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24 January 2013

CASAC submission to the Marikana Commission of Inquiry

The Council for the Advancement of the South African Constitution (CASAC) made a written submission to the Marikana Commission of Inquiry on 23 January 2013. The submission is located within the context of the promotion of civil liberties as enshrined in the Universal Declaration of Human Rights and the South African Constitution.

The submission deals with the following issues:

- Whether it can be inferred that a policy of "maximum force" has been introduced into the operational practice of the SAPS;
- Whether there is a direct or indirect causal link between the articulation of such a policy and the events at Marikana on 16 August 2012;
- Whether statements made by Cabinet Ministers and National Police Commissioners regarding the use of force by SAPS have contributed in any manner to the events at Marikana on 16 August 2012.

The submission details a shift in the attitude and approach of government towards the police, from a 'service' to a 'force', the militarization of the police and encouraging a greater use of force. It refers to a series of public statements by the President, Minister of Police, Deputy Ministers of Police and various National Commissioners of SAPS, to illustrate that there is a causal relationship between what is said by such leaders and what is done by police officers.

CASAC asserts that a 'doctrine of maximum force' became established within the SAPS contrary to the principles of proportionality and necessity and in violation of the law.

The CASAC submission highlights a period dating from approximately January 2011 when a policy of encouraging greater use of force was advanced. It is argued that government initially pursued this policy in the belief that it would provide a solution to the problem of (violent)

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crime. However since January 2011, the policy also involved the application of greater levels of force, including lethal force, to address the phenomenon of large numbers of service delivery and labour protests.

CASAC Executive Secretary, Lawson Naidoo, said:

"The concept of maximum force should have no place whatsoever in the policing of democratic societies. It is rather uniformly accepted that the principle that should govern the use of force by police is the principle of minimum force.

We submit that it is the responsible officials of government, including the relevant members of cabinet and senior officials of SAPS *who authorised the police operation to disarm the striking miners, who bear direct responsibility for the massacre, and should be accordingly held to full account.*"

CASAC has offered to provide oral testimony to the Commission to support its submission. The submission is available upon request.

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