Chairperson. I believe I would be receiving them –

2 **CHAIRPERSON:** You have received them, you

3 will be receiving them. So you will have to read them, I am

4 afraid, before tomorrow. I am not so sure about the injured

5 and arrested persons; I am not sure whether their counsel

6 will start cross-examining tomorrow, but he might,

7 depending upon how long or how short the other counsel are.

8 But in any event, you have got the documents, or you have got

9 or are going to get the documents you need, so on that note

10 we will – Mr Gotz, do you have any knowledge, after Mr

11 Burger has cross-examined, as you see it from your side and

12 the parties you represent, you are for AMCU, aren't you?

13 What is proposed, who will follow Mr Burger for Lonmin?

14 **MR GOTZ:** Chairperson, as I understand it, it

15 will be the representatives for the families. As things

16 currently stand it is going to be Ms Lewis who will ask a

17 few questions. It is not anticipated that it will be cross-

18 examination lasting longer than an hour though, Chairperson.

19 **CHAIRPERSON:** And then will that be

20 followed by a representative for AMCU?

21 **MR GOTZ:** No, so Lonmin will be next, I

22 understand –

23 **CHAIRPERSON:** No, no, I said Lonmin.

24 Then you say the families –

25 **MR GOTZ:** Lonmin, and then Ms Lewis –

1 **CHAIRPERSON:** - Ms Lewis –

2 **MR GOTZ:** No, sorry, I beg your pardon,

3 then we are at cross purposes. So the order is Lonmin, and

4 then AMCU, and then the families.

5 **CHAIRPERSON:** And you of course represent

6 AMCU. I think your colleague Ms Barnes will be doing the

7 cross-examination. Do you have any idea as to how long

8 she is likely to be?

9 **MR GOTZ:** Chairperson, I think after today's

10 cross-examination no more than half a day. So perhaps two

11 to three hours at the most.

12 **CHAIRPERSON:** I see. So it sounds as if

13 the Lonmin, families, and AMCU cross-examination will fill

14 the whole of tomorrow.

15 **MR GOTZ:** Certainly, Chairperson.

16 **CHAIRPERSON:** And then the representative

17 of the injured and arrested persons will start cross-

18 examining the day after. So that gives you an idea of what

19 to prepare and in what order to prepare, Provincial

20 Commissioner. And then there is Mr Gumbi. Where are you

21 going to fit in, Mr Gumbi?

22 **MR GUMBI:** Yes, we prefer to do our

23 cross-examination after the families of the deceased, at

24 the end.

25 **CHAIRPERSON:** [*Microphone off, inaudible*]

1 the families?

2 **MR GUMBI:** Yes.

3 **CHAIRPERSON:** And how long are you going
4 to be?

5 **MR GUMBI:** 15 to 20 minutes.

6 **CHAIRPERSON:** 15 to 20 minutes?

7 **MR GUMBI:** Yes.

8 **CHAIRPERSON:** And are there documents
9 which the Provincial Commissioner has already received, or
10 is going to receive today?

11 **MR GUMBI:** Probably we will finalise our
12 document tomorrow. There will be no new document.

13 **CHAIRPERSON:** No, hang on a second. If
14 you are only going to finalise your documents tomorrow, when
15 is the Provincial Commissioner going to read them?

16 **MR GUMBI:** No new document we are going
17 to introduce, Chairperson.

18 **CHAIRPERSON:** Sorry?

19 **MR GUMBI:** No new document we are going
20 to introduce.

21 **CHAIRPERSON:** You are not going to have
22 any new – no, never mind new documents, but there are so
23 many what one can describe as old documents, documents that
24 are already exhibits, so you cannot expect the Provincial
25 Commissioner to look through the haystack in search of a

1 needle or two that you are going to rely on. So mustn't you
2 tell her as soon as possible what documents you are going to
3 rely on so that she can look at them?

4 **MR GUMBI:** Tomorrow we will do that.

5 **CHAIRPERSON:** Or you must wait to come
6 after Mr Mpofu for the injured and arrested persons.

7 **MR GUMBI:** Yes, after Mr Mpofu.

8 **CHAIRPERSON:** Sorry?

9 **MR GUMBI:** After Mr Mpofu.

10 **CHAIRPERSON:** After Mr Mpofu, right.

11 **MR GUMBI:** Yes.

12 **CHAIRPERSON:** So Mr Semenya, you wanted
13 to say something?

14 **MR SEMENYA SC:** No thanks, Chairperson.

15 **CHAIRPERSON:** No, alright. I do not think
16 there are any – I think I have dealt with all the potential
17 cross-examiners, have I?

18 **MR FISCHER:** Chairperson, for
19 completeness, the Human Rights Commission does intend to
20 cross-examine as well.

21 **CHAIRPERSON:** The?

22 **MR FISCHER:** Human Rights Commission.

23 **CHAIRPERSON:** What about it?

24 **MR FISCHER:** At the end at the moment –

25 **CHAIRPERSON:** You are at the end, so

1 you will be after Mr Gumbi?

2 **MR FISCHER:** Yes.

3 **CHAIRPERSON:** And your documents?

4 **MR FISCHER:** The list has been provided.

5 **CHAIRPERSON:** Has been provided, I see.

6 So all the housekeeping is in order as far as we can see,

7 and so we will adjourn now until tomorrow morning at – yes,

8 sorry?

9 **MS MAPULE:** Sorry, Mr Chairperson, as far as I

10 could remember my counsel wanted to take the podium last.

11 Yes, Mr Mpofu wanted to be last. When we discussed amongst

12 ourselves, he literally asked to be the last, to take the

13 podium last.

14 **CHAIRPERSON:** Alright, I won't decide it

15 now. You can discuss it with the representative, with Mr

16 Fischer of the Human Rights Commission, and then when and

17 if you have reached an agreement, come and tell me, and if

18 you have not reached an agreement I will have to decide which

19 of you will have the disadvantage of being last. But

20 anyway, see if you can sort it out among yourselves first

21 and then report the result to me thereafter. We won't

22 discuss it further here in the chamber. Instead, we will

23 adjourn until 9 o'clock tomorrow morning.

24 **MR BIZOS SC:** Mr Chairman, could we

25 appeal to our learned friend Mr Semanya to give us an idea

1 of who the next, or possibly the next two or three
2 witnesses will be in order so that we can manage our lives?

3 **CHAIRPERSON:** I am sure he will give that
4 matter urgent consideration and discuss it with those
5 instructing him and those assisting him, and give you the
6 answer tomorrow.

7 **MR BIZOS SC:** We have tried, Mr Chairman,
8 but we do not seem to be able to get a definitive answer.

9 **CHAIRPERSON:** Well, let us see; Mr
10 Semenya, do you hope to be able to give Mr Bizos the answer
11 he seeks tomorrow?

12 **MR SEMENYA SC:** My learned colleague
13 did not discuss this with me, but I am in discussion with Adv.
14 Budlender as to the next witness that will come. The
15 indications are we are either going to have Mr X with the
16 logistics that go with it, alternatively Colonel Vermaak.

17 **CHAIRPERSON:** So Mr Bizos, it is one or
18 the other.

19 **MR BIZOS SC:** That is helpful.

20 **CHAIRPERSON:** Either Mr X, or Lieutenant
21 Colonel Vermaak. But presumably when clarity is reached on
22 which of the two it will be, you will be informed as soon
23 as possible. Can we now, with your permission, Mr Bizos,
24 adjourn until 9 o'clock tomorrow morning.

25 **[COMMISSION ADJOURNED]**