

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 91 14 MAY 2013 PAGES 9643 TO 9774

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 14 MAY 2013]
 2 [09:40] CHAIRPERSON: The Commission resumes.
 3 Generaal-majoor, u is nog steeds onder eed.
 4 CHARL ANNANDALE: s.o.e.
 5 CHAIRPERSON: Mr Mpofu.
 6 MR MPOFU: Thank you, Chairperson. Good
 7 morning, General.
 8 GENERAAL-MAJOOR ANNANDALE: Good morning.
 9 MR MPOFU: I'd like us just to tidy up a
 10 few of the points that we covered yesterday, before
 11 starting on a new topic. There was the debate that you
 12 witnessed between myself and the Chairperson regarding the
 13 definition of offensive measures. Now I don't want to
 14 criticise you later for something that you did not say. So
 15 I want to get it very clearly. Are you telling this
 16 Commission that the firing of live ammunition does not,
 17 despite those definitions and so on, does not fall under
 18 the rubric of offensive measures, as a positive statement.
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 dit is korrek, dit is nie deel van offensiewe maatreëls
 21 nie.
 22 MR MPOFU: So in respect of the
 23 definition which I've also found somewhere else, which
 24 includes the use of fire-arms as offensive measures, your
 25 testimony is that it's the – once that draft is adopted, it

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1 will be the first time ever that the use of fire-arms will
 2 be regarded as offensive measures?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 nee, selfs as die konsep goedgekeur word, sal vuurwapens
 5 nie deel van offensiewe maatreëls wees nie. As ek die
 6 dokument kan kry, kan ons dit verder lees in konteks en ek
 7 is seker daar is 'n pertinente uitsluiting daar. Die
 8 pertinente vuurwapen wat daar na verwys sal wees, sal wees
 9 haelgeweer met gebruik van rubber, want haelgeweer is ook
 10 'n vuurwapen.
 11 MR MPOFU: Okay. So at least we are in
 12 agreement that the use of rubber bullets is part of
 13 offensive measures?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 dis korrek, ja, rubber is deel van offensief. As ek kan
 16 verwys na bewysstuk GGG21? O, ek weet nie of dit 'n
 17 bewysstuk is. Ek sien dis gekrap hier bo-op GGG21, maar ek
 18 weet nie of dit 'n bewysstuknommer toegeken is nie,
 19 Voorsitter. Maar die dokument is "National instruction" en
 20 dan nog nie 'n nommer nie, of 2012.
 21 CHAIRPERSON: It's GGG21.
 22 GENERAAL-MAJOOR ANNANDALE: Dankie,
 23 dankie, Voorsitter. Voorsitter, dan gemerk deur die – op
 24 die bladsy bo, 000565 of dan die bladsy aan die voetnota is
 25 bladsy 16 van 21. En dan pertinent paragraaf 5, sub B.

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1 Voorsitter, as ek net kan aanhaal? "Use of the following
 2 are prohibited or restricted during crowd management
 3 operations", en dan onder B, "Fire-arms and sharp
 4 ammunition, including birdshot (fine lead pellets) and
 5 buckshot (small lead pellets) are prohibited." En dan sub
 6 6, "The approved action rubber rounds may only be used as
 7 offensive measures to disperse a crowd in extreme
 8 circumstances if less forceful methods have proved to be
 9 ineffective."
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: Sorry, sorry, what
 12 documents are you quoting now?
 13 MR MPOFU: 262, I think.
 14 CHAIRPERSON: The wording differs from
 15 262. It's essentially the same meaning, content, but it
 16 sounds like an expansion of some kind. I just want to know
 17 what it is.
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dis die konsep nasionale instruksies, getitel, "Public
 20 order police, crowd regulation and management during public
 21 gatherings -
 22 CHAIRPERSON: Exhibit number, has it got
 23 an exhibit number? Not an exhibit?
 24 MR MPOFU: Oh, I see –
 25 CHAIRPERSON: Yes, I didn't think it was

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1 an exhibit. Do you want to have it made an exhibit, Mr
 2 Mpofu?
 3 MR MPOFU: Yes, Chairperson. Is that the
 4 draft from which I quoted earlier?
 5 CHAIRPERSON: This is the draft, do you
 6 see, it says it's a draft concept.
 7 MR MPOFU: Yes, that's the one that I
 8 quoted the definition of offensive measures –
 9 CHAIRPERSON: National instruction on
 10 what, on crowd management?
 11 MR MPOFU: Yes, Chairperson, I'll just
 12 give you the actual heading.
 13 CHAIRPERSON: As far as I can see, it
 14 sounds like draft national instruction on crowd management?
 15 MR MPOFU: Yes, I did say it yesterday on
 16 the record for Mr Mahlangu.
 17 CHAIRPERSON: Is it English or Afrikaans?
 18 MR MAHLANGU: It is English.
 19 MR MPOFU: It's called National
 20 Instructions 2012.
 21 MR MAHLANGU: National Instructions 2012.
 22 MR MPOFU: Is that the one, General,
 23 National Instructions of 2012, public order police crowd
 24 regulation and management during public gatherings and
 25 demonstration?

<p style="text-align: right;">Page 9647</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Dit is 2 korrek, Voor­sitter. 3 MR MPOFU: And while you are there – 4 CHAIRPERSON: I'm sorry, I just want to 5 understand what's going on. This document headed National 6 Instructions – National Instructions hash - 7 MR MPOFU: Yes. 8 CHAIRPERSON: - of 2012. I think the 9 hash indicates it's a draft. 10 MR MPOFU: yes. 11 CHAIRPERSON: Because they don't know 12 what the number is going to be. 13 MR MPOFU: Ja. 14 CHAIRPERSON: Public order police crowd 15 regulation management during public gatherings and 16 demonstrations and it is, as the witness said, has 21 17 pages. It also says, Issued by Consolidation Notice hash, 18 2012. So this is a draft? 19 MR MPOFU: Correct. 20 CHAIRPERSON: It hasn't been approved 21 yet? 22 GENERAAL-MAJOOR ANNANDALE: Dis korrek, 23 Voor­sitter. 24 CHAIRPERSON: So if you want it as an 25 exhibit, then we'll make it an exhibit.</p>	<p style="text-align: right;">Page 9649</p> <p>1 MR MPOFU: Yes. 2 GENERAAL-MAJOOR ANNANDALE: Onder andere, 3 Voor­sitter. Donderbuis kan ook deel van dit wees, CS-gas. 4 CHAIRPERSON: So teargas as well? 5 GENERAAL-MAJOOR ANNANDALE: Dis alles 6 pirotegniese goed. 7 CHAIRPERSON: And then just for clarity, 8 paragraph 14, 14(5) says the following - "Use the following 9 while prohibited or restricted during crowd management 10 operations.". Now there's something similar in the wording 11 of – 12 MR MPOFU: Word for word. 13 CHAIRPERSON: Of Standing Order 262, but 14 I think you'll find the wording is expanded here, but it's 15 essentially the same meaning. 16 MR MPOFU: Yes, so it's essentially the 17 same, Chairperson. And that is maybe my point, that the 18 only thing, according to your evidence is that this would 19 be the first time ever that the use of fire-arms is 20 regarded as offensive measures and – one. Two, that do you 21 agree or don't you agree that just as pyrotechnics include 22 stun grenades onder andere, fire-arms would also include a 23 shotgun for rubber bullets, but it also includes live 24 ammunition? 25 GENERAAL-MAJOOR ANNANDALE: Voor­sitter,</p>
<p style="text-align: right;">Page 9648</p> <p>1 MR MPOFU: We do. 2 CHAIRPERSON: Alright. So the next 3 number then is? 4 MR MPOFU: Is it 22? 5 MS PILLAY: 22, Chair, GGG22. 6 CHAIRPERSON: Alright. 7 MR MPOFU: GGG22. 8 CHAIRPERSON: This is your copy, is it, 9 Majoor? 10 GENERAAL-MAJOOR ANNANDALE: Korrek, 11 Voor­sitter. 12 CHAIRPERSON: So you won't mind my 13 writing on it, exhibit GGG22. We'll give it back to you 14 and then copies will be made for all those who are 15 interested in having full sets of the exhibits. So it's 16 exhibit GGG22. Alright. So I think that now clarifies 17 that. Now you say that that document has a section dealing 18 with offensive – 19 MR MPOFU: Yes, in the definition 20 section, which is section 2N for Nellie. 21 CHAIRPERSON: The paragraph is paragraph 22 2 - 2N, N for Nellie? 23 MR MPOFU: Yes. 24 CHAIRPERSON: So I see it refers to 25 pyrotechnics, so that's stun grenades?</p>	<p style="text-align: right;">Page 9650</p> <p>1 nee, dit sal nie die eerste keer wees nie, want vuurwapens 2 wat skerppunt ammunisie afvuur, is steeds uitgesluit. 3 CHAIRPERSON: I read that, I read that 4 subparagraph. And of course, at Marikana on the 16th, stun 5 grenades were used, were they not? And teargas? 6 GENERAAL-MAJOOR ANNANDALE: Skok granate 7 was gebruik en CS, dis reg, ja. Ook waterkannonne, dis 8 korrek. 9 CHAIRPERSON: Was a warning given? 10 GENERAAL-MAJOOR ANNANDALE: Ek het nie 11 gehoor nie, Voor­sitter. 12 CHAIRPERSON: Was a warning given that 13 those are offensive measures, you would accept in terms of 14 the definition? 15 GENERAAL-MAJOOR ANNANDALE: Dis reg, 16 Voor­sitter. 17 CHAIRPERSON: And the warning should be 18 given before offensive measures used. Now was a warning 19 given before the, as far as you know? I know you weren't 20 on the scene, but - 21 GENERAAL-MAJOOR ANNANDALE: Voor­sitter, 22 soos ek verstaan, as gevolg van die aanval, was daar nie 'n 23 geleentheid nie. 'n Terme van die plan sou daarna die 24 defensief, sou daar 'n waarskuwing wees, maar as gevolg van 25 die aanval –</p>

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1 CHAIRPERSON: So what you're saying is,
 2 strictly speaking a warning should have been given, but it
 3 wasn't, because there wasn't an opportunity to do so. So
 4 that's your case, is that correct?
 5 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 6 Voorsitter. Voorsitter, as ek net kan verder gaan met
 7 paragraaf N op GGG22 onder die definisies. Die "responding
 8 with fire-arms" moet saam gelees word met paragraaf
 9 14(5)(b). En dit is 'n konsep dokument en om alle
 10 onduidelikheid uit die weg te ruim, sal hierdie pertinente
 11 definisie dan ook noodwendig moet in die definisie verander
 12 word om dan uitsluiting te gee aan skerppunt-ammunisie.
 13 MR MPOFU: Okay, well, is that your
 14 reason for saying that it doesn't apply? Of course that
 15 would be true if 14(5) posited a total prohibition of life
 16 ammunition, it does not. Can you see that paragraph 5
 17 says, "The use of the following are prohibited or
 18 restricted."
 19 CHAIRPERSON: - go on, Mr Mpofu. You'll
 20 see that if you - you're reading from sub para 5.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: "The use of the following
 23 are prohibited or restricted during crowd management
 24 operations."
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: "Pepper spray is prohibited
 2 unless fire-arms and sharp ammunition are prohibited and
 3 teargas may be used only by POP - or operation commanders."
 4 So in other words, tear gas is restricted, pepper spray is
 5 restricted, because it's prohibited unless the relevant
 6 command is issued through instructions.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: But fire-arms and sharp
 9 ammunition, including birdshot and buckshot are prohibited
 10 and there is no provision which provides for its use in
 11 exceptional circumstances.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: So the opening words, "The
 14 use of the following are prohibited or restricted", becomes
 15 clear when one has regard to the three subparagraphs A, B
 16 and C. A and C are effectively examples of restriction and
 17 B appears to be a case of an absolute -
 18 MR MPOFU: It's fine, but -
 19 CHAIRPERSON: I don't want to unduly stop
 20 you, Mr -
 21 MR MPOFU: No, no -
 22 CHAIRPERSON: We're now debating the
 23 meaning of a draft instruction.
 24 MR MPOFU: Hm.
 25 CHAIRPERSON: If the draft instruction

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1 had been enforced at the time and we were applying it to
 2 see whether it had been complied with, I would let you
 3 proceed. But I don't know that our time is being gainfully
 4 used in examining the meaning of a draft instruction.
 5 Basically what you're trying to establish is the word
 6 "offensive measures" as used in the standing order,
 7 includes the use of - as the definition, includes the use
 8 of sharp ammunition.
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: I think, if I may say so,
 11 whether the argument is correct or not, it can be
 12 determined later. But I don't know if there is any further
 13 evidence that you need put before us in order to be able to
 14 mount an argument one way or the other, as to what the
 15 words, expression means in Standing Order 262.
 16 MR MPOFU: Well, we don't know -
 17 CHAIRPERSON: I would be inclined to
 18 suggest you to move on to another point.
 19 MR MPOFU: Ja, Chairperson, please,
 20 before I do that, let me just say. The witness has said
 21 that the use of rubber bullets as they are commonly
 22 referred to, is part of offensive measures. That much was
 23 established. Now with your permission, I'd like to ask
 24 him, whether do you agree that in policing there is no
 25 distinction that is drawn between rubber bullets and live

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1 ammunition?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek verstaan nie die vraag in algemene terme van policing
 4 nie. Ek is jammer, ek verstaan dit regtig nie.
 5 MR MPOFU: Okay, well -
 6 CHAIRPERSON: I think what it means is,
 7 sharp ammunition is generally forbidden and rubber bullets
 8 are equally forbidden. We understand that. Neither of the
 9 - I mean that's the point he's making, from a policing
 10 point of view? Is that right, Mr Mpofu?
 11 MR MPOFU: Yes, whether as a policing
 12 matter there is a distinction, a distinction like this
 13 between rubber and sharp ammunition?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek kan net verwys na Staandorde 262 wat daar 'n duidelike
 16 onderskeid is.
 17 MR MPOFU: Okay.
 18 CHAIRPERSON: Mr Mpofu, sorry to
 19 interrupt, but it's not as simple as that, because there
 20 was what we call a gloss later on the Standing Order, which
 21 is the instruction issued by the National Commissioner in
 22 July 2012. And my understanding was that that was for more
 23 restrictive, the case of rubber bullets and balls and so on
 24 then the case has been previously. So it goes beyond 262
 25 as it stands by itself, because apparently, the case has

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1 been experienced, the people who previously injured by
 2 rubber bullets, so hence the need to move forward and hence
 3 the issue of that instruction by the National Commissioner,
 4 isn't it so?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 maar die gebruik van rubber was nog altyd 'n laaste uitweg.
 7 Dit was net weereens bevestig deur die Nasionale
 8 Kommissaris.

9 [10:00] MR MPOFU: General, you know, I've not
 10 done this to you before, but this time I would really like
 11 a yes or no answer. You can elaborate as much as you like
 12 after that. I'm asking you a simple question. In policing
 13 matters regarding POP and crowd management and so on, is
 14 there anything, any distinction between the use of rubber
 15 bullets and live ammunition in the context of the use of
 16 force, yes or no –

17 COMMISSIONER HEMRAJ: Mr Mpofu, can I
 18 just understand that question? Do you mean anything of the
 19 Standing Order, anything of the legislation or anything in
 20 the actual usage on the field?

21 MR MPOFU: I don't know. Just in
 22 policing, intelligent practice –

23 CHAIRPERSON: Sorry, Mr Mpofu, I
 24 understand you mean the current police practice?

25 MR MPOFU: Yes.

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1 CHAIRPERSON: In the light of 262 and as
 2 - instruction and the subsequent instruction of the
 3 National Commissioner?

4 MR MPOFU: Yes, and the Constitution –

5 CHAIRPERSON: The answer is either yes or
 6 no, but obviously the witness will then have an opportunity
 7 to amplify as to why he says what he says.

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 die antwoord is ja, daar is 'n verskil. Vuurwapens, daar
 10 word pertinent verwys na die gemeenregtelike beginsels van
 11 selfverdediging, noodweer en die beskerming van eiendom,
 12 terwyl rubber as 'n laaste uitweg is, 'n laaste fase in
 13 terme van die uiteendryf van 'n skare.

14 MR MPOFU: I think that calls for cake,
 15 Chairperson.

16 CHAIRPERSON: Notionally he is still in
 17 the chair, I'm just going to fetch a file.

18 MR MPOFU: Thank you.

19 CHAIRPERSON: You've got the witness's
 20 answer.

21 MR MPOFU: Yes, I did, thank you, Mr
 22 General. Well, I put it to you that you are busy
 23 contradicting yourself now. When you were asked that exact
 24 question by Mr Semenya, your answer was not ja, it was nee.
 25 What is your answer?

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1 MR MAHLANGU: Can you please refer us to
 2 the transcript?

3 MR MPOFU: Okay. I can do so. If you go
 4 to 8434, examination by Mr Semenya SC continues. "General,
 5 the use of force by POP members, is there anything between
 6 the use of rubber and the use of sharp ammunition in
 7 policing? Voorsitter, as ek kyk na die kontinuum van
 8 geweld, dan sal ons merk dat dit die heel laaste faset is."
 9 Okay. Then Chairperson, "Are you finished with Mr White's
 10 report", and so on. Then Mr Semenya says, "Yes, Chair, the
 11 conclusion then Mr White says that obviously beyond POP and
 12 the next thing that happened is sharp ammunition. The
 13 point I'm trying to make, is there anything in policing,
 14 not in self-defence, in policing that exists as a policing
 15 measure between rubber and sharp ammunition?" Generaal-
 16 majoor Annandale, "Voorsitter, in polisiëring weet ek nie,
 17 maar in die Suid-Afrikaanse Polisiediens, polisiëring
 18 konteks, nee." And that was, I can't remember, it was on
 19 the 24th of April and today your answer is, 'ja'.

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 die vrae was verskillend gewees. Die ander een was of daar
 22 'n stap tussen die gebruik van rubber en vuurwapens is in
 23 polisiëring en ek het gesê daar is niks tussen die twee
 24 nie. Nou het ek die onderskeid verduidelik. So daar is
 25 nie 'n – dis verskillende vrae.

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1 MR MPOFU: No, I'm sorry, actually I read
 2 the question almost from Mr Semenya's question, so that you
 3 don't have that escape route.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 ek stem nie saam nie.

6 MR MPOFU: Okay. Now we move on. That's
 7 fine, we leave it for argument. The next issue is – okay,
 8 well, as u sat we will leave it for argument. I honestly
 9 don't believe we are debating whether the use of live
 10 ammunition is offensive or not. But be that as it may,
 11 we'll move to the – the next important issue that you and I
 12 discussed yesterday was the issue of barbed wire. Would
 13 you agree with the following statement, that if it's
 14 established that that line of semi-automatic rifle wielding
 15 policemen that was formed in front of the gap that which
 16 you and I discussed yesterday, was formed before any attack
 17 was mounted by anybody, then that line was formed for
 18 something else other than self-defence, because you can't
 19 have self-defence if there is no attack?

20 GENERAAL-MAJOOR ANNANDALE: Ek weet nie,
 21 daar is nie 'n vraag gevra nie, Voorsitter.

22 MR MPOFU: Well, this is the question.
 23 Would you agree, means the question, would you agree that -
 24 at the end of that there must be a question mark. Would
 25 you agree that if that line was formed before any attack of

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1 any sort was mounted, then it was formed in front of that
 2 gap for a purpose other than self-defence, whatever the
 3 purpose was, because there was no attack at that stage.
 4 You can't have self-defence if there is no attack?
 5 GENERAAL-MAJOOR ANNANDALE: So dis ten
 6 tyde van die klein groepie nog steeds gegroepeer sonder dat
 7 hulle, hulle eerste beweging gedoen het op die polisie lyn?
 8 MR MPOFU: No, I don't care where they
 9 were. All I'm saying is that they were not attacking
 10 anybody at that stage, at the stage when that line was
 11 formed, as depicted in the picture that you pointed us to
 12 at 10:52, where the "basic line" is formed and there are no
 13 protestors in sight in that picture at least?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 soos ek dit het, het die TRT beweeg van hulle agterste
 16 posisie, sowat 100 meter agter die voorste twee linies van
 17 gepantserde voertuie en dat hulle beweging was as gevolg
 18 van die eerste beweging van die groep op die polisie lyn by
 19 Nyala 4. So of hulle aanvanklik beweeg het om in
 20 ondersteuning te wees van die lede voor of as 'n
 21 afskrikmiddel in terme van addisionele mags vertoon, dit
 22 weet ek nie.
 23 MR MPOFU: Yes, so your answer is yes
 24 then, because whatever it is, show of force, what have you,
 25 all I'm saying is that if you like at slide 210, the last

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1 picture, whether the line formed facing the gap and in
 2 which there are no protestors in sight, even though you can
 3 see the kraal, 210, the last one. I'm asking you a simple
 4 question, would you agree that the formation of that line,
 5 with those people holding semi-automatic rifles, must have
 6 been for a purpose other than self-defence, because there,
 7 there was clearly nobody in sight and even on the police
 8 version, no attack had yet been mounted?
 9 MR SEMENYA SC: Chair, slide 210 –
 10 MR MPOFU: 210, sorry.
 11 MR SEMENYA SC: The last one is after.
 12 You can even see the bodies are lying on the ground there.
 13 CHAIRPERSON: - the time is obscured by
 14 the 210, but it looks as if it's 15:51.
 15 MR MPOFU: Yes, no, Chair, okay, let us
 16 assume Mr Semanya is right. It doesn't matter. The point
 17 I'm making is simply that, would you agree that – okay,
 18 let's take one step back. Would you agree that the basic
 19 line or the calls for basic line were made before an
 20 "attack" on the police version, was launched?
 21 MR SEMENYA SC: Chair, can we have this
 22 conversation with witnesses who were on the police line?
 23 They will tell us more accurately at what point they formed
 24 it, why they formed it and Mr Mpofo can have a meaningful
 25 conversation.

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1 CHAIRPERSON: There's substance in that
 2 point. The suggestion is not that you should be stopped
 3 from asking the question, but that you'd rather ask someone
 4 who would be able to give a more definitive answer than
 5 this witness who has to rely partly on hearsay and partly
 6 on material before us in the form of photographs and videos
 7 and so on.
 8 MR SEMENYA SC: Ja.
 9 CHAIRPERSON: You know, regard be had to
 10 the need to use the time gainfully.
 11 MR MPOFU: Ja.
 12 CHAIRPERSON: I don't propose stopping
 13 you from asking the question, but I suggest that keep the
 14 question for someone who can give us, in all deference to
 15 the witness, a better answer than this witness can.
 16 MR MPOFU: No, Chairperson, that is a
 17 sensible suggestion, but the stick coming from Mr Semanya,
 18 the only reason I'm raising this is because he asked this
 19 witness about those things in chief.
 20 MR SEMENYA SC: Okay, fine, I'll –
 21 CHAIRPERSON: Don't pick unnecessary
 22 fights, please.
 23 MR MPOFU: Well, if it wasn't raised in
 24 chief I wouldn't be cross-examining it. So he should have
 25 taken his own advice. Okay. Now can we move to the issue

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1 of – I won't ask you about the specifics of who stood where
 2 at whatever time, but what I do want to establish with you
 3 is, if the Chair will bear with me?
 4 CHAIRPERSON: Yes.
 5 MR MPOFU: I've got the document I'm
 6 looking for, but I have another version which is
 7 underlined. I'm looking for that.
 8 CHAIRPERSON: If you can't find it,
 9 perhaps those assisting you can find it and you can move on
 10 to another point in the meanwhile.
 11 MR MPOFU: Ja. Then I'll find it here.
 12 It's just going to be more difficult. In terms of – thank
 13 you, Chairperson. In terms of FFF1, I'm just going go read
 14 a lot of passages and then I'll ask you the question. In
 15 terms of FFF1, 5.2.3 thereof, it says, "Should negotiation
 16 fail, the next step would be to contain the situation",
 17 underline this, "to protect critical point and non-
 18 participants through the implementation of defensive
 19 measures."
 20 CHAIRPERSON: Forgive me, Mr Mpofo, I was
 21 trying to find my copy. What page?
 22 MR MPOFU: It's page 9, typed page 9,
 23 5.2.3, Chairperson.
 24 CHAIRPERSON: 5?
 25 MR MPOFU: 5.2.3, the very last point.

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1 CHAIRPERSON: Thank you.
 2 MR MPOFU: I've just read the first part
 3 of 5.2.3. So defensive measures, the defensive measures in
 4 the Marikana context means barbed wire, among under things,
 5 correct?
 6 GENERAAL-MAJOOR ANNANDALE: Onder andere,
 7 dis korrek.
 8 MR MPOFU: And then on the next page, on
 9 the next page it says, "In these types of operations it is
 10 important to maintain a distance between the demonstrators
 11 and SAPS or POP personnel by means of non-violent methods."
 12 In other words, I'm going to argue that that means that if
 13 one wanted to protect the so-called enclosed area, it would
 14 be important to do that by means of non-violent method as a
 15 priority. Would you agree?
 16 GENERAAL-MAJOOR ANNANDALE: Dis dan juis
 17 die afstand wat ons gehad het, die 80 meter plus dan die
 18 draad.
 19 MR MPOFU: Yes. And then it then says -
 20 CHAIRPERSON: I don't think the answer is
 21 interpreted in isiXhosa yet.
 22 MR MPOFU: Oh yes, sorry, Chairperson.
 23 MR HANABE: I have interpreted,
 24 Commissioner.
 25 MR MPOFU: And before I move on, that

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1 requirement is also mimicked or carried through in
 2 Regulation 262 and I'm now going to read you, put your
 3 finger on that one, we're going to come back to it. I'm
 4 reading 11.2 of Regulation 262 -
 5 CHAIRPERSON: Standing Order.
 6 MR MPOFU: Standing Order, sorry,
 7 Standing Order 262, thank you, Chairperson. And that one
 8 says, "If negotiation fail," which on your version has
 9 happened, "and life or property is in danger", which also -
 10 has happened, "the following procedure must be followed."
 11 And then for number 1 it is, "Put defensive measures in
 12 place as a priority." Is that the same sentiment of if
 13 there is a danger to life or property, the priority should
 14 be non-violent/defensive measures being put in place?
 15 [10:19] GENERAAL-MAJOOR ANNANDALE: Presies wat
 16 dit sê, Voorsitter, om defensiewe maatreëls in plek te sit.
 17 MR MPOFU: And therefore, if that is
 18 true, then would you agree with the statement which I put
 19 to you yesterday, just before we stopped, namely that the
 20 enclosed area should be preferably have been protected by
 21 the employment of barbed wire/defensive measures, rather
 22 than gun wielding, a gun wielding line of people with semi-
 23 automatic rifles?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 die lede wat daar ontplooi was, is deel van die

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1 magsvertoon. Dit is ook 'n aanvaarbare praktyk in terme
 2 van om reserwe magte vorentoe te beweeg om 'n magsvertoon
 3 om dan aksies, aggressiewe aksies te ontmoedig.
 4 MR MPOFU: Yes, I accept that - oh sorry.
 5 GENERAAL-MAJOOR ANNANDALE: Magsvertoon
 6 is uiters belangrik en dit het al oor baie jare het dit
 7 baie goeie gevolge gehad, Voorsitter. En dis maar 'n
 8 kombinasie van hulpbronne wat insluit menslike hulpbronne,
 9 maar dan ook die voertuie, water-kannonne ensovoorts.
 10 MR MPOFU: General, I'm afraid you have
 11 not answered my question. My question is a comparative one
 12 and please listen to it carefully. Even accepting what you
 13 are saying, let's accept that the show of force method was
 14 meant to discourage any attack or breach, all I'm asking
 15 you is this, and as background you and I agreed yesterday
 16 that there was at least 200 metres of wire available. So
 17 there was the means and there was the opportunity. Given
 18 that background, would it comparatively not have been
 19 preferable to achieve that very goal of discouraging an
 20 attack to employ the non-violent defensive that was
 21 prescribed in what I read to you, rather than to achieve
 22 that object with a line of gun wielding policemen with
 23 semi-automatic rifles?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 maar beide die ontplooiing was nie gewelddadig, beide die

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1 draad as 'n defensiewe maatreël, asook die ontplooiing van
 2 hulpbronne. Soos ek praat van die een en die ander
 3 gesamentlik en beide is nie-gewelddadig. Veral magsvertoon
 4 is nie-gewelddadig.
 5 MR MPOFU: Yes, but I'm talking about the
 6 potential of the two measures. The one measure at worst
 7 would have resulted in a few people rupturing their skins
 8 against barbed wire if they were stupid enough to go
 9 against it. The other measure resulted in 34 deaths - at
 10 least 16, let's leave it to the gap, 16 and it could have
 11 resulted in hundreds and hundreds, if not thousands of
 12 other deaths. Don't you think that is a crucial
 13 distinction between the potential between those two
 14 measures, if they were put - against each other?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek het getuig dat wat ons nou weet in nabetragting, sou ek
 17 die totale area heeltemal afgekordon het met slegs 'n
 18 ingang wat beheer is. Controlled entrance.
 19 CHAIRPERSON: Limited entrance that was
 20 controlled, I think.
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 maar hoe ons dit beplan het, was ons vas oortuig dat die
 23 ontplooiing van die draad plus die magsvertoon sou
 24 voldoende gewees het om enige sodanige aanval te ontmoedig.
 25 Die bedoeling was ook om al ses die draadkarre te ontplooi,

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1 maar die omstandighede het dit nie toegelaat nie en
2 gevolglik was daar net vier ontplooi.

3 MR MPOFU: No General, you can't be
4 serious. The – you and I established yesterday, we're not
5 talking about the whole area. We're talking about the
6 small area of 25 metres, we established that the barbed
7 wire was available. So I don't know what you mean that
8 they could not deploy it. I mean surely they could have?

9 CHAIRPERSON: But he said there wasn't
10 time.

11 MR MPOFU: Well, exactly. We also
12 established that there was – there was at least more than –
13 there was more than two minutes and it does not take –
14 well, I don't know how long it takes, but surely it can't
15 take more than two minutes to deploy a small gap of 25
16 metres. So that we established yesterday, that there was
17 the means and the opportunity and in any event, the issue
18 is not a question of hindsight. It's actually the
19 opposite. It's a question of foresight, because the people
20 who drafted these things, were – it was an exercise in
21 foresight and when they said, when life is endangered and
22 all those things, put defensive measures in place as a
23 priority, in the future, not looking back on. Would you
24 agree with that?

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek is seker dat die twee Nyalas wat nie ontplooi het nie,
2 sal die betrokke bevelvoerders kan aandui hoekom nie. Dis
3 maar net om die praktiese ontplooiing van draadkarre so ver
4 ek bewus is daarvan, vir u te verduidelik. Voorsitter, ons
5 ry nie in die Nyala en dan druk ons 'n knoppie en dan begin
6 hierdie draad ontplooi nie. Daar is lede wat buite die
7 voertuig moet staan met dik handskoene wat hulleself
8 beskerm teen die lemmetjiesdraad. Daar is drie rolle van
9 hierdie draad, twee onder en een bo-op dit. So aanvanklik
10 moet die draad, moet dit afgehaak word en dan moet daai
11 voertuig beweeg en dan is dit – in praktyk haak dit baie
12 keer vas. Dan moet dit eers losgehaak word en dit gaan van
13 – dit is – dit is gidsrelings kan ek nou maar sê, wat
14 hierdie draad op hang, so dit haak vas as dit ontplooi
15 word. Voorsitter, dis een ding om dit te ontplooi terwyl
16 daar nie 'n pertinente dreigement is nie en 'n ander ding,
17 maar 'n ander ding as daar 'n pertinente bedreiging is. En
18 ek weet nie Brigadier Calitz of enige – of Kolonel Mokubela
19 of enige van die betrokke bevelvoerders kan getuig of dit
20 so was dat draadkar 4 reeds afgehaak was, sodat hy kan
21 begin ontplooi, maar draadkar 5 en 6 was nog nie gewees
22 nie. Ek weet werklik nie wat die pertinente rede was
23 hoekom hulle nie kon verder kom met die ontplooiing nie.

24 MR MPOFU: Okay General, then we'll ask
25 them. Would you turn to L191. You have already referred

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1 to the 80 metre distance between the strikers and the row
2 of Nyalas. Do you see that's depicted by the yellow line?

3 GENERAAL-MAJOOR ANNANDALE: Ek merk die
4 geel lyn op en die 80 meter, dis korrek, Voorsitter.

5 MR MPOFU: And then the other yellow line
6 further down is the 50 metre yellow line. The question I
7 want to ask you is, would you agree that what we've
8 previously referred to as the horseshoe arrangement formed
9 by those Nyala, defined the demarcated area, the protected
10 area?

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
12 die beskermde gebied word aangedui deur die ses Nyalas en
13 dan die potensiële area wat die sesde Nyala nog addisioneel
14 sou dek in terme van sy ontplooiing. En dit is nie -
15 MR MPOFU: So your earlier evidence –
16 GENERAAL-MAJOOR ANNANDALE: - L-formaat –
17 MR MPOFU: Sorry, Chair. Yes, in other
18 words, your earlier evidence that it was defined by the 80
19 metre gap, so to speak, is – should be – you are amending
20 that now?

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 ek het verwys na die 80 meter tussen die lede en die
23 polisie lyn. As die lyn vyf meter agter daai lyn is, dit
24 is – in die beplanning het ons gesê, sowat 80 meter.
25 Niemand het dit gaan uitmeet om dan presies te sê dit moet

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1 die lyn wees nie.

2 MR MPOFU: Okay, well, that I will leave
3 for argument, but that's what defines the enclosure on the
4 western side. On the northern side you would agree that it
5 was - that horseshoe arrangement was defined by the 50
6 metre line, yellow line, correct?

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
8 nee, Nyala 6 sou nog sowat 'n 80 meter of miskien 'n 100
9 meter in terme van die volle strekking van die draad, sou
10 nog in 'n oostelike rigting beweeg het.

11 MR MPOFU: Well, okay, so on that version
12 then, you see that there are people in slide 191 who are
13 walking on the part that goes in front of the kraal?

14 GENERAAL-MAJOOR ANNANDALE: Ek merk
15 persone op, Voorsitter.

16 MR MPOFU: Maybe it would be easier if we
17 use them as a reference. Would you agree that those people
18 who were walking there, had not reached the police line or
19 are you saying they had?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 op hierdie stadium was die lyn nog nie ontplooi nie, maar
22 in terme van die posisieonering van die Nyalas, is hulle
23 buitekant die laaste Nyala.

24 MR MPOFU: I see. So this demarcated
25 area was a moving target. It was not a static, as is

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1 required in the regulations. It was not a static defined
 2 police line. It was wherever you determined it to be?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 nee, die enigste mobiliteit sal wees terwyl die Nyalas
 5 beweeg om die statiese lyn daar te stel.
 6 MR MPOFU: General, please, let's try and
 7 help each other. When those people were walking in front
 8 of the kraal, you are saying that at this stage they were
 9 not breaching the police line? In other words the police
 10 line at that stage did not include that path in front of
 11 the kraal? Sorry, before you answer, and I say that,
 12 because we can assume that they walked, knowing that
 13 they're not walking into the horseshoe, but within that 50
 14 metre gap. Now you can answer.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 soos ek sê die statiese versperring was nog nie ontplooi
 17 nie. En ek het gesê die mense op daai voet paadjie waarna
 18 verwys word, is buite die laaste Nyala wie beoog om die
 19 verdere versperring te ontplooi.
 20 [10:39] MR MPOFU: So the – in other words, the
 21 place in front of the kraal, that road or path, as at 15:40
 22 when the people had started dispersing, was not strictly
 23 speaking within the police line. It was free place where
 24 people could move and indeed moved in and out of the
 25 koppie?

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1 GENERAAL-MAJOOR ANNANDALE: Alles buite
 2 die betrokke voertuie sou buite die polisie-kordon gebied
 3 gewees het.
 4 MR MPOFU: General, okay, I take one step
 5 back. Were you, since you were in the JOC and not on the
 6 scene you might have not been aware of this. Were you
 7 aware that for the day, since about 6 o'clock, up to that
 8 time, people to come and go into the Koppie were using that
 9 path in front of the – mainly using that path in front of
 10 the kraal?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek was bewus dat persone uit alle windrigtings die koppie
 13 benader het. So dit kan insluit die betrokke pad en
 14 verskeie ander paaiie.
 15 MR MPOFU: Did those all directions
 16 include people walking on the path in front of the kraal?
 17 CHAIRPERSON: He said, yes.
 18 MR MPOFU: He didn't.
 19 CHAIRPERSON: He said it in Afrikaans.
 20 MR MPOFU: No, well, he was disputing the
 21 statement I was making that they mainly come from there and
 22 the –
 23 CHAIRPERSON: Let's get going. I'm
 24 correct in saying that you did say that people came from
 25 all directions, including walking on the path to which

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1 counsel referred?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek het die woord gebruik, insluitend, potensieel insluitend
 4 die betrokke pad.
 5 CHAIRPERSON: Including, yes.
 6 MR MPOFU: And the police were there
 7 since the morning. The question is, those people who were
 8 walking up and down that path in front of the kraal, were
 9 not breaching the police line. Would you agree with me?
 10 GENERAAL-MAJOOR ANNANDALE: Dit is
 11 korrek, Voorsitter.
 12 MR MPOFU: So the people who were at the
 13 koppie, at least those were interested in going to Nkaneng,
 14 and those who had come through that path, knew for sure
 15 that that path does not constitute – or rather, walking on
 16 that path does not constitute breaching the police line,
 17 because they had just done so in the past six to eight
 18 hours?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 ons kan nie veralgemeniseer dat almal op die koppie die
 21 betrokke pad gebruik het nie. Soos sekerlik die enkele
 22 persone wie die pad gebruik het, kon bewus wees, maar om te
 23 gaan sê dat mense wat van die westekant af gekom het of van
 24 die noordekant af, dat hulle ook sodanig bewus was, is
 25 sekerlik 'n bietjie aanname.

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1 MR MPOFU: Yes, that's exactly why,
 2 General, I did not generalise. That's why I said, those
 3 people who had walked there in the morning, but be that as
 4 it may. The evidence – you cannot dispute – or rather,
 5 you're not in a position to dispute the evidence of Mr
 6 Magidiwana that after Mr Mathunjwa's departure and after
 7 the deployment of the first or first two Nyalas with barbed
 8 wire, Mr Noki said words to the following effect. "Let us
 9 leave this place. Let us walk to the residential area.
 10 Let us not run, because we have done nothing wrong."
 11 GENERAAL-MAJOOR ANNANDALE: Ek was nie
 12 teenwoordig nie. Ek aanvaar dis getuienis voor hierdie
 13 Kommissie.
 14 MR MPOFU: Yes, well, that evidence as it
 15 happens, was not disputed by the police in cross-
 16 examination. So it stands that Mr Noki said, "Let us walk,
 17 let us not run, let us leave this place. We have done
 18 nothing wrong."
 19 So assuming that that is what happened, because
 20 we don't have any evidence to the contrary, this is why the
 21 issue of the path, the path that you and I have been
 22 discussing is so critical, General, to the determination of
 23 the issues in this case. Because the evidence of Mr
 24 Magidiwana once again is that in complying, for lack of a
 25 better word, with what Mr Noki had said, they chose to,

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1 like everybody else, like all these people in 191 and so
2 on, to use that path in front of the kraal to comply with
3 Mr Noki's command or request.

4 **GENERAAL-MAJOOR ANNANDALE:** Dan is my
5 interpretasie van die fotos dan heeltemal verkeerd, want as
6 dit so was, dan wonder ek hoekom het hulle dan beweeg na
7 Nyala 4 se posisie toe, waar daar geen sodanige voetpad of
8 pad is nie. En hoekom het hulle dan nie direk noord beweeg
9 op die pad wat daar aangedui word en dan gedraai in 'n
10 rigting oos om dan hierdie betrokke voetpad wat u na
11 verwys, te volg nie? So my eie interpretasie is dan, dis
12 vir my baie vreemd as dit dan die pad was wat almal gebruik
13 het, wat almal van bewus was, dat hulle dan nie pertinent
14 die pad dan gevat het om dan na Nkaneng te gaan nie.

15 **MR MPOFU:** Well, that can't be so,
16 General. If you look at picture 194, which shows the
17 direction of the crowd, according to the police, according
18 to the police that orange line depicts the direction of the
19 crowd and that accords with the version of Mr Magidiwana,
20 that they walked there in order to pass through that gap
21 between the kraal and the road or – and those Nyalas. It
22 is true as you say that Nyala 4 then closed that gap and
23 that's exactly why they then wanted to access the same
24 road, because they know the area, by going around the
25 kraal, which they did.

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1 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
2 maar dis juis my punt. Hulle het dan juis nie op die pad
3 gebly wat hulle dan gebruik het om na die Koppie toe te
4 gaan nie. Ek weet nie of hulle wou kortpad vat na die pad
5 toe. Voorsitter, en as ons na slide 193 kyk, dan sal u
6 sien waar die groepie omsingel is of omkring is met 'n rooi
7 kring, dan aan hulle regterkant, soos ons na die foto kyk,
8 is daar dan 'n meer natuurlike pad wat sal basies net so by
9 die Nyala, wat Nyala nommer 5 is, sou kon verby beweeg het.

10 **MR MPOFU:** Yes, the evidence is that that
11 part of the – and once again, this is not disputed
12 evidence. That part is blocked by a fence which, if my
13 memory serves me well, runs for about 260 metres before
14 you'd be able to access the township. But that's not the
15 issue. The issue is, it is not – it can't be correct that
16 they took a shorter route. Actually they took a longer
17 route, because from where they are at the point of the
18 orange line, the shortest way to access the road, is a
19 matter of a few metres, but they deviated from that shorter
20 route, because Nyala 4 closed that road and took a longer
21 turn around the kraal to access the road. That's the
22 evidence.

23 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
24 ek en advokaat Mpofu praat verby mekaar. Ek praat - daar
25 is geen draad in die paadjie waarna ek verwys nie.

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1 Voorsitter, as ons kyk na 193 en ons kyk na waar die
2 groepie is, omkring met rooi, en ons kyk na die wit pyl en
3 sy punt, dit klink vir my min of meer wat adv Mpofu na
4 verwys, waar hulle, dan sal u merk dat daar 'n pertinente
5 pad is aan die regterkant van die groepie, soos wat ons
6 daarna kyk. En die pad lei na Nyala nommer 5. U sal sien
7 Nyala nommer 5 staan basies op die betrokke pad. So my eie
8 interpretasie, die kortste roete tussen waar die groepie
9 gekonsentreer is en om dan te kom by daai klein kraal area
10 by die punt van die wit pyl, sou dan eenvoudig wees om op
11 die pad te beweeg, om te beweeg om Nyala 5 en dan aan te
12 gaan in die noordekant van Nyala 6 en dan deur daai gaping
13 te beweeg. U sal merk dat Nyala 4 is dan so ietwat in 'n
14 verkeerde rigting om dan nou weer weg te draai in daai
15 rigting. So dit maak nie vir my sin dat dit die kortste
16 pad is nie.

17 **MR MPOFU:** General, maybe you're right
18 we're speaking verby mekaar. Are you actually disputing,
19 are you at picture 194? If you're not, just go there.

20 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
21 nee, 194 verstaan ek die – waar die geel pyl is, dit is wat
22 hulle posisie was, vorige posisie en dat hulle toe om
23 beweeg het na daai posisie toe. So dit wys net weereens
24 dit was nie 'n direkte beweging vanaf die gebied wat hulle
25 aanvanklik was, die einde van die oranje pyl nie.

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1 **MR MPOFU:** Okay.
2 **COMMISSIONER HEMRAJ:** Mr Mpofu, the fence
3 you're referring to is the fence around the informal
4 settlement?

5 **MR MPOFU:** Yes, it was that, but I see
6 that is –

7 **COMMISSIONER HEMRAJ:** But there is no
8 sense in the road that the General is referring to, no
9 sense there.

10 **MR MPOFU:** Ja, there might not be. Then
11 I'm not referring to that at all, then it is irrelevant to
12 what I'm asking him. Can you go to 194. Look at the
13 point, the sharp point of the arrow, of the orange arrow.
14 You see that point?

15 **GENERAAL-MAJOOR ANNANDALE:** Yes.

16 **MR MPOFU:** Would you agree that the
17 shortest and straightest way to move from that sharp point
18 to the part that it is in front of the kraal, is a matter
19 of a few metres that is defined by that smaller road,
20 leading to the bigger one, where these people are
21 apparently walking. In other words, if you continued on a
22 straight line from the sharp point, that's the shortest
23 possible route. Let's say you were going to that kraal,
24 let's say, for argument's sake, the entrance of the kraal
25 is marked with an X, hopefully on yours as well. If you're

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1 going there, you're going to fetch your cow, the shortest
 2 possible route would have been to continue along the sharp
 3 point and get into the entrance, yes, no?
 4 [10:59] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 ek kan nie ja of nee antwoord nie. Ons moet dit sien in
 6 terme van waar die aanvanklike beweging plaasgevind het.
 7 Ons kan dit nie ignoreer en net fokus op die posisie nou op
 8 slide 194 nie. Voorsitter, en as ons -
 9 MR MPOFU: No, but you don't answer the
 10 question, please.
 11 GENERAAL-MAJOOR ANNANDALE: Ek is besig
 12 om die vraag te probeer antwoord. Voorsitter, as ons 193,
 13 die posisie van die groep oorplaas op 194, dan sal u merk
 14 dat daarso is 'n klein koppie en dan is daar so 'n kruispad
 15 en as ons dan gaan kyk waar hulle was, dit is basies by die
 16 begin van die geel pyl. Voorsitter, in die konteks dan,
 17 sou die direkte beweging met die pad wat ek vroeër aangedui
 18 het, die kortste pad gewees het na die bestemming wat mnr
 19 Mpofu na verwys. Maar ons weet dat daar eers 'n beweging
 20 was in die rigting soos die geel pyl aandui en die volgende
 21 beweging was dan soos min of meer aangedui deur die boog
 22 van die oranje pyl. So om net eenvoudig te antwoord, ja,
 23 vanaf die punt van die oranje boog pyl na die kruis by die
 24 kraal is die kortste pad, sal dit nie in die korrekte
 25 konteks plaas nie.

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1 MR MPOFU: Okay, well, I'm going to take
 2 it that you don't want to answer the question, or I'll
 3 repeat it for the last time.
 4 CHAIRPERSON: No, no, Mr Mpofu, I don't
 5 think you can put it like that. You can argue maybe that -
 6 MR MPOFU: Well, I will.
 7 CHAIRPERSON: At the end, that he is
 8 evading -
 9 MR MPOFU: Well, first I've got to take
 10 it and then I'll argue.
 11 CHAIRPERSON: What?
 12 MR MPOFU: I'll do both.
 13 CHAIRPERSON: Sorry?
 14 MR MPOFU: I'm saying, I'll do both.
 15 I'll assume that he does not want to answer it and I'll
 16 argue it as well.
 17 CHAIRPERSON: You can make whatever
 18 assumptions you like.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: At the end of the day you
 21 must argue that we should make the same assumption.
 22 MR MPOFU: I will, ja.
 23 CHAIRPERSON: You may succeed, you may
 24 not.
 25 MR MPOFU: I may not, ja, but in case I

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1 don't succeed, can I just ask him the question again.
 2 General, if you were - you, General, standing at the sharp
 3 point of the orange line, and you owned a cow and you
 4 wanted to get into the kraal, would you agree that the
 5 shortest way to take from that point, would be to continue
 6 straight and enter where the X is, yes or no?
 7 MR SEMENYA SC: Mr Chairman,
 8 Commissioners, just to understand the question, I have
 9 problems with the colours, because I'm listening to the
 10 question, I understand my learned friend to be referring to
 11 what I see as yellow instead of orange. And then below it,
 12 there is a curving horseshoe like darker shade of what may
 13 be a yellow, I don't know. And then there's what I see as
 14 an orange, also curving like a horseshoe and the sharp
 15 point or the end of the orange is where the shooting took
 16 place.
 17 MR MPOFU: Okay.
 18 CHAIRPERSON: The way it works is, the
 19 arrow which is at the top of the three arrows, the straight
 20 arrow, which is apparently the first attempt to breach the
 21 line, that is yellow. Then there's an arch or a bow or a
 22 curved arrow. That's what's called orange. And then the
 23 final one, which goes around the kraal, is called the red
 24 one.
 25 MR MPOFU: Thank you.

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1 CHAIRPERSON: Those are the colours as we
 2 understand them. I understand that the - if one had one of
 3 those colour coded things that you get from the paint shop,
 4 you might have slightly different colours, but that's what
 5 we're talking about.
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 as ons alles ignoreer voordat hierdie groep op die betrokke
 8 einde van die oranje boog en by die punt gekom het, dan is
 9 dit verseker van die punt na die kraal toe die kortste pad.
 10 Ek bedoel, dit is net eenvoudig logies dat van daai punt na
 11 die kraal toe die kortste pad is.
 12 MR MPOFU: Thank you. Chairperson, just
 13 one quick aspect before we take the tea. I'm moving to
 14 something else now, General. The - well, something else,
 15 but it's related. Remember, I said to you that the path,
 16 the reason why I'm spending so much time is that the issue
 17 of the path is important for the reasons that I have
 18 explained to you. But it's also important for another
 19 crucial reason in this Commission. Mr Magidiwana testified
 20 that - or let me take one step back. Our version is that
 21 there was no attack. That's one of the reasons that we are
 22 going to say self-defence was not an issue, because as you
 23 and I have agreed earlier, for self-defence there must be
 24 an attack. So our version is that there was no attack. So
 25 you can't even move to step one of self-defence if there is

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1 no attack. Do you understand that? Now, in justifying
 2 that conclusion, Mr Magidiwana testified as follows. He
 3 said, "you know, I would understand if the police had shot
 4 us not before we reached the path." And by that he meant
 5 this, he said that these two versions. We say we were
 6 going to Nkaneng. The police say we were attacking them.
 7 And he says the only way he would have determined that, is
 8 what happened when you reached the road, because if you
 9 reached the road, if you are attacking, you're going to
 10 cross the road, obviously, because the police are there.
 11 Whereas if you're going to Nkaneng, when you reach the
 12 road, you're going to turn left? That's – I am
 13 paraphrasing what Mr Magidiwana was saying, when he said, I
 14 would understand if the police had shot us, if we had
 15 crossed the road, then obviously they say, well, these
 16 people are not going to Nkaneng. They're coming to us.
 17 That's another crucial importance of the path. That's why
 18 we are discussing the path. Now and I will accept that you
 19 were not there, but will you accept as well that it is
 20 common cause that these people were shot before the path,
 21 before they reached the path or just before. In fact, some
 22 of them fell just before that. There are pictures and
 23 videos to show that.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek weet nie waar die persone, die sterftes plaasgevind het

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1 in verhouding met die betrokke pad nie. Ek kan net kyk op
 2 210 en dan sien ek net daar, dit lyk of daar liggame lê op
 3 'n groterige pad.

4 MR MPOFU: Yes, no, I accept that, but
 5 you can accept that Mr Magidiwana's undisputed evidence is
 6 that they were shot. That's why he made this long speech
 7 that I've just made to you, is that they were shot before
 8 they reached the path.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter –
 10 MR SEMENYA SC: That version was
 11 disputed, Chair.

12 CHAIRPERSON: What?
 13 MR SEMENYA SC: That version was put in
 14 dispute, Chairman.

15 MR MPOFU: Oh, Mr Ngalwana, I hope he is
 16 here, certainly did not. I don't know who else then did
 17 put it in dispute.

18 CHAIRPERSON: - speak for themselves if
 19 it was disputed.

20 MR MPOFU: Yes -
 21 CHAIRPERSON: We don't have to debate
 22 that now.

23 MR MPOFU: Ja.
 24 CHAIRPERSON: What did you want to ask
 25 him before tea? Have you asked your question, you haven't

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1 got an answer, have you? You better repeat your question.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: And let's get the answer
 4 and then we'll take the tea adjournment.

5 MR MPOFU: Thank you, thank you,
 6 Chairperson. If you assume that the evidence of Mr
 7 Magidiwana that they were shot before they reached the
 8 path, hence what he said about it is either undisputed, or
 9 if it's disputed that it will be accepted. He didn't know,
 10 he must assume.

11 CHAIRPERSON: You can ask the witness to
 12 make that assumption. On the assumption that we find at
 13 the end of the inquiry that what the witness had said, was
 14 correct, that they were shot before they got to the path,
 15 then you're going to be asked a question by Mr Mpofu.

16 MR MPOFU: Then would you or rather, the
 17 statement that – or let me put it this way. Would you
 18 agree that until they had reached the path, it cannot be
 19 said that they were going to Nkaneng as they claim, or
 20 rather, that they were accessing the path for the purpose
 21 of going to Nkaneng, rather than crossing it and attacking
 22 anybody?

23 GENERAAL-MAJOOR ANNANDALE: Ekskuus,
 24 Voorsitter, ek sal moet vra dat advokaat Mpofu dit herhaal.
 25 Die gedeelte wat ek moet -

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1 MR MPOFU: Okay. No, thank you, I
 2 understand, there was an interruption. I'm saying, as the
 3 Chair started the question, if you assume that the evidence
 4 of Mr Magidiwana, that they were shot before they reached
 5 that path, will be accepted, either because it's undisputed
 6 or another reason, then would you agree that their
 7 evidence, his further evidence, Mr Magidiwana, that they
 8 were accessing the path for the purposes of reaching it and
 9 turning left to Nkaneng, and not for the purposes of
 10 crossing it and attacking anybody, is – makes sense in the
 11 light of everyone having used that very same path?

12 CHAIRPERSON: I don't want to stop you
 13 unduly, but isn't this a matter for argument. You're
 14 really putting one of your arguments that you'll put to us
 15 at the end of the Commission, to the witness and asking him
 16 to comment. Well -

17 MR MPOFU: - cross-examination, Chair.
 18 CHAIRPERSON: Well, it's sometimes done
 19 in cross-examination, but also the question is whether
 20 you're prejudiced by not allowing you to put the question
 21 to the witness, but allowing you to argue the point before
 22 the Commission at the end. If this witness has been on the
 23 scene at the time, it would be more, but you know, he's
 24 almost in the position we are in, called upon to make what
 25 amounts to a judgment call on photographs and material,

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1 information given to him by other people. So aren't you
 2 really asking him to –
 3 MR MPOFU: Chairperson, I thought cross-
 4 examination was about putting your version and –
 5 CHAIRPERSON: And you're asking him to -
 6 MR MPOFU: Maybe I'm wrong. Okay.
 7 CHAIRPERSON: You will have the
 8 opportunity to put your case to witnesses who were directly
 9 on the scene. I don't think I'm prejudicing you in any way
 10 by suggesting that you move on, after tea, to the next
 11 point.
 12 MR MPOFU: Yes, Chairperson, I will
 13 oblige, Chairperson, but once again, I must say this,
 14 because I need to emphasise it. I would not be asking this
 15 witness on these issues if he was not led on them, but I
 16 accept what the Chairperson has said and I will move on
 17 after tea.
 18 Thank you.
 19 CHAIRPERSON: You've made the point
 20 already that some of these points he was led on and you and
 21 I had a discussion yesterday. The fact that he's led on
 22 them, doesn't really take it any further. You can always
 23 take the line, I'm not going to cross-examine you on it,
 24 because you have direct knowledge of it. I deal with the
 25 direct witnesses.

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1 MR MPOFU: And we know he wasn't there.
 2 CHAIRPERSON: I'm not to be taken as
 3 having accepted what you say.
 4 MR MPOFU: I accept that, Chair.
 5 CHAIRPERSON: Which you've said over and
 6 over again and you say it again now.
 7 MR MPOFU: I accept that.
 8 CHAIRPERSON: We will take the tea
 9 adjournment.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [11:40] CHAIRPERSON: The Commission resumes.
 12 Generaal-Majoor, u is nog steeds onder eed.
 13 GENERAAL-MAJOOR ANNANDALE: s.o.e.
 14 CHAIRPERSON: Mr Mpofo, you're still
 15 cross-examining, on the last lap now of your cross-
 16 examination.
 17 MR MPOFU: Thank you, Chair. Hopefully,
 18 yes. Chairperson, before I continue with the General, I
 19 hate to be always the bringer of bad news, but I've been
 20 asked to bring to the attention of the Commission that
 21 there are developments in the Marikana area which might
 22 have an indirect effect on our proceedings. The –
 23 CHAIRPERSON: I've read the newspaper
 24 reports and heard the radio reports, and in fact I think I
 25 said yesterday already that I was concerned that the work

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1 of the Commission might well be hampered -
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: - by what's happening.
 4 MR MPOFU: Thank you, Chairperson. Well
 5 effectively what's happening now is we are told that as we
 6 speak here there are about 10 000 people gathered at the
 7 koppie, that tensions are quite high. People did not go to
 8 work this morning, and the indirect effect on the
 9 Commission is that we are advised by the people who usually
 10 come here by using the bus that given the heightened
 11 tensions from the weekend and the killings and what's
 12 happening now, they feel that they are more vulnerable now
 13 as the identifiable group that is travelling to the
 14 Commission, and most of them are on the witness list, which
 15 is the reason why they come here. So as I said it's that
 16 tangential effect and so we are obviously, we're going to
 17 meet with them over lunch and see what advice we can give
 18 as to those who might want to still travel here, or even
 19 those who might want to participate in the strike and those
 20 kinds of things. So I'm just bringing it really just to
 21 say should it – fortunately there are not people that are
 22 going to be called next week or anything like that, but
 23 insofar as it is relevant to the work of the Commission I
 24 thought I should bring it to your attention.
 25 CHAIRPERSON: Thanks for bringing it to

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1 my attention. Looking at the timetable it doesn't look as
 2 if they'll be giving evidence for some time, and one hopes
 3 sincerely that by the time they do come to give evidence
 4 the present problems will be over. There was a previous
 5 approach to the Commission last year in respect of
 6 witnesses in respect of whose safety there were fears and I
 7 drew the attention of the attorneys concerned to the
 8 provisions of the Witness Protection Act, which does deal
 9 with not only witnesses in trials, but also witnesses
 10 giving evidence before commissions. So that machinery and
 11 that protection provided by the act is available, so I'm
 12 not sure that your clients would actually wish to avail
 13 themselves of that at this stage, but it is something to
 14 bear in mind if things get worse and they feel that that
 15 kind of protection is required. But thank you for bringing
 16 it to my attention.
 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 18 Thank you, Chairperson. General, I just want to ask you if
 19 you have copies of the following documents, whether if you
 20 have them or if you've seen them, and if you do whether you
 21 can help us with them. Do you have the JOCOM minutes of
 22 the 17th of August?
 23 GENERAAL-MAJOOR ANNANDALE: 17de, nee,
 24 Voorsitter.
 25 MR MPOFU: Okay, but according to your

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1 evidence there was a JOCOM meeting on that day. Correct?

2 GENERAAL-MAJOOR ANNANDALE: Reg,

3 Voorsitter.

4 CHAIRPERSON: I think they've been handed

5 in as exhibits, have they Ms Pillay?

6 MR MPOFU: No, that's why I'm asking –

7 MS PILLAY: They're not exhibits, Chair.

8 CHAIRPERSON: If they're relevant, I take

9 it they're on the police hard drive, are they?

10 MR MPOFU: It's not. Well, I don't know,

11 Mr Semenya maybe can help us. The witness says there was

12 such a meeting; whether the minute are there, I haven't

13 seen them.

14 CHAIRPERSON: - necessary enquiries have

15 been made on someone's laptop computer and when we have the

16 answer we'll be told. Perhaps you can then move on to

17 something else in the meanwhile, if there is something else

18 you can move on to.

19 MR MPOFU: Thank you, yes. And then also

20 you testified that at the Potchefstroom meeting there was a

21 slideshow and a narrative version thereof. Do you still

22 have copies of those documents?

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

24 die "slideshow" is bewysstuk L, en die narratiewe weet ek

25 is ook ingehandig. Ek weet nie of dit 'n bewysstuk nommer

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1 het nie.

2 CHAIRPERSON: The whole narrative portion

3 is in exhibit L. I don't know, for example if you look at

4 slide 203 for example, and 204, they are narrative portions

5 of exhibit L. I don't know whether that's the narrative to

6 which you're referring, or was there another narrative

7 portion that's not part of exhibit L?

8 MR MPOFU: And sorry, General –

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 nee, daar is 'n totale verskillende dokument, so daar is

11 dit plus 'n totale ander dokument.

12 MR MPOFU: Yes. No, sorry Mr Chairperson

13 –

14 CHAIRPERSON: Mr Mpofo, sorry to

15 interrupt you. I'm not sure that this witness will

16 necessarily be able to help us, but I would imagine that

17 enquiries directed to counsel appearing for the police will

18 produce what you're looking for. I'm not saying the

19 witness doesn't know the answer, but I suspect he may not,

20 but that wouldn't be the end of the search because –

21 MR MPOFU: No, absolutely not, Chair. I

22 accept that, Chairperson. All I want to establish through

23 him is only that their existence exist. We'll obviously

24 approach the legal representatives. Just a last issue on

25 this; I accept that exhibit L is the product of the nine-

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1 day meeting, but I understood your evidence to be that at

2 the beginning of the meeting there was a slideshow and a

3 narrative version, and those are the documents I'm

4 referring to. But as the Chairperson says, we will deal

5 with that with the legal representatives. But am I correct

6 that the narratives and the slideshow was presented at the

7 beginning by Lieutenant-Colonel Scott?

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

9 nee, beide bewysstuk L en die narratiewe was die eindproduk

10 gewees. Dit was nie, voor die tyd was daar nie so 'n

11 pertinente "slideshow" of narratiewe voorgelê nie. Daar

12 was wel foto's gewys en video's wat ek na verwys het.

13 CHAIRPERSON: I take it that means that

14 there are slides that ended up, as the movie producers

15 would say, on the cutting room floor because they didn't

16 make it into exhibit L, and presumably the slides you saw

17 were not only those in exhibit L; you presumably saw some

18 others as well which are not included in exhibit L because

19 they were thought to be superfluous or unnecessary or

20 whatever. Would that be right?

21 GENERAAL-MAJOOR ANNANDALE: Pertinent

22 verwysend na foto's, Voorsitter, ja. Uit die totale foto's

23 beskikbaar was daar sekere foto's gekies wat ten beste die

24 situasie kon illustreer.

25 CHAIRPERSON: I take it Mr Semenya, all

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1 the slides that were seen at Potchefstroom are part of the

2 police hard drive?

3 MR SEMENYA SC: As far as we're

4 concerned, yes Chair.

5 MS JELE: Sorry, Chairperson, just to be

6 of assistance, we do have a document called "Marikana

7 Narratives" specifically. I don't know if that's the

8 document that my learned colleague is referring to. It's a

9 document that's part of the folder "New Stuff from SAPS

10 Final Presentation," and the title of the document is the

11 "Marikana Narrative." It's a PDF document of some 140

12 pages.

13 CHAIRPERSON: Well that's a very helpful

14 comment you made, but I think we can probably sort it out

15 once we've adjourned. It's not necessary for us to spend

16 hearing time on it, but thank you for bringing it to our

17 attention. It's a point to follow up. Mr Mpofo?

18 MR MPOFU: Thank you, Chairperson. Okay,

19 now General, it's correct, isn't it, that you – or rather,

20 the information that you had about the events in respect of

21 which the actual shooting and all that, all the events

22 where you were not present, when you were at the JOC, at

23 the Lonmin JOC, that those events were as reported to you

24 primarily by Generals Naidoo and Calitz. Correct?

25 GENERAAL-MAJOOR ANNANDALE: Hoofsaaklik

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1 die twee betrokke offisiere, maar nie uitgesluit ander nie.
 2 MR MPOFU: Yes. Yes, and knowing what we
 3 know now, General Naidoo would have given you the briefing
 4 mainly about scene 2 and Brigadier Calitz about scene 1.
 5 Correct?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 Naidoo pertinent rondom "scene" 2, maar Calitz in terme van
 8 beide.
 9 MR MPOFU: And it was as a result of
 10 those briefings that you formed the view – secondary as it
 11 is – that both events, in respect of both events the deaths
 12 were as a result of self-defence/private defence?
 13 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 14 Voorsitter.
 15 MR MPOFU: Now the overall commander was
 16 General Mpmembe. That's correct, hey?
 17 GENERAAL-MAJOOR ANNANDALE: Korrek,
 18 Voorsitter.
 19 MR MPOFU: So according to your plan or
 20 planning, General Mpmembe is the person who was scheduled to
 21 give the warning to the protesters as the overall
 22 commander. Correct?
 23 GENERAAL-MAJOOR ANNANDALE: Dis nie
 24 korrek nie, Voorsitter, nee.
 25 MR MPOFU: Well, your evidence - and I'll

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1 get the reference now - is that the overall commander was
 2 going to give the verbal warning. I'll find it just now.
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 nie my getuienis, soos ek dit onthou nie.
 5 MR MPOFU: Okay, and you're also saying
 6 not in your evidence and not in your statement?
 7 GENERAAL-MAJOOR ANNANDALE: Dat Generaal
 8 Mpmembe die waarskuwing sou gee, nee.
 9 MR MPOFU: Okay.
 10 COMMISSIONER HEMRAJ: The warning has
 11 been given by the commander in charge on the field.
 12 GENERAAL-MAJOOR ANNANDALE: Die
 13 operasionele bevelvoerder, Brigadier Calitz, maar nie
 14 noodwendig in persoon hy nie maar onder sy opdrag.
 15 CHAIRPERSON: Unless I've misunderstood
 16 the evidence, I don't see how Major-General Mpmembe could
 17 have done it because most of the time he's in the JOC,
 18 alternatively in a helicopter. Is that correct?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 dis korrek in die geval, maar ook 'n oorhoofse bevelvoerder
 21 gee nie die waarskuwing nie. Dis altyd die operasionele
 22 bevelvoerder wat die verantwoordelikheid het.
 23 MR MPOFU: Yes, well that's exactly the
 24 point that if he was supposed to do that and he was not
 25 even there, then it will show that there was no intention

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1 to do it.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 maar die bedoeling was nie dat die oorhoofse bevelvoerder,
 4 Generaal-Majoor Mpmembe, die waarskuwing moet gee nie.
 5 COMMISSIONER HEMRAJ: General, just to
 6 understand this issue, if the National Instruction 9 of
 7 2011, doesn't that say if the STF is mobilised then the
 8 commander of the STF is the commander in charge of the
 9 scene?
 10 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 11 dit sal slegs wees as hulle uitsluitlik gemobiliseer word
 12 in terme van een van die vier aspekte wat vermeld word
 13 onder (a) tot (d) dink ek, of dan die taking wat die
 14 Nasionale Kommissaris, maar nie in 'n Openbare Orde konteks
 15 nie.
 16 MR MPOFU: Alright, the Potchefstroom
 17 meeting ended on the 6th of September. Correct?
 18 GENERAAL-MAJOOR ANNANDALE: Dit is
 19 korrek, Voorsitter.
 20 MR MPOFU: And is it correct that exactly
 21 one week thereafter General Mpmembe was arrested by the
 22 police?
 23 MR SEMENYA SC: Sorry, what's the
 24 relevance of that, Chair?
 25 CHAIRPERSON: Do you give me the

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1 assurance that this question is relevant? I won't ask you
 2 to say what it is, but as counsel do you give me the
 3 assurance it's relevant?
 4 MR MPOFU: Yes, I do, Chair.
 5 CHAIRPERSON: It's leading somewhere?
 6 MR MPOFU: It is –
 7 CHAIRPERSON: No, you don't have to say
 8 where.
 9 MR MPOFU: It's leading somewhere.
 10 CHAIRPERSON: Alright, you can carry on
 11 for the moment.
 12 [11:59] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 ek is bewus dat daar 'n arrestasie plaasgevind het. Ek
 14 weet nie wat die datum is nie en so ver ek bewus is was dit
 15 deur IPID ondersoekers en nie noodwendig deur die polisie
 16 nie.
 17 MR MPOFU: And since the question of its
 18 relevance has been raised, are you aware whether or not the
 19 arrest had anything to do with the events at Marikana?
 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 as ek reg het dan is dit te doen met beweerde aanranding
 22 van gearresterde persone in 'n polisieel.
 23 MR MPOFU: I think you said "persone."
 24 Are those arrested persons the persons that I act for,
 25 arrested in connection with the Marikana incident on the

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1 16th?

2 GENERAAL-MAJOOR ANNANDALE: Ek kan net

3 aanvaar dit is so. Ek het dit so, ja.

4 MR MPOFU: Okay, do you know of any other

5 member of the police service who since the 16th of August up

6 to now, whether there have been arrests or disciplinary

7 measures taken in respect of the Marikana incidents, apart

8 from that particular arrest?

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 ek is nie seker of daar ander polisiebeamptes ook in

11 dieselfde geval as wat Generaal Mpembe voor gearresteer was

12 ook gearresteer was nie.

13 MR MPOFU: Yes, I accept that. Whether

14 he was arrested alone or with other people, what I'm asking

15 you is do you know if there's been another incident

16 separate from this one in which the police who were

17 involved in Marikana have either been arrested or placed

18 under disciplinary proceedings?

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

20 ek is nie pertinent bewus nie.

21 CHAIRPERSON: I would imagine this

22 information, insofar as it's relevant, you can obtain from

23 the counsel for the police. I don't see why it's necessary

24 for you to ask this witness, but I'm not stopping you for

25 the moment, but I'm just suggesting to you that if this

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1 information is relevant you can obviously obtain it through

2 the police and it can be put before us if necessary by way

3 of some kind of admission.

4 MR MPOFU: Well, maybe let me then put it

5 more forthrightly. I'd like you to comment, that one of

6 the criticisms that we're going to place on the police is a

7 matter that we have, that was certainly raised with the

8 National Commissioner and I know it was raised by this

9 Chairperson with you, namely that the attitude that no

10 proceedings, internal or external, should be taken awaiting

11 the outcome of the Commission, can have disastrous

12 consequences. Would you agree with that?

13 CHAIRPERSON: - say no proceedings, but

14 the point I raised was no –

15 MR MPOFU: Remedial –

16 CHAIRPERSON: - if they've learned from

17 what happened -

18 MR MPOFU: Yes.

19 CHAIRPERSON: - mistakes that were made,

20 obviously they must put in place measures to avoid the

21 recurrence or repetition of those mistakes.

22 MR MPOFU: Ja, no fair enough.

23 CHAIRPERSON: They can't just wait until

24 we've given our report.

25 MR MPOFU: Yes.

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1 CHAIRPERSON: And I understood the

2 witness to agree with that –

3 MR MPOFU: Yes.

4 CHAIRPERSON: - to say that some he was

5 already busy with, or that the police were busy with.

6 MR MPOFU: No, thank you –

7 CHAIRPERSON: That it's not proceeding

8 with actually that –

9 MR MPOFU: Ja, that's correct. Okay –

10 CHAIRPERSON: It's more the point of

11 measures –

12 MR MPOFU: Yes, okay. Forget what the

13 Chairperson said. I'm saying it to you. Ja, we had the

14 reference to the Chairperson. I'm saying to you that would

15 you agree that in addition to not implementing the

16 learnings, that the failure of the police to take action -

17 criminal or departmental – against, or rather in respect of

18 the Marikana incident, given for example what we know now,

19 that there are people at that same koppie, might have

20 disastrous consequences in the sense that some of the

21 people who might have been deterred by those actions might

22 well be deployed this afternoon to the same place?

23 CHAIRPERSON: Mr Semenya.

24 MR SEMENYA SC: Chair, we are not aware

25 of any prima facie evidence justifying departmental

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1 disciplinary steps or criminal prosecution.

2 CHAIRPERSON: That's not an objection to

3 the question. The real objection to the question is one

4 that I think you should consider and that is while you were

5 away a point was raised by your colleague Mr Ntsebeza when

6 he was questioning the National Commissioner, and she said

7 that disciplinary steps, or contemplated disciplinary steps

8 or criminal steps against members of the force – sorry, I

9 beg their pardon for the moment – service, really have to

10 be initiated by IPID. She said "IPID polices us." So as I

11 understood the evidence, and as I understand the act since

12 we then looked at during the adjournment, the initiative

13 for taking criminal steps against members of the service is

14 taken by IPID. In other words, the police don't

15 investigate themselves; that is in the hands of IPID and

16 IPID in fact were called in, as I understand it, on the 16th

17 when the dust had settled. So I'm not sure that it's an

18 appropriate question to ask the witness or suggest to the

19 witness that the police should have taken steps. Any steps

20 that were taken or should have been taken would have been

21 in the hands of IPID, so I think the question may need to

22 be reformulated in the light of that.

23 MR MPOFU: Alright. Are you aware that

24 IPID, the self same IPID initiated investigations in which

25 they took statements from the people I represent, but that

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1 did not stop them from being charged with among other
2 things murder and all sorts of things?
3 CHAIRPERSON: Mr Mpofu, I don't want to
4 stop you but I don't understand the relevance of that
5 question. The people to whom you are now referring were
6 not members of the police, so they weren't subject to the –
7 as I understand it – to the investigatory powers of IPID,
8 which investigates potential prosecutions in respect of
9 criminal offences by members of the service, and also in
10 respect of disciplinary proceedings. You are asking a
11 question now about people who weren't subject to the
12 jurisdiction of IPID, namely your clients, who despite the
13 fact that they made statements to IPID, have subsequently
14 been charged. I think some of them were already under
15 arrest on particular charges. But I don't understand the
16 relevance of that for the matters that we have to
17 investigate.

18 MR MPOFU: Well, the relevance of that is
19 that whatever the justification, Chair, I'm not interested
20 in the red tape but the reality of the situation is that we
21 are sitting here as South Africans with a situation where
22 the people that I represent, despite their interactions
23 with IPID, were kept in cells, allegedly tortured, and
24 charged, whereas as we are sitting now about 10 months
25 later after the incident, for whatever red-tape reason the

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1 persons similarly investigated for the same incident are
2 "upholding law and order" as if nothing has happened.
3 CHAIRPERSON: Isn't that a question that
4 should really be asked, if it's relevant, to IPID? If IPID
5 investigated and found no prima facie evidence against the
6 police, it may or may not be a basis for criticism of them.
7 If they did find evidence prima facie of criminal conduct
8 by the police or conduct which justifies disciplinary
9 proceedings, then one would have expected them to have
10 taken the necessary steps. But I don't see how this
11 witness can answer for IPID's actions or omissions. The
12 fact that your clients are still – I don't think it's
13 actually indictment, they're still subject to pending
14 criminal proceedings, flows from the fact that they were
15 arrested in respect of alleged criminal offences. Their
16 trials have, we understand it, been not proceeded yet, and
17 I take it no basis has been put to the prosecution
18 authorities as to why the charges should be withdrawn.
19 Whether there was torture, that really calls to be a
20 subject of another matter and from you say it appears that
21 IPID did take action, did investigate, and in fact not only
22 caused criminal charges to be accepted, but presumably
23 applied for warrants of arrest for inter alia General
24 Mpembe, and he was arrested. So that aspect has been dealt
25 with, but my difficulty is I don't understand how any

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1 answer the witness can give to the questions you've asked
2 is going to assist us as Commissioners in answering the
3 points that arise for report under the Terms of Reference.

4 MR MPOFU: Okay, fine, Chairperson.
5 Well, he was part of the decision that resulted in the
6 arrest of the one group and not the other, but be that as
7 it may, I'll –

8 CHAIRPERSON: How is this witness part of
9 the decision which led to the arrest of the one and not the
10 other? He may well have been -

11 MR MPOFU: According to the minutes –

12 CHAIRPERSON: You know, he may well have
13 been a party to the decision to arrest the one, as you put
14 it, in other words, your clients.

15 MR MPOFU: Yes.

16 CHAIRPERSON: But he could not have been
17 properly a party to any decision to arrest or not to arrest
18 any members of the police service who would be subject to
19 IPID, and he would have no authority at all and if he tried
20 to tell IPID what to do he might well find himself at the
21 receiving end of disciplinary proceedings because it would
22 be an improper intervention into the affairs of IPID, which
23 is intended to be an independent body.

24 MR MPOFU: Ja, well that's not what I
25 said. I said he was part of the reason for the arrest of

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1 the one group. That's exactly the point I'm making, but
2 I'll move on to something else.

3 COMMISSIONER HEMRAJ: Mr Mpofu, your
4 complaint is that those cases where your clients are
5 complainants, those have not resulted in any investigations
6 leading to arrest?

7 MR MPOFU: Yes, that's the point, but
8 also the point is that the one, at least my clients were
9 arrested. Once again the "complainant" would have been
10 people like him because at least when we went to court it
11 was General Van Zyl, who was part of his team, who
12 testified and justified, and in part of the justification
13 he used material from the JOC, where this witness was
14 sitting. But I'll leave it.

15 CHAIRPERSON: - not understand the
16 relevance of the questions as asked of this witness. There
17 are a number of issues which have to be decided, not
18 necessarily by the Commission but they certainly have to be
19 decided, particularly in relation to the charges against
20 your clients, but I'm not sure that –

21 MR MPOFU: Okay, Chairperson, I –

22 CHAIRPERSON: - it's relevant at this
23 stage of this witness.

24 MR MPOFU: Ja, well once again I'll move
25 on, but the relevance of the question is that from what

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1 I've said it would seem that there are certain rules for
2 ordinary people and other rules for the police, who are
3 both in terms of IPID statements at least described as
4 murder suspects at the minimum, because all the statements
5 that are in the IPID statements put your name and what have
6 you, constable so-and-so, and under that other block it
7 says "murder suspect" and those people are roaming the
8 streets, enforcing so-called law and order.

9 CHAIRPERSON: You know, people could be
10 murder suspects but if the investigations don't produce
11 evidence which amounts to a prima facie case, then the
12 prosecution authorities don't charge them. So, but it's
13 not our -

14 MR MPOFU: Yes, and in our case they had
15 a prima facie case of 34 murders?

16 CHAIRPERSON: It's not our function -

17 MR MPOFU: Really.

18 CHAIRPERSON: - to tell the prosecution
19 authorities at this stage what to do. We may make
20 recommendations to them in our report.

21 MR MPOFU: Fine. Okay. General -

22 COMMISSIONER HEMRAJ: Mr Mpofu, have any
23 -

24 MR MPOFU: Sorry, Commissioner.

25 COMMISSIONER HEMRAJ: Have any enquiries

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1 been addressed in regard to these cases, these
2 investigations where your clients are complainants, have
3 any enquiries been addressed to the offices of the Director
4 of Public Prosecutions?

5 MR MPOFU: Yes, actually their release
6 was the result of our intervention because what happened is
7 when Brigadier Van Zyl and the prosecutor suggested that
8 they should not be given bail because the offences are
9 under schedule 6, we then said well, what is the offence.
10 Then they said it's murder. Then we said well, give us the
11 list of the deceased, and they gave us the 34 people,
12 including Mr Noki and others, and it was as a result of
13 that that we then wrote to the National Prosecutor, the
14 President, the Minister of Justice, and so on, and as a
15 result of that then the charges of murder were
16 provisionally withdrawn, not totally withdrawn, but the
17 other charges are still hanging over their heads, including
18 in a way the murder charges are half hanging over their
19 charges.

20 CHAIRPERSON: The charges that are still
21 hanging over their heads, what are they?

22 MR MPOFU: Well, the ones of half hanging
23 is murder -

24 CHAIRPERSON: That has provisionally been
25 withdrawn. No, I'm talking about the ones that have not

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1 been withdrawn provisionally or otherwise.

2 MR MPOFU: Yes, the other one is public
3 violence, which is also strange because there was no public
4 there, but the other one -

5 CHAIRPERSON: No, no, no. No, no, the
6 definition of the offence "public violence" might well be -
7 I'm not saying it is - might well be covered by the event,
8 but we won't go there -

9 MR MPOFU: It's not. I've checked. It's
10 not, but let's not debate it now, Chairperson. It's
11 definitely not. It's a wayward charge, and then the other
12 one is under the Illegal Gatherings Act, which is also
13 unfounded because as we know the attendance of such a
14 gathering is not an offence, but I don't want to bore you
15 with our defences. Then the one that is - oh, and then
16 there's one of, under the Dangerous Arms Act, which is
17 ridiculous because no individual was identified with any
18 act - rather, particular weapon. But the charges are
19 hanging over their heads nevertheless.

20 Chairperson, can we move - thank you, General,
21 I'll move on to something else. This is a point probably
22 in your favour, but I just want to clarify this. There is,
23 to put it mildly, confusion in the statements as to whether
24 what Mr Mathunjwa reported after the visit to the koppie on
25 the 15th was an undertaking or a promise that the people

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1 would disarm, or that he would go back at 9 o'clock and
2 persuade them to disarm. Believe me, I've done an
3 analysis; I can tell you there are X-number of people who
4 believe in the one version and the others who believe in
5 the other version. All I want to establish is that you at
6 least -

7 CHAIRPERSON: He said in chief that he
8 could not say there was a promise that Mr Mathunjwa -

9 MR MPOFU: Yes, that's what I want to
10 confirm.

11 [12:19] CHAIRPERSON: He already said that in
12 chief, that he does not say and he cannot say that Mr
13 Mathunjwa promised that the arms would be laid down the
14 next morning. He most he can say was that he appeared to
15 be confident - I think I used the word "overly," with which
16 he agreed - he appeared to be confident that he would be
17 able to persuade them. That was his evidence-in-chief. I
18 don't know whether you want to take it further than that.

19 MR MPOFU: I do. Given what you know and
20 what the Chairperson has said, would you then say that
21 those people who belong to the other camp that says Mr
22 Mathunjwa made a firm undertaking are wrong and mistaken,
23 or is it another combo?

24 GENERAAL-MAJoor ANNANDALE: Voorsitter,
25 ek het gesê dat dit was nie 'n belofte nie, maar my

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1 interpretasie was dat dit waarskynlik gaan gebeur in terme
 2 van die besprekings wat ons gehad het selfs oor die detail
 3 van die ontwapening.
 4 MR MPOFU: Ja, but your counsel said it
 5 was a promise, so someone must have said to him it was a
 6 promise.
 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 8 ek dink dis 'n kwessie van interpretasie. Die woord "ek
 9 belowe," "I promise" was nie in my teenwoordigheid aan my
 10 gemaak nie.
 11 CHAIRPERSON: Mr Mpofu, if you look at
 12 paragraph 15 of the witness's statement, exhibit GGG1,
 13 you'll see the way he put it, that Mr Mathunjwa indicated
 14 that he convinced that the group will lay down their arms,
 15 their weapons, on Thursday, 16 August, when he will address
 16 them again at 9 o'clock.
 17 MR MPOFU: I accept that, Chairperson.
 18 That's why I'm saying he belongs to that camp.
 19 CHAIRPERSON: But that's been his
 20 evidence from the beginning. Other people talk about a
 21 promise, but I take it they must be asked why they said it,
 22 in the light of –
 23 MR MPOFU: No, Chairperson –
 24 CHAIRPERSON: - in the light of what the
 25 evidence is, I think even the transcript of what Mr

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1 Mathunjwa said. I don't see how this witness can help us.
 2 His evidence goes as far as it goes. You can ask the other
 3 people when they come how they interpret it differently,
 4 but surely he can't say how they interpret it differently,
 5 can he?
 6 MR MPOFU: Alright. Anyway General, we
 7 spoke I think on the first day a lot about what I regarded
 8 as the lost opportunity for a peaceful resolution in
 9 respect of Mr Mathunjwa's intervention. So I don't want us
 10 to go back there. What I want to ask you is that we're
 11 going to argue that there was yet another lost opportunity
 12 for a peaceful resolution as presented by Bishop Seoka.
 13 Firstly, were you aware of his intervention? If so, what
 14 role did you play, if any?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek het nie die biskop ontmoet nie. Ek het geen interaksie
 17 met hom gehad nie. Ek het verneem dat daar, ek dink tussen
 18 hom en Generaal Mbombo, as ek dit nie mis het nie, was daar
 19 interaksie gewees en dan ook tussen hom en ek dink van die
 20 Lonmin verteenwoordigers.
 21 MR MPOFU: And is it also correct that
 22 you have said that you may be many things, but a POP expert
 23 is not one of them?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 dis korrek. Ek het my nie voorgehou as 'n POP kundige nie,

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1 of 'n OOP kundige nie.
 2 MR MPOFU: And yet you were, depending on
 3 which version one believes, second in command, or third in
 4 command on a POP operation. Correct?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 nee, ek het telkens verwys dat dit 'n hibriede situasie
 7 was. Dit was nie 'n suiwer Openbare Orde situasie nie.
 8 MR MPOFU: Yes well, you are partly
 9 responsible for that broadening insofar as you brought in
 10 the Special Task Force, which the Special Task Force by the
 11 way has escaped the demilitarisation description. They're
 12 still called a force. Correct?
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 die situasie het hom sodanig verleen vir die ontplooiing
 15 van addisionele eenhede, soos ek reeds verduidelik het, en
 16 die naam is Spesiale Taakmag, Special Task Force.
 17 MR MPOFU: Yes, what was your rank on the
 18 30th of September 2012?
 19 GENERAAL-MAJOOR ANNANDALE: Generaal-
 20 Majoor.
 21 MR MPOFU: Okay, it's the current rank.
 22 When did you acquire that rank?
 23 GENERAAL-MAJOOR ANNANDALE: 1ste Augustus
 24 2012.
 25 MR MPOFU: Okay, sorry, that's my fault.

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1 I got dyslexic. What I wanted to ask you is what was your
 2 rank on the 31st of July 2012?
 3 GENERAAL-MAJOOR ANNANDALE: Brigadier,
 4 Voorsitter.
 5 MR MPOFU: So when you tracked to
 6 Marikana from Pretoria you had been a general of one week
 7 standing?
 8 CHAIRPERSON: I think you're not only – I
 9 won't repeat what you said, but not only do you have the
 10 problem that you mentioned earlier, your mathematics isn't
 11 very good either, because he'd been a major-general for
 12 just under two weeks.
 13 MR MPOFU: Yes, less than two weeks, more
 14 than a week, whichever way – is the glass half full or half
 15 empty. Were you a general for just more than a week?
 16 GENERAAL-MAJOOR ANNANDALE: Vir 12 dae.
 17 MR MPOFU: So just to get the picture
 18 correct, here you were a general of 12 days' standing, and
 19 somehow you, because the other two persons, one had gone to
 20 the hospital allegedly, and the other one was in the Lonmin
 21 chopper. So effectively when the people were shot it was
 22 left, you were the effective person in the JOC, the highest
 23 leader of the operation available?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek sal graag wil twee aspekte meld rondom die vraag. Ek

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1 het die pertinente funksies van die Komponenthoof
 2 Gespesialiseerde Operasies reeds vervul vanaf die 26ste
 3 Oktober 2011. Voorsitter, en dan die JOC was dan die tyd
 4 wat Generaal Mpembe in die lug was, was beide myself en
 5 Luitenant-Generaal Mbombo by die JOC teenwoordig.
 6 MR MPOFU: So was General Mbombo at the
 7 JOC when the people were killed, in your estimation?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ek weet nie of sy binne die JOC of buite die JOC was nie.
 10 Ek weet Generaal Mbombo het, was telkens was sy buite die
 11 fisiese vertrek gewees, so ek weet nie op die betrokke
 12 stadium of sy binne of buite was nie.
 13 MR MPOFU: Yes, accepting that she would
 14 walk in and out, when the people were killed, was she in
 15 the vicinity of the JOC?
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ja die pertinente tye soos ons nou weet toneel 1 en toneel
 18 2 was sy dan of binne-in die JOC of dan buite die JOC
 19 gewees, maar in die nabye omgewing van die JOC.
 20 CHAIRPERSON: Mr Mpofo, in the hopes of
 21 shortening the discussion, if you look at exhibit GGG5,
 22 which is Lieutenant-General Mbombo's statement, you'll see
 23 in paragraph 19.5 she says that she returned, she said she
 24 left the JOC after the 13:30 meeting and then she came
 25 back, she says, at about 15:20. She says, "I returned to

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1 the JOC where I was advised that the dispersal, disarming,
 2 and arresting process is unfolding," and she doesn't say
 3 she left. She therefore we can assume that from, according
 4 to her from 15:20 she was either in or near (as they say in
 5 the charge sheets) the JOC.
 6 MR MPOFU: Now I'm sure you followed some
 7 of the discussions that took place yesterday, or that you
 8 know of at least – well, you definitely know from the
 9 statement, our opening statement, that one of the issues
 10 that we referred to is the relationship between Lonmin and
 11 SAPS as having been, had a causal effect, or we call it a
 12 toxic relationship, so a death-causing effect as it were.
 13 That's just our version. What I want to know from you is
 14 that at least what you are aware of is that the National
 15 Commissioner on the 13th appealed for a partnership – that's
 16 what she chose to call it – a partnership between Lonmin
 17 and SAPS. Is that correct?
 18 GENERAAL-MAJOOR ANNANDALE: Soos u dit
 19 parafraseer is dit sekerlik redelik korrek.
 20 MR MPOFU: Yes, and that partnership, or
 21 "samewerking" I think is what you called it, manifested
 22 itself in many ways, including for example Mr Sinclair,
 23 Graham Sinclair being installed as the liaison person to
 24 manage the partnership. Correct?
 25 GENERAAL-MAJOOR ANNANDALE: Hy was die

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1 skakel, kom ons noem dit die skakel tussen die polisie en
 2 Lonmin.
 3 MR MPOFU: And it also involved a
 4 partnership in respect of the identification of individuals
 5 who were suspected and information in relation thereto.
 6 Correct?
 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 8 daar is 'n verantwoordelikheid - dit was, het te doen gehad
 9 met ondersoeke, so daar is 'n verantwoordelikheid op
 10 persone om samewerking te gee aan die polisie, en dit was
 11 dan ook sodanig versoek aan Lonmin en ek dink dit was ook
 12 tussen Generaal Mpembe en verteenwoordigers was daar dan
 13 gekyk na die identifikasie van potensiele betrokkenes.
 14 MR MPOFU: Yes. No, that's exactly the
 15 point. The Lonmin management gave their commitment in
 16 terms of that they will provide the assistance if they
 17 know, if they have information in terms of individuals
 18 involved they will obviously share it with the police in
 19 pursuance of this partnership. Correct?
 20 GENERAAL-MAJOOR ANNANDALE: Dit is
 21 korrek.
 22 MR MPOFU: And it also involved the
 23 establishment and the use of the, what is known as the
 24 Lonmin JOC, in other words the mere fact that the police
 25 JOC was located within the premises of Lonmin. Correct?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 dit was 'n polisie JOC maar dit was gesetel op die gronde,
 3 of in die fasiliteite van Lonmin.
 4 [12:39] MR MPOFU: Yes, but it was commonly known
 5 among the police as the Lonmin JOC. Correct?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek weet nie. Dit was die polisie JOC. As ek verwys het
 8 daarna, het ek verwys na die JOC.
 9 MR MPOFU: Okay, look, I don't want to
 10 belabour the point, but I'll read you a statement of – I
 11 won't even put it in as an exhibit because there are too
 12 many examples of this, but a statement of Amanda Van Der
 13 Merwe who is a Lonmin employee. She said, "I was in charge
 14 of managing Lonmin's joint operation centre, Lonmin JOC,"
 15 and then various other policemen referred to the JOC as the
 16 Lonmin JOC –
 17 CHAIRPERSON: You say "various other
 18 policemen." She doesn't sound like she's from the police –
 19 MR MPOFU: Okay, sorry, yes, yes, no I'm
 20 sorry. Various policemen, I mean it's all over the
 21 documentation, referred to – maybe I was over exaggerating
 22 when I'm saying commonly, but let's just say some people
 23 refer to it as the Lonmin JOC.
 24 MR BURGER SC: No, Amanda refers to a
 25 Lonmin JOC. That's different from the SAP JOC.

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1 MR MPOFU: Okay, fine. Did anyone, any
2 policeman not commonly refer to the JOC as the Lonmin JOC,
3 that you're aware of?
4 CHAIRPERSON: Sorry, Mr Mpofo, I think
5 you have to frame the question differently in the light of
6 the point Mr Burger has made. It appears as if –
7 MR MPOFU: I have just done that.
8 CHAIRPERSON: No, no, I'm not sure you
9 did. It appears that there were two JOCS. There was a
10 Lonmin JOC and there was the police JOC which was situated
11 on the Lonmin premises. Now you are asking about the,
12 you're just asking about the JOC. It's not clear which one
13 you're referring to. The question is whether the police,
14 any members of the police service referred to the police
15 JOC as the Lonmin JOC. That's the question –
16 MR MPOFU: Okay, well then –
17 CHAIRPERSON: I don't know what the
18 answer is, but that's the way the question –
19 MR MPOFU: Ja, then Chairperson, I'm
20 afraid then we might have to hand in the statement. Listen
21 to this; this is what Amanda Van Der Merwe says. "Although
22 the JOC was a Lonmin setup and run centre, the South
23 African Police Service started using these facilities
24 together with Lonmin once their presence on the mine
25 increased." Was that your experience? In other words, it

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1 was the same place?
2 MR BURGER SC: Chair, if I may assist,
3 there's a complex of buildings and part of the complex was
4 occupied by Lonmin and they used that as their headquarters
5 during the incidents. Then there was a major thatched-
6 covered area which was the police JOC. It was on the
7 Lonmin property, but as I understand the statement by Ms
8 Amanda Van Der Merwe she refers to that component which was
9 the Lonmin JOC. The debate starts with my learned friend
10 putting that it was generally amongst the police to refer
11 to their JOC as the Lonmin JOC. Now I wonder what the
12 factual basis for that is?
13 CHAIRPERSON: Mr Mpofo says he has some
14 statements by members of the police service who so describe
15 it, and if he's correct in that then that's a proper
16 question.
17 MR MPOFU: Chairperson, simply because I
18 don't have those statements at hand now, all I want to rely
19 on is what Van Der Merwe says here, and for the –
20 CHAIRPERSON: Read it to me again. I
21 thought I –
22 MR MPOFU: "Although the JOC was a Lonmin
23 setup and run centre, the South African Police Service
24 started using these facilities together with Lonmin once
25 their presence on the mine increased." Was that what

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1 happened? Chairperson, sorry, she goes on, "As a result of
2 the SAPS presence I (the Lonmin employee) was afforded
3 access to the SAPS radio and I was instructed by Graham
4 Sinclair to log the various reports received on the SAPS
5 radio, as well as the calls made directly to Lonmin's
6 crisis centre on the log sheet."
7 CHAIRPERSON: I hear that. It does seem
8 though from what the witness has said, that he didn't
9 understand it that way. You could ask him a few more
10 questions to sort of tidy up the point, as it were –
11 MR MPOFU: Okay.
12 CHAIRPERSON: But it sounds as if these
13 are questions that should be directed to other witnesses
14 and not to him. But anyway, ask a few more questions first
15 just to –
16 MR MPOFU: Yes.
17 CHAIRPERSON: - so we can get as much
18 information from him on the point –
19 MR MPOFU: Okay, alright. Fine. As one
20 of the manifestations of this partnership, you can't
21 dispute that at some stage there was a JOC jointly used by
22 the police and SAPS and with access to police radios by
23 Lonmin staff?
24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
25 ek dink op die Sondag die 12de, as ek dit nie mis het nie,

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1 ek dink 18:00, het die polisie – en ek weet nie of dit
2 Generaal Mpmembe of Brigadier Calitz of Generaal Mbombo was
3 nie, maar ek dink Generaal Mbombo het opdrag gegee, maar
4 het hulle 'n JOC gestig en die JOC was gestig gewees in die
5 Lonmin JOC. Kom ek verwys daarna na 'n radiokamer.
6 CHAIRPERSON: It was a radio room. So it
7 sounded as if the Lonmin already had a JOC. It was a radio
8 room and the police established a JOC there on the Sunday
9 night at 6 o'clock. That's what he said, established a
10 police JOC in the Lonmin JOC. The Lonmin JOC consisted of
11 a radio room. That's my understanding of what he's saying.
12 Is dit reg, Generaal-Majoor?
13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
14 dis reg, ja. Ons het basies 'n lessenaar, soos ek dit
15 verstaan, gekry en daar het ons ons radio gehad en daar het
16 ons 'n voorvalleboek bygehou so deur 'n radio-operateur van
17 die polisie.
18 CHAIRPERSON: - put our radio there, and
19 an occurrence book. What happened after that, after the
20 evening of the 12th?
21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 dan deur die Maandag die 13de, en ek weet nie op watter
23 stadium nie, is daar dan toe 'n aparte fasiliteit
24 beskikbaar gestel vir die polisie wat hulle hul eie JOC
25 losstaande van die radiokamer, of die Lonmin JOC, hoe ons

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1 ook al daarna wil verwys, kon vestig. Maar Lonmin het nog
2 steeds voortgegaan met hulle eie JOC, net soos hulle was.
3 Ons het net verhuis. Ons het uitgetrek en ons het na ons
4 eie fasiliteit beweeg. Dit was dan in die fasiliteit wat
5 die Nasionale Kommissaris eers vergader het met die
6 offisiere die aand. Toe het sy geskuif van die fasiliteit
7 na 'n ander fasiliteit vir die vergadering met Lonmin, en
8 toe teruggekeer weer na die polisie JOC fasiliteit toe.

9 MR MPOFU: Ja, okay, let's accept –

10 GENERAAL-MAJOOR ANNANDALE: Net 'n laaste
11 opmerking, jammer Voorsitter, jammer. So as 'n persoon of
12 persone verwys het na Lonmin JOC aanvaar ek het hulle na
13 die oorspronklike fasiliteit van Lonmin verwys en nie na
14 die polisie JOC nie.

15 MR MPOFU: Ja, well the sum total is that
16 at some stage Lonmin and SAPS used the same facility and at
17 another stage the two facilities were separated, but they
18 were both situated at the Lonmin premises. Is that
19 correct?

20 GENERAAL-MAJOOR ANNANDALE: Dit is
21 korrek, Voorsitter.

22 MR MPOFU: And also that even, or at
23 least let's say by the 14th, even when the separation had
24 happened the police radios that had been issued to Lonmin
25 staff were still being used by them.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 ek is onder korreksie, maar die CCTV monitering vind plaas
3 in die Lonmin JOC.

4 CHAIRPERSON: He said the CCTV monitoring
5 was taking place in the Lonmin JOC. In other words someone
6 was sitting in the Lonmin JOC, looking at all the TV
7 screens, seeing what the CCTV was showing. I think that's
8 –

9 MR MAHLANGU: From inside the Lonmin JOC.
10 VOORSITTER: Ja, verstaan ek korrek wat u
11 gesê het?

12 GENERAAL-MAJOOR ANNANDALE: Heeltemal
13 korrek. Daar is later, ek dink op die Woensdag was daar 'n
14 skakel deurgetrek na die polisie JOC waar daar dan nou een
15 monitor was dat ook van die kameras dan kon gemoniteer
16 word.

17 CHAIRPERSON: I understand that the
18 witness – sorry, I understand Mr Mpofo's point is that
19 radio equipment belonging to the police was in the Lonmin
20 JOC. That's the question he asked you. Did I
21 misunderstand you?

22 MR MPOFU: No, Chair. Yes, well the
23 earlier question was that they were both situated within
24 Lonmin premises, to which he said yes. The follow-up
25 question was despite that separation, the police radio

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1 issued to Lonmin staff was still in their possession,
2 wherever they were. Whether they were at Lonmin or at
3 home, I don't know, but that they were still in possession
4 of SAPS radios.

5 GENERAAL-MAJOOR ANNANDALE: Ek probeer
6 nog daar uitkom, Voorsitter. Ek probeer nog die pertinente
7 vraag antwoord. Ek het nog nie daarby uitgekome nie. Ek sé
8 soos ek verneem het was daar dan 'n radio beskikbaar gestel
9 in die Lonmin JOC vir die monitering van die gebeure sodat
10 as daar pertinent 'n CCTV in die betrokke omgewing is waar
11 daar dan nou opgemerk word in terme van die gesprekke van
12 die polisie –

13 MR MAHLANGU: So that if there was a CCTV
14 in the vicinity –

15 CHAIRPERSON: No, no, it's the other way
16 around. He's saying that if there wasn't a CCTV camera in
17 the vicinity where something was happening which is being
18 discussed by the police on the radio, I think that's what
19 he's saying. Is dit korrek?

20 GENERAAL-MAJOOR ANNANDALE: Dis reg, dat
21 hulle dan daardie beelde kan addisioneel en dit dan onder
22 ons aandag bring in terme van addisionele informasie.

23 MR MPOFU: Okay, I'll take that as a yes,
24 they had those radios, but you are probably just giving us
25 the reason why they had the radios.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 'n radio, enkelvoud.

3 MR MPOFU: Okay, let me just assist you.
4 I promise, Chair, this was not intended. This statement
5 was meant, I was just meant to use it as a reference, but
6 at this rate we're going to have to have it handed up as an
7 exhibit, so copies will be made during the lunch. It's a
8 statement of Amanda Van Der Merwe, 21 – or rather GGG23 I
9 think. 23, yes.

10 CHAIRPERSON: Exhibit GGG23 will be the
11 statement by Amanda Van Der Merwe.

12 MR MPOFU: Yes, it comes from the Lonmin
13 bundle, volume 1, page 216A to 216B. It's just a two-page
14 statement. I'll just read a section which you – if you
15 need the full statement we'll organise that we get it, but
16 you should be able to answer from this. She says, after
17 explaining why she had the radio, "On 14 August 2012 at
18 14:22 SAPS reported and I recorded that there were
19 approximately 2 000 persons at the koppie and that they
20 needed instructions on 'whether or not they should shoot at
21 the mob.' This report came via SAPS radio and I recorded
22 it on the log sheet as I was instructed to do. I
23 understood this to mean that the SAPS had requested
24 authorisation from the Commissioner to use water cannons,
25 rubber bullets, and the like, to disperse the crowd. The

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1 subsequent report at 15:50 on the same day was also
 2 received," sorry, this is now paragraph 7, the last
 3 paragraph, "was also received via SAPS radio. Information
 4 was that SAPS was planning to 'go into the mob.' I
 5 assumed, although I did not know, that the SAPS would try
 6 to disperse the mob on that day." And I'm not –
 7 CHAIRPERSON: Did I hear you, is that the
 8 14th?
 9 MR MPOFU: 14th, ja. I'm not asking you
 10 about the contents of the statement at this stage. We'll
 11 ask other people, or even Ms Van Der Merwe. All I'm saying
 12 is that this confirms that she got this information that
 13 she's talking about because she was in possession of the
 14 SAPS radio, as she had explained. Are you with me?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 maar ek het nie ontken dat daar sodanige radio was nie. Ek
 17 het net gesê nie radio's nie; enkelvoud, een radio.
 18 MR MPOFU: Since you've mentioned it,
 19 fourthly, another manifestation of the partnership was the
 20 joint use of the CCTV material by both Lonmin and the
 21 police. Correct?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 dis korrek. Ons het toegang tot die beelde gehad.
 24 MR MPOFU: And there was also what one
 25 might call the joint deployment of the medical staff which

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1 was at FHA2, if I'm not mistaken, which included the
 2 Netcare staff contracted by Lonmin. Correct?
 3 [12:59] GENERAAL-MAJOOR ANNANDALE: Ek hoor die
 4 tolk het dit reg vertaal, ja, forward holding area 1, not
 5 2, maar daar was –
 6 MR MPOFU: Whichever one.
 7 GENERAAL-MAJOOR ANNANDALE: - personeel –
 8 MR MPOFU: 1 or 2. No, it doesn't
 9 matter, in one of the forward holding areas.
 10 CHAIRPERSON: The actual area, which of
 11 the two it was isn't material for the point you're making.
 12 The point you're making is that the Netcare people who were
 13 contracted to Lonmin were made available to the operation –
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: - on the 16th.
 16 MR MPOFU: Yes, in fact according to your
 17 evidence-in-chief they formed part of what you described as
 18 the, I think the forward operational staff, something like
 19 that. I can't remember the exact expression.
 20 GENERAAL-MAJOOR ANNANDALE: Dit is reg.
 21 Die gekontrakteerde mediese personeel het saam met ons
 22 gewerk.
 23 CHAIRPERSON: Mr Mpofo, it's now 1
 24 o'clock. You did indicate to me you hoped to finish by
 25 half past 1 and I said if that was so I would be prepared

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1 to sit until half past 1 and take the lunch adjournment
 2 then. Do you think you will be able to finish by half past
 3 1? I know it's difficult to predict; you don't know how
 4 long the answers will be and what we call injury time, but
 5 as far as you can see is there a reasonable prospect you'll
 6 be finished by half past 1?
 7 MR MPOFU: There's a reasonable prospect
 8 which I want to –
 9 CHAIRPERSON: Alright, so I think we'll
 10 take a short adjournment now for five minutes and then
 11 we'll carry on if necessary till 25 –
 12 MR MPOFU: Till 25 to 2, yes. Thanks,
 13 Chairperson.
 14 CHAIRPERSON: Alright.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [13:05] CHAIRPERSON: The Commission resumes.
 17 Generaal-Majoor, u is nog steeds onder eed.
 18 CHARL ANNANDALE: s.o.e.
 19 CHAIRPERSON: Mr Mpofo.
 20 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 21 Another, I think the fifth or the sixth manifestation was
 22 that – is it the sixth? - yes, was that Mr Botes about
 23 whom we have heard before and who –
 24 CHAIRPERSON: GGG19.
 25 MR MPOFU: Yes, exhibit GGG19, says at

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1 paragraph 41, and I'm just asking you to check if you're
 2 aware of this or not, "That on the 14th of August an
 3 increasing number of senior police officers had arrived at
 4 the mine. This included a large number of senior police
 5 officers. A request was made by Brigadier Pretorius, who
 6 was as I understood it, in charge of the SAPS JOC, that I
 7 should move to the SAPS JOC on a full-time basis as the
 8 liaison person between the SAPS and Lonmin." And then he
 9 says, "I told her that I could not work in the SAPS JOC
 10 without the CCTV surveillance equipment which was in the
 11 Lonmin JOC." That shows that by then the separation that
 12 you spoke about had happened, and then at 46 he says that
 13 eventually he moved in, ja, but "Once I had moved into the
 14 SAPS JOC permanently, on 14th August there was always a
 15 representative from management on a rotating basis with
 16 me." So that's the important part now, and then the one
 17 that concerns you is paragraph 47. He says, "By the 14th
 18 and in discussions I picked up amongst members of SAPS who
 19 would hold some discussions within my earshot, I was able
 20 to ascertain that consideration was already being given,
 21 particularly in discussions between General Annandale and
 22 Colonel Scott, on how SAPS could best attend to disarming
 23 the crowd on the koppie. I overheard some of the
 24 discussions in this regard. I was though never party to
 25 the discussions." There are two or three things that arise

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1 from there. Once again I don't want to ask you about the
2 contents of what is being discussed, simply to say that
3 there was a permanent representative of management in the
4 SAPS JOC, and that discussions about the operations were
5 conducted within earshot of those people. I'm not going
6 into the gist. Is that how you understood it?

7 GENERAAL-MAJOOR ANNANDALE: Voorster,
8 mnr Botes was daar deur die dag en dan was daar 'n ander
9 verteenwoordiger vir die nagskof, en dan was daar CCTV
10 operateurs gewees, ek dink daar was een, soms twee. Die
11 persoon van bestuur waarna verwys word, daar was nie 'n
12 permanente sodanige persoon nie. Daar het persone gekom en
13 gegaan en in gesprek met mnr Botes.

14 MR MPOFU: Okay, so it was a 24/7
15 permanent presence. Now of course in the seventh place
16 there's the issue that we have dealt with on several
17 occasions, which was the use during the operation of the
18 Lonmin chopper, or Coin Security chopper –

19 MR BURGER SC: Chair, there was no Lonmin
20 chopper. I don't want to keep on objecting to it. We've
21 objected two months ago and I thought my learned friend
22 understand it then. There was a Coin chopper. There was
23 no Lonmin chopper in the air during the period under
24 investigation.

25 MR MPOFU: Once again, General, are you

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1 aware that this chopper was referred to interchangeably as
2 the Lonmin chopper and as the Coin –

3 CHAIRPERSON: I don't want to stop you,
4 but look, Lonmin witnesses will come; you could ask them
5 about the chopper –

6 MR MPOFU: No, I'm talking about the
7 police. It was referred to by the police.

8 CHAIRPERSON: That's a matter, I
9 understand the police may have called it the Lonmin
10 chopper.

11 MR MPOFU: Yes.

12 CHAIRPERSON: That's what appears from
13 some of the statements.

14 MR MPOFU: Yes, it does.

15 CHAIRPERSON: But it doesn't make it the
16 Lonmin chopper, but it may well have been, there may well
17 have been some connection between Lonmin and the Coin
18 Security people. That's something you can probe when
19 people from Lonmin come and give evidence –

20 MR MPOFU: That's common cause, I think.

21 CHAIRPERSON: Yes, so –

22 MR MPOFU: I don't want to probe
23 something that's common cause. All I'm saying is the
24 police referred –

25 CHAIRPERSON: Alright, well just ask him

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1 that quickly.

2 MR MPOFU: Yes. Some members of the
3 police, and once again I won't put it as high as all or
4 common or whatever, but some members of the police referred
5 to that chopper as the Lonmin chopper to your knowledge.
6 Correct?

7 GENERAAL-MAJOOR ANNANDALE: Voorster,
8 ek weet nie hoe polisiemanne daarna verwys nie. Ek kan net
9 vir u vertel my betrokkenheid en wat ek weet van die
10 tjopper.

11 MR MPOFU: Very well.

12 GENERAAL-MAJOOR ANNANDALE: Voorster,
13 mnr De Waal, wie 'n werknemer is van Protea Coin, het vir
14 my gesê dit is 'n tjopper waarmee hy gekom het wat
15 beskikbaar is, 'n Squirrel tjopper. Hy het ook gemeld daar
16 is 'n ander tjopper wat gebruik word deur Protea Coin wat
17 buite, ek dink hy het gesê wat 'n sleutelpunt, tussen
18 sleutelpunte vlieg maar op die buite perimeter.

19 Voorster, dit is wat ek weet van die betrokke tjopper.
20 Ek weet nie hoe daar verwys word deur persone en wat is die
21 basis nie.

22 MR MPOFU: Okay, well I put it to you
23 that the – and I'm afraid I don't have it at hand now, but
24 one of the entries in the OB refers for example to General
25 Mbombo having just left in the Lonmin chopper. I'll find

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1 it, Chair. I have read it to the Commission before, but I
2 don't have it at hand now, but that's not important. The
3 point is there was a chopper offered by, in the same way as
4 the Netcare example by a contractor to Lonmin which was
5 used by the police. Correct?

6 GENERAAL-MAJOOR ANNANDALE: Voorster,
7 ek het getuig dat ek weet van die tjopper, en ek het ook
8 gesê as daar ander persone is wat sodanig daarna verwys het
9 dan is dit waarskynlik so.

10 MR MPOFU: Ja. No, I know your evidence.
11 I was just bringing to your attention that it was so
12 referred to in an occurrence book, but that's not the
13 point. In the eighth place, did the police use a Lonmin
14 employee called George as their interpreter when they were
15 interacting with the protesters?

16 GENERAAL-MAJOOR ANNANDALE: Ek weet nie
17 of die persoon se naam George is nie, maar daar was 'n
18 persoon beskikbaar gestel op ons versoek wat kon in
19 Fanagalo oordrag doen.

20 MR MPOFU: Ja-no, that's fine.

21 CHAIRPERSON: Sorry to interrupt you, Mr
22 Mpofo. My colleague, Commissioner Tokota has found what
23 you were referring to.

24 MR MPOFU: Yes.

25 CHAIRPERSON: If you look at exhibit

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1 FFF25, which is the occurrence register –
 2 MR MPOFU: Oh, yes.
 3 CHAIRPERSON: It's the entries of the 16th
 4 of August. There are two entries that are relevant, 1004,
 5 11:55, and 1005, 12:05. 11:55 says that, "Brigadier
 6 Tsiloane reported that the president of AMCU just left the
 7 base on his own to visit the group at the koppie. He left
 8 the rest of the group of AMCU behind and the Lonmin-branded
 9 Combi with other members of AMCU drove to the koppie." So
 10 they used the Lonmin Combi for AMCU, but then the next
 11 entry is 1005, "Chopper 1 reported that there are other
 12 chopper on air which they don't know. General Mpembe
 13 confirmed that is Lonmin chopper with Provincial
 14 Commissioner General Mbombo, as she is visiting the place."
 15 MR MPOFU: Okay.
 16 CHAIRPERSON: So that's the reference.
 17 MR MPOFU: That's the reference, thank
 18 you. That's what I was looking for, yes.
 19 CHAIRPERSON: It's actually the reference
 20 to the Protea Coin helicopter.
 21 MR MPOFU: It's certainly, yes – well,
 22 it's, ja, it's a reference to the Lonmin chopper, which is
 23 also the Protea Coin chopper. That's the point. It's just
 24 one of those references that is doomed because Mr Burger
 25 last year when I referred to this objected, and I couldn't

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1 find the reference, but that's the reference that I was
 2 referring to, among others.
 3 CHAIRPERSON: Maybe you can move on and
 4 look at something else.
 5 MR MPOFU: Thank you, Chairperson.
 6 MR BURGER SC: I must just say last year
 7 when I objected my learned friend and I discussed it. I
 8 explained the facts to him; he accepted it, and he dropped
 9 the point thereafter.
 10 MR MPOFU: No –
 11 MR BURGER SC: It wasn't that he was
 12 looking for a reference which he couldn't find. I
 13 explained to him that what was referred to as the Lonmin
 14 chopper was not a Lonmin chopper, it was a Coin chopper and
 15 that they had a contract to work for Lonmin, but that they
 16 weren't there at the invitation of Lonmin. He accepted it
 17 then.
 18 MR MPOFU: Well, I still accept it,
 19 Chair. That's why I said to the witness that chopper was
 20 interchangeably referred to –
 21 CHAIRPERSON: I think I understand the
 22 point.
 23 MR MPOFU: Ja.
 24 CHAIRPERSON: This is a helicopter which
 25 is on contract to Lonmin, was therefore loosely called the

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1 Lonmin –
 2 MR MPOFU: Lonmin chopper, ja.
 3 CHAIRPERSON: - helicopter, and the
 4 helicopter that Lonmin had available to it under its
 5 contract with Protea Coin was then used, with Lonmin's
 6 permission obviously, to ferry certain policemen around.
 7 MR MPOFU: Ja.
 8 CHAIRPERSON: That's the point, provided
 9 –
 10 MR MPOFU: Ja, the labelling doesn't
 11 matter –
 12 CHAIRPERSON: That's the point, vir wat
 13 dit werd is. We can now move on to the next one.
 14 MR MPOFU: Thank you, Chairperson. So
 15 there's no difference in my stuff. And then of course on
 16 the 15th when the union presidents were escorted to the
 17 koppie, there were Lonmin executives who travelled with the
 18 police and the so mentioned presidents. I think it was a
 19 Mr Kwadi. Correct?
 20 GENERAAL-MAJOOR ANNANDALE: Korrek,
 21 Voorsitter.
 22 MR MPOFU: And in the ninth place, the
 23 people who were arrested, the people that I represent were
 24 taken from the koppie and they were processed at the Lonmin
 25 number 1 Shaft. Correct?

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1 GENERAAL-MAJOOR ANNANDALE: Dit is
 2 korrek, Voorsitter.
 3 MR MPOFU: And in the tenth place, as you
 4 have already indicated, on the 13th there was a joint
 5 briefing of the National Commissioner by Lonmin and
 6 yourselves. Correct?
 7 GENERAAL-MAJOOR ANNANDALE: Daar was 'n
 8 toeligtig tussen Lonmin en polisiebestuur, dis korrek.
 9 MR MPOFU: In the eleventh place, at the
 10 6AM JOCOM meeting on the 16th one of the attendees was Mr
 11 Botes. Correct?
 12 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 13 Voorsitter.
 14 MR MPOFU: In the twelfth place, and I'm
 15 not sure if you're aware of this, the NUM witnesses
 16 referred to twice a day meetings which were held between
 17 the NUM and the police, and I think Lonmin management. Are
 18 you aware of that? If not, let's move on. Sorry
 19 Chairperson, I think subject to correction by Mr Tip, that
 20 was the evidence of either the late Mr Gegeleza or Mr
 21 Setelele. I've been corrected, it was Gcilitshana, but
 22 let's leave it at what I said. You don't know these
 23 people. Say it's just one of the NUM witnesses –
 24 MR TIP SC: Chair, in any event the
 25 position was corrected that it was Gcilitshana and he made

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1 it clear that he had attended the regular Lonmin security
2 briefings in the morning. That was not a SAPS briefing and
3 that was to report by Lonmin on the events overnight and
4 the like. On some occasions a SAPS officer would attend
5 those briefings, but they were not joint meetings with SAPS
6 per se.

7 MR MPOFU: Okay. Yes, Mr Tip is correct,
8 but that's exactly on Mr Tip's description now, were you
9 aware of SAPS' involvement in such meetings?

10 MR BURGER SC: Then I don't follow the
11 debate. I thought my learned friend was putting indicia of
12 a toxic relationship between my client and the SAPS. Now
13 he's lost me on this one. "I hold a briefing in the
14 morning and NUM people came. At times the police is
15 there." Is this an – does he rely on this for a toxic
16 relationship?

17 CHAIRPERSON: That's one of the indicia
18 upon which he relies –

19 MR MPOFU: Yes.

20 CHAIRPERSON: Let him get it on record.
21 It can be argued later that it's not an indicia that proves
22 anything, if that's what you say. He will say –

23 MR BURGER SC: No, I just don't follow
24 it.

25 CHAIRPERSON: He will say the cumulative

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1 effect of all these things is to show collusion. That's
2 what he's busy doing. He's busy piling up all the factors
3 which will form the basis of his argument at the end. Is
4 that right?

5 MR MPOFU: That's right, Chairperson.

6 All I wanted to ask the witness, if he was aware - if he
7 was not aware, I'll move on – if he was aware and then I
8 was going to go to the toxicity of that arrangement as to
9 whether they were there by invitation of Lonmin or not, but
10 obviously if he was not aware, even that toxic thing
11 doesn't arise. Were you aware of SAPS' involvement in such
12 meetings as described by Mr Tip?

13 [13:24] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
14 ek weet nie watse dag word daar na verwys nie. Ek is net
15 bewus van die interaksie wat Generaal Mpembe gehad het met
16 NUM, AMCU, en dan ook Lonmin se arbeidsverteenvoerders wat
17 ek verstaan teenwoordig was, en dan die 15de die aand wat
18 dit ook met beide unies was. Ek weet nie of daar ander
19 vergaderings was pertinent nie [onhoorbaar] betrokke was
20 nie.

21 MR MPOFU: And in the thirteenth place,
22 and I'm going to stop now, not because there are not other
23 examples but because –

24 CHAIRPERSON: You stop because it's an
25 unlucky number.

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1 MR MPOFU: Because it's unlucky, it's the
2 ominous 13, ja, and the most symbolic of these in terms of
3 significance. It is that when the people were shot, the
4 overall commander, the chief of the JOC was in the Lonmin
5 chopper/Coin chopper, and not at the JOC. Correct?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 ek het gister verwys dat die tjopper, sover ek kan onthou
8 moes in die omgewing van 4 uur opgegaan het en was min of
9 meer seker vir 20 minute in die lug. So as Adv Mpofo
10 verwys na die toneel 1 soos ons nou weet, dan was Generaal
11 Mpembe nie in die lug ten tyde van dit nie, maar potensieel
12 ten tyde van die skietery op toneel 2.

13 MR MPOFU: Okay, so even if we miss the
14 coincidence that I'm trying to draw, what we do know is
15 that at some stage around the time of the killings he was
16 in that chopper.

17 GENERAAL-MAJOOR ANNANDALE: Waarskynlik
18 tydens van die sterftes, ja.

19 MR MPOFU: Chairperson, I don't want to
20 suggest another deal, but I'm really rounding off. I'm
21 left with a few minutes. Oh, do I still have 16 minutes?
22 Okay, I won't necessarily use it all, Chairperson, but I'll
23 use as much of it as I can. Now having had this kind of
24 relationship – let me take one step back. You accept that
25 at the route of the whole Marikana situation was a labour

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1 dispute between two private citizens, to put it broadly?
2 In other words between Lonmin and the protesters, viewed
3 aggregately.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 ek is bewus daar was 'n loonverskil, of 'n loon aanspraak.

6 MR MPOFU: Yes, and that nobody, least of
7 all me, quibbles with the fact that somewhere along the
8 line there were criminal activities, and that is why I said
9 to the National Commissioner the presence of the police
10 nobody can question, but that at the base of these
11 happenings was the wage dispute. In fact all your slides
12 started with the description of the economic issues, the
13 dispute, sometimes incorrectly described as a rivalry
14 between AMCU and NUM as the root cause, but you dealt with
15 those, what we call labour issues, or economic issues, as
16 the root cause. Correct?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 die teenwoordigheid van die polisie was nie as gevolg van
19 arbeidsverskille, en die polisie was daar in terme van 'n
20 verskeidenheid van kriminaliteit, en ek weet nie of dit reg
21 is om te sê dat die arbeidsgeskille die "root cause" was
22 vir al die gevolge nie.

23 MR MPOFU: Okay, let's forget whether it
24 was the root or the stem or the leaves. The question is
25 were you aware that apart from the criminal aspect on which

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1 you correctly concentrated, there was alongside that a
 2 labour issues/economic issue between these parties?
 3 GENERAAL-MAJOOR ANNANDALE: Dit is reg,
 4 Voorsitter.
 5 MR MPOFU: You also know that there is a
 6 constitutional imperative on SAPS to act impartially?
 7 GENERAAL-MAJOOR ANNANDALE: Dit is
 8 korrek.
 9 MR MPOFU: Now you also know that – to
 10 put it crudely, and this is something we touched on
 11 yesterday – the view of the protesters, or at least the
 12 ones that I represent, put simply and crudely, is that
 13 their employer Lonmin, with the assistance of the police,
 14 or solicited the assistance of the police and both parties
 15 in collusion acted to their detriment, to the deaths that
 16 occurred, the injuries, and the arrests.
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 dis nie waar nie.
 19 MR MPOFU: It's not correct that they
 20 hold that view, or it's not correct that it is so, in other
 21 words that the two parties acted in collusion?
 22 MAJOR-GENERAL ANNANDALE: That the
 23 parties acted in collusion or to their detriment.
 24 MR MPOFU: Well, if these were two
 25 parties in dispute, having their own dispute, and the SAPS

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1 was committed to acting, and not only acting impartially
 2 but being seen to be acting impartially, can you blame the
 3 view that the collusion as manifested by the 13 examples
 4 that I gave you, gave the distinct impression that the
 5 police were siding with Lonmin in that dispute?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek kan nie kommentaar lewer in terme waarop persone, 'n
 8 persoon of persone hulle persepsies vorm nie. Voorsitter,
 9 en ek het verskeie vrae geantwoord, maar ek het nog nie 'n
 10 kans gekry om te verduidelik in terme van hoe ek die
 11 vennootskap ervaar het tussen die Suid-Afrikaanse
 12 Polisie en pertinent dan nou in die geval Lonmin nie.
 13 CHAIRPERSON: Someone else can answer
 14 that question. Mr Mpofo, is that the end of your cross-
 15 examination?
 16 MR MPOFU: Not quite, Chairperson, but
 17 I'm rounding off. I would like to finish, Chairperson, if
 18 –
 19 CHAIRPERSON: How much longer are you
 20 going to be?
 21 MR MPOFU: Just one more aspect that, not
 22 –
 23 CHAIRPERSON: How long is the aspect
 24 going to take?
 25 MR MPOFU: Two questions.

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1 CHAIRPERSON: Alright, two –
 2 MR MPOFU: Thank you. One of the
 3 questions that –
 4 CHAIRPERSON: Two as in two.
 5 MR MPOFU: As in two, excluding this one.
 6 CHAIRPERSON: No, not excluding this one.
 7 Two as in two.
 8 MR MPOFU: Well, okay. Okay, well then
 9 the first one I'll not make it a question; I'll make the
 10 comment, which is that that –
 11 CHAIRPERSON: No, no, no, no comment, Mr
 12 Mpofo. There are time constraints. I've indicated to you
 13 that I was prepared to –
 14 MR MPOFU: I would have finished by now,
 15 Chairperson.
 16 CHAIRPERSON: Well, finish quickly.
 17 MR MPOFU: Yes. The opportunity that
 18 you're talking about – I think it's just out of cordiality
 19 to the witness – the opportunity to explain anything you'll
 20 get in re-examination from Mr Semanya. That's all I wanted
 21 to say. But what I want to ask you is, is it really the
 22 case of SAPS, as indicated by you, I think and one or two
 23 other people, in your statement that these people were
 24 killed in self-defence, in private defence, and in defence
 25 of the media people?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 nee, in die beskerming van eie of ander lewens. As dit die
 3 media sou insluit, dan is dit so.
 4 CHAIRPERSON: If it includes the media,
 5 so be it.
 6 MR MPOFU: Okay, so you yourself are not
 7 aware that the – I mean I accept what you're saying. It
 8 could have been the media or postman or whoever, but you
 9 yourself are not a subscriber to the view that these people
 10 were killed inter alia in defence of the media?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ons het, ek het aangedui dat die neutrale gebied wat
 13 daargestel was en die beskerming was ook dan vir die
 14 beskerming van die media. Die selfverdediging, ek kan nie
 15 dink dat iemand pertinent gesê het ek het opgetree om
 16 pertinent 'n lid van die media se lewe te beskerm nie.
 17 MR MPOFU: Chairperson, if the
 18 Chairperson can promise me that I won't be prejudiced by
 19 not putting certain issues, which have already been
 20 covered, but what I'd intended to do was to put certain
 21 propositions, but I can skip that stage really, as long as
 22 one –
 23 CHAIRPERSON: I indicated to you that
 24 things that this witness said based on hearsay, you're
 25 entitled to say I'm not going to question you on it, I'm

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1 not to be taken as admitting what you said, I will deal
 2 with the witnesses who were your informants, who gave you
 3 your direct information, but I cannot be held to have
 4 conceded or not attacked any of those propositions that are
 5 based on hearsay. That I said to you and you said it over
 6 and over again, and I think we can make that as a general
 7 proposition relating to everything he said based upon what
 8 other people told him, as opposed to his own knowledge.
 9 MR MPOFU: Okay, then I'll make one broad
 10 statement. I put it to you, General, that firstly you had
 11 no authorisation to be at the, involved in this whole
 12 sordid business –
 13 CHAIRPERSON: You put that already, Mr
 14 Mpofu.
 15 MR MPOFU: Yes. No, I'm going to give a
 16 broad – I promise, Chair. You had no reason to be involved
 17 in this sordid affair in the first place insofar as you
 18 went there uninvited and unauthorised; that you had no
 19 authority to deploy neither the STF nor the NIU; and that
 20 nevertheless within 72 hours of your arrival there you
 21 miraculously climbed up to play a very significant role,
 22 notably by handpicking the overall coordinator for
 23 planning, playing a major role in appointing the chief
 24 negotiator, determining the starting time of the operation,
 25 shortening the time available for adequate briefings, and

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1 negating or ignoring the opportunities presented by inter
 2 alia Mr Mathunjwa, and that you as an individual had the
 3 largest footprint in the massacre, and that you and the
 4 likes of you provided the answer for the POPs who took over
 5 from General Mpembe, and also that some of your evidence
 6 here has been tailored, for example in respect of the
 7 numbers of people who had to be dealt with, to suit the
 8 case, and that you overstepped the legal mark in respect of
 9 the deployments which were inappropriate, unauthorised, and
 10 unnecessary. Do you have any comment?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek stem nie met een van dit saam nie.
 13 [13:44] MR MPOFU: Thank you. Thank you,
 14 Chairperson –
 15 CHAIRPERSON: Most of the propositions
 16 were put to you in the course of cross-examination and you
 17 answered them. Is there anything else you want to add in
 18 relation to the general proposition put to you?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 20 nee, ek sal net op elkeen van die sal ek net gaan sê ek het
 21 'n rede gehad, ek was gemagtig gewees om daar – ek het
 22 gemagtig gewees om – maar ek kan nie in detail ingaan nie.
 23 Ek het reeds nou getuig na al die aspekte wat reeds hier na
 24 verwys is en ek ontken elkeen van dit.
 25 MR MPOFU: Thank you. Yes, General, in

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1 fairness, you had dealt with most of these in the body of
 2 the cross-examination. Thank you, Chairperson, I have
 3 nothing further.
 4 CHAIRPERSON: Thank you, Mr Mpofu. We'll
 5 now adjourn until half past 2.
 6 MR MPOFU: Chairperson, just before – I'm
 7 sorry, one second. The current arrangement, I'm saying
 8 this because I might not be here tomorrow, the current
 9 arrangement regarding General Phiyega, Mr Semenya –
 10 CHAIRPERSON: I understand Ms Jele says
 11 she's going to be at least a day and –
 12 MR MPOFU: Yes, so Thursday –
 13 CHAIRPERSON: And some of the other
 14 counsel are going to ask questions as well.
 15 MR MPOFU: Of course, and there's re-
 16 examination.
 17 CHAIRPERSON: And there's re-examination.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: So I don't think any
 20 arrangement is in place to invite the National Commissioner
 21 back by tomorrow –
 22 MR MPOFU: Certainly not tomorrow.
 23 CHAIRPERSON: Not tomorrow. It's a
 24 matter you can discuss –
 25 MR MPOFU: So our working arrangement –

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1 CHAIRPERSON: It's a matter you can
 2 discuss with Mr Semenya -
 3 MR MPOFU: I have.
 4 CHAIRPERSON: And the evidence leaders.
 5 MR MPOFU: It's just for now, but if you
 6 need to shift it, Mr Semenya and I will inform you, Chair.
 7 CHAIRPERSON: Alright, thank you.
 8 [COMMISSION ADJOURNS COMMISSION RESUMES]
 9 [14:52] CHAIRPERSON: I'm sorry that we are
 10 resuming late, but there were important matters we had to
 11 attend to in chambers. U is nog steeds onder eed,
 12 Generaal-Majoor.
 13 CHARL ANNANDALE: s.o.e.
 14 CHAIRPERSON: Ms Jele, I understand
 15 you're going to be the next cross-examiner.
 16 CROSS-EXAMINATION BY MS JELE: Thank you,
 17 Chairperson, I do have a few questions for the Major-
 18 General. Major-General, as you are aware, it is my client,
 19 the Human Rights Commission, that sought the assistance of
 20 Mr White in establishing, or in offering this Commission
 21 his views on the SAPS actions with regard to the matters
 22 that this Commission is dealing with.
 23 GENERAAL-MAJOOR ANNANDALE: Ek is bewus
 24 daarvan, Voorsitter.
 25 MS JELE: Apologies, I thought there

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1 would be a need for isiXhosa translation. Very well, I
 2 will be dealing specifically with you, Major-General, with
 3 a number of headline topics, if I might call them that, and
 4 I will deal with each of these one after the other, but
 5 before I actually dive into these topics, there is one
 6 matter at the very outset that I need to clarify with
 7 regard to certain aspects of Gary White's statement that
 8 you dealt with at some length during the course of your
 9 examination-in-chief. If I could refer you, Major-General,
 10 to paragraph 4.4.20 and 4.4.21 of Gary White's preliminary
 11 statement, which is exhibit WW4 – WW2, apologies, paragraph
 12 4.4.20, page 32, and 4.4.21.

13 GENERAAL-MAJOOR ANNANDALE: Dankie,
 14 Voorsitter, ek het die betrokke paragrawe voor my.

15 MS JELE: As I understood your criticism
 16 of Gary White's statement during your examination-in-chief,
 17 Major-General, it was that White appeared to assume that
 18 the SAPS were intent on effecting the arrest of thousands
 19 of people. Was that one of your main criticisms? Am I
 20 correct, Major-General?

21 GENERAAL-MAJOOR ANNANDALE: Dit is
 22 korrek, Voorsitter.

23 MS JELE: Now Major-General, I don't
 24 intend revisiting the issue of whether or not the target of
 25 SAPS was 3 000 or 300 persons that has been dealt with by

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1 some of my colleagues, but I would like you to look
 2 specifically at paragraph 4.4.20. Nowhere in that
 3 paragraph certainly, would you agree, Major-General, does
 4 Gary White suggest that the difficulty he has with the SAPS
 5 actions was an intention to arrest thousands of persons?
 6 In fact, the difficulty that he expresses in that specific
 7 paragraph was the apparent lack of clarity in the plan, his
 8 view being that it was either to disperse, allowing a
 9 number of persons to go home or leave the koppie, as they
 10 might will, or to encircle, disarm, and arrest, and that
 11 nowhere in that paragraph does he suggest he believes the
 12 SAPS were intent on arresting thousands of persons, or
 13 protesters. Am I correct, Major-General?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ja die enigste aspek wat hy verwys het na is in die laaste
 16 sin, "might have numbered," maar dan het hy dit reggestel
 17 deur te sê "lack of clarity."

18 MS JELE: He doesn't use that expression.
 19 He says at the beginning of the paragraph, "The plan was
 20 unclear." Do you see that, Major-General?

21 GENERAAL-MAJOOR ANNANDALE: Ek merk dit
 22 op, dis korrek, Voorsitter.

23 MS JELE: And if you look at paragraph
 24 4.4.21, and specifically I direct you to the last few
 25 sentences of that paragraph on the following page, on page

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1 33, the statements reads, "That a plan to make large
 2 numbers of arrests in a crowd numbering in the thousands
 3 was inherently risky." He does not criticise the SAPS for
 4 wanting to make thousands of arrests; he understands that
 5 the SAPS would be attempting to make arrests of "large
 6 numbers" of persons among that crowd numbering in the
 7 thousands. Correct?

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ja, hy verwys net na "significant numbers."

10 MS JELE: And even if one were to take
 11 the smaller number, say 170 persons were intended to be
 12 arrested, that number alone would be a significant number
 13 of arrests, would you not say, Major-General?

14 GENERAAL-MAJOOR ANNANDALE: Opsigself is
 15 170 'n groot getal. In verhouding tot drie en 'n half
 16 duisend is dit maar iets soos 15%.

17 MS JELE: Major-General, can we agree
 18 that effecting the arrest of 170 persons, whether they're
 19 amongst thousands or not, would be effecting the arrest of
 20 a significant number of persons?

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 ons kan ooreenstem.

23 MS JELE: Can I therefore suggest that
 24 your criticism of Mr White, which was that his reasoning
 25 was flawed in assuming the SAPS sought to arrest thousands

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1 does not in fact appear in his statement, and that at the
 2 very least that aspect of your criticism of Mr White,
 3 unless you can point me to another paragraph where he
 4 suggests the arrest of thousands was intended by SAPS, has
 5 no basis?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek dink dit is redelik, nou dat dit so opgeklaar is, is dit,
 8 stem ek saam.

9 MS JELE: Thank you very much, Major-
 10 General. Now if I might start with the schematic approach
 11 I referred to you during the course of my introduction, one
 12 of the first issues – and while I accept that it might be
 13 out of sequence, but our notes, I assure you, hopefully
 14 evince some kind of order in our madness – is the issue of
 15 debriefing broadly. Now when I speak of debriefing I do
 16 not speak of those issues that have consistently been
 17 raised before this Commission about whether or not Potch
 18 was or was not a debriefing and whether or not there was a
 19 full debriefing after the events. What I would like us to
 20 focus on first and foremost is the requirements for
 21 debriefing as a matter of course, which we would submit
 22 would have been needed on the 13th, and in order to do that
 23 I will refer you to a number of documents, if I might. You
 24 would agree, Major-General, considering the very
 25 unfortunate incidents on the 13th of August of 2012, that at

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1 the very basic level a debriefing with respect to those
2 events would have been required at that date?
3 GENERAAL-MAJOOR ANNANDALE: Dit is
4 korrek, ek stem saam.
5 MS JELE: And if I might refer you to a
6 document that we'd indicated we would refer to, it's in
7 file 4, the IPID files, and its pages marked 712, 713 –
8 CHAIRPERSON: Is this the document headed
9 "Member in charge Captain Khumalo, report by commander, EHW
10 Rustenburg?"
11 MS JELE: It is, Chairperson.
12 CHAIRPERSON: That will be exhibit GGG24.
13 MS JELE: I wish to refer to the column
14 that's towards the middle of that page, under which it says
15 "Nature of duty, changes, and casualties." I'll wait for
16 the Major-General to have the document in front of him.
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ek het nommer 13, IPID volume A. Ek probeer net op die
19 bladsy –
20 MS JELE: Volume A, file 4, pages 712 and
21 713, the stamped pages at the top that's beginning with
22 000.
23 MAJOR-GENERAL ANNANDALE: 712.
24 MS JELE: Now again, Major-General, the
25 column marked "Nature of duty, changes, and casualties," do

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1 you see that?
2 GENERAAL-MAJOOR ANNANDALE: Aard van
3 diens, veranderings, en ongevalle, ek het dit. Dis korrek.
4 MS JELE: Perhaps, Major-General, you can
5 be of assistance to us. We understand the words
6 handwritten thereafter to indicate that the nature of
7 duties of the individuals that have signed this particular
8 roster is "debriefing." Are we correct in that assumption?
9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
10 as ons kyk na links bo waar daar staan "Stasie/Station,"
11 staan daar "EHW Rustenburg." Voorsitter, so die aard van
12 dienste, ek verstaan dit dat dit lede of personeel was van
13 "Employee Health and Wellness," so dit sal wees
14 maatskaplike werkers, sielkundiges en/of kapelane. So
15 Voorsitter, die "debriefing" wat ek daar lees is in terme
16 van die aard van diens is dan nou in terme van "debriefing"
17 wat ek aanvaar hulle gedoen het op die lede in terme van
18 trauma ontlofting. Ek sien dan pertinent op bladsy 724
19 word dit vermeld "counselling, debriefing and trauma
20 maintenance."
21 MS JELE: Having established therefore
22 that it was accepted to have Health and Wellness staff on
23 deck, I would submit to you, Major-General, if I might
24 refer you to the Standing Order 262, that there was more to
25 debriefing than just health, wellness and trauma regimes.

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1 We could look at specifically clause 13 of that document.
2 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
3 Voorsitter. Die nabetragting na verwys in Staande Order
4 262 is 'n ander nabetragting. Voorsitter ja, ek dink nie
5 dit is korrek om te sê in "hindsight" nie. Ek dink dit is
6 nabetragting soos in "debriefing," nabetragting wat gehou
7 word na afloop –
8 MS JELE: Chairperson, I don't speak
9 Afrikaans, so I will rely on the interpretation during the
10 course of this exchange.
11 CHAIRPERSON: Yes, I'm trying to think of
12 what the correct translation would be actually, in
13 retrospect I suppose, in retrospect –
14 MR MAHLANGU: In retrospect, in thinking
15 back.
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 ek dink, the psychologists, social workers and so on, that
18 would be in Afrikaans "ontlofting," meer as "debriefing."
19 MNR MAHLANGU: Ontlofting, ignite?
20 GENERAAL-MAJOOR ANNANDALE: Ontlofting is
21 –
22 [15:12] CHAIRPERSON: Debriefing is presumably
23 the improper English translation for "ontlofting," but what
24 you mean is it's a different kind of debriefing from the
25 debriefing referred to in the Standing Order 262, which it

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1 concerns what went wrong during the incident. This is
2 debriefing of what was the emotional or traumatic effect on
3 the person concerned which gives rise to the need for
4 counselling or something, or therapy or something of that
5 kind. Is that the point you're making?
6 MAJOR-GENERAL ANNANDALE: That is
7 correct, Chairperson.
8 MS JELE: Major-General, as clearly
9 stated by the Chairperson what the Standing Order refers to
10 specifically in its clause 13 is a different type of
11 debriefing. My question is, would it not be appropriate
12 after a day like the 13th to have specifically the type of
13 debriefing, not just health and wellness, which
14 incidentally was catered for, but that specifically
15 referred to in clause 13 of the Standing Order 262?
16 GENERAAL-MAJOOR ANNANDALE: Dit is
17 korrek.
18 MS JELE: We have no record of such
19 debriefing or any notes that might have been taken, and as
20 we read Standing Order 262, specifically its subparagraph
21 4, it talks of preventing recurrences of identified
22 mistakes, identifying shortcomings. Surely being aware for
23 example at the time that striking miners continued to wish
24 to demonstrate, that's something that would have taken
25 place and there would be some record of it, Major-General.

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1 MR BOOI: I'm trying to get hold of these
2 documents that are being referred to here, and –
3 MS JELE: The Standing Order is exhibit
4 SS2. I refer to paragraph 13 of that exhibit.
5 CHAIRPERSON: Page 10 of 11 of exhibit
6 SS2.
7 GENERAAL-MAJOOR ANNANDALE: Voorsitter
8 ja, daar is 'n verwagting dat daar sodanige verslag sal
9 wees.
10 MS JELE: My question, Major-General, was
11 that there would be a record of such a debriefing and that
12 it would inform things going forward, surely.
13 MAJOR-GENERAL ANNANDALE: Record as in
14 "verslag;" as ek sê dat daar 'n verslag moet wees, it means
15 that there should be a report so that it entails a record.
16 MS JELE: In light of the continuing
17 events, that process ending in a report you have just
18 described, would have had to have taken place Monday
19 evening, Tuesday at the latest. Would you not agree,
20 Major-General?
21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 sekerlik so gou as moontlik in terme van na so 'n
23 gebeurtenis, maar ons moet net dalk kyk na redelikheid en
24 kyk na die omstandighede wat hom afgespeel het na die 13de.
25 MS JELE: Major-General, under the

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1 circumstances there were a number of individuals that were
2 on duty on both the Monday and the Thursday. It has been
3 referred to, I'm happy to specify the statements that we
4 have reflecting that fact for the sake of reference for the
5 record. We understand for example that Warrant-Officer
6 Rakodi, whose statement is number 38 in the SAPS list,
7 Warrant-Officer Makukule, whose statement is number 44, as
8 well as Cebekhulu, whose statement is number 140, all of
9 these individuals make it plain that they were there both
10 on Monday and on Thursday, and for this reason I would
11 insist that the debriefing referred to in Standing Order
12 262, knowing that your personnel was on the ground, knowing
13 that they face a continuing group of demonstrators, would
14 have specifically needed to be done sooner rather than
15 later, regardless of the consideration that you have just
16 expressed.
17 CHAIRPERSON: Ms Jele, may I suggest that
18 for the sake of clarity one draws a distinction between
19 what one can call psychological debriefing, you know
20 effectively kind of trauma therapy, I take it, and
21 debriefing in terms of Standing Order 262, if there's a
22 difference, what one can call operational debriefing. So
23 if you're happy to adopt that terminology, operational
24 debriefing as opposed to psychological debriefing, then I
25 think we'd understand the questions, or rather the witness

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1 would understand the questions and we would understand the
2 answers.
3 MS JELE: Certainly, Chairperson, and
4 perhaps you'll give me the opportunity to rephrase my
5 question, the issue being that operational briefing would
6 be just as important to inform those officers, the SAPS
7 members of the ground, as trauma debriefing would be.
8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 beide is noodsaaklik.
10 CHAIRPERSON: There's a distinction. May
11 I suggest there may be a distinction. Trauma debriefing, I
12 would have thought should probably take place sooner after
13 the occurrence than operational debriefing, particularly if
14 the member concerned is likely to be involved in operations
15 shortly thereafter. You wouldn't want someone who's
16 suffering from trauma as a result of a particular
17 occurrence to be sent into battle again, as it were, if one
18 may use that expression, unless and until that person had
19 received therapy. Would you agree with that?
20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 as 'n leek voel ek ook dat dit so gou as moontlik, maar ek
22 weet daar is twee kampe in die sielkundige in terme van of
23 dit moet onmiddellik gebeur of eers na 'n pertinente
24 tydsverloop.
25 CHAIRPERSON: As a layperson he's

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1 inclined to agree, but he's aware of the fact that in the
2 field of psychology there are two views, or two camps. One
3 group says the trauma therapy should happen as soon after
4 the event as possible. The other says there should be, a
5 time period should elapse first before the person concerned
6 receives therapy. I think that's a translation of the
7 answer.
8 MNR MAHLANGU: Is dit korrek? That is
9 correct.
10 MS JELE: I appreciate that, but under
11 circumstances where the SAPS is facing the same group on
12 the same koppie, operational debriefing would identify
13 mistakes that might have been made on the 13th that might
14 inform operations or planning going forward for the rest of
15 the week, Major-General.
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 dis korrek. Ek het verwys na die drie vlakke van
18 "operational debriefing."
19 CHAIRPERSON: I think the word is levels,
20 three levels of operational debriefing.
21 MR MAHLANGU: Three stages of? Three
22 levels –
23 CHAIRPERSON: "Vlakke," is three levels.
24 GENERAAL-MAJOOR ANNANDALE: Die eerste
25 dan tussen die lede betrokke en hulle direkte

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1 bevelvoerders, en dan die oorhoofse bevelvoerder,
 2 operasionele bevelvoerder tipies en die ander
 3 bevelvoerders, en dan die vlak wat polisie en ander
 4 rolspelers by betrokke is. Ek sou verwag dat ten minste
 5 vlak 1, en dan sover prakties moontlik ook vlak 2
 6 plaasgevind het.

7 MS JELE: Major-General, we have no
 8 record of that taking place after the 13th. Now perhaps
 9 there might be some somewhere, but we have none. Would you
 10 accept that if it did not take place, especially within
 11 amongst the commanders as you put it, who were then
 12 considering their planning and operations going forward,
 13 that this would be an oversight? Sorry, an oversight at
 14 the very least. A serious omission might actually be a
 15 better characterisation.

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ek het verneem, ek dink vanaf Generaal Mpembe en Brigadier
 18 Calitz, dat daar wel nabetragting plaasgevind het na die
 19 13de.

20 MS JELE: We'll deal with the –

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 22 ja, die besonderhede in terme van datum en tyd, wie
 23 betrokke was, of daar rekord gehou was, dit kan ek
 24 ongelukkig nie mee help nie.

25 MS JELE: Major-General, in your

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1 experience would those records be in writing, or some of
 2 them be in writing?

3 CHAIRPERSON: What sort of oral records
 4 could you have?

5 MS JELE: I thought oral records would
 6 refer to certainly whatever information we might garner
 7 from General Mpembe and Brigadier Calitz when they testify,
 8 but the question is notes –

9 CHAIRPERSON: Yes, yes.

10 MS JELE: - something that we can look
 11 at.

12 CHAIRPERSON: Ja.

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 my ervaring is dat vlak 2 en verseker vlak 3, dat daar
 15 geskrewe rekord sal wees.

16 MS JELE: Well, we certainly hope,
 17 considering that General Mpembe and Brigadier Calitz would
 18 fit into level 2, that we will have the opportunity to
 19 obtain whatever written notes they might have of that
 20 particular debriefing, if it took place. Now if I might
 21 specifically refer you to a document that we circulated to
 22 all parties during the course of yesterday, which is
 23 entitled "Briefing 1" in the hard drive specifically, the
 24 title of which at the top in the top margin is "Crowd
 25 management for platoon commanders, briefing and

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1 debriefing," with a long rectangle surrounding the word
 2 "briefing" at the top.

3 CHAIRPERSON: That will be exhibit GGG25.

4 MS JELE: Thank you, Chairperson.

5 COMMISSIONER HEMRAJ: Before you look at
 6 this document, those records that counsel refers to of the
 7 debriefings, where would they normally be? With the unit,
 8 would they be stored with the unit or the commander?

9 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 10 dit sal waarskynlik by die Openbare Orde eenheid op argief
 11 geplaas word.

12 COMMISSIONER TOKOTA: Sorry, General, I
 13 just want to check the debriefing which was referred to by
 14 counsel is said to be the one referred to in Standing Order
 15 262. I just want to check whether the debriefing envisaged
 16 in Standing Order 262 is the debriefing of each and every
 17 stage of the events, or the debriefing of the whole event
 18 after it has occurred?

19 [15:32] MAJOR-GENERAL ANNANDALE: Chair –

20 COMMISSIONER TOKOTA: What I want to
 21 know, if you see subparagraph 5 says "Trainers and
 22 instructors must attend the debriefing." Now I could
 23 imagine on the 13th, when there's a debriefing on the 14th
 24 you must call the trainers and the instructors to come and
 25 attend that debriefing, that's the one which must be

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1 recorded.

2 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 3 ja. Subparagraaf 5 is 'n tamentejie want in praktyk is dit
 4 bitter moeilik gegewe die aantal openbare orde insidente
 5 wat ons in 'n jaar doen, wat partykeer 10 tot 12 000 is.

6 COMMISSIONER TOKOTA: Now what I want to
 7 check is whether the debriefings referred to in your
 8 evidence, namely those which were not recorded are actually
 9 the debriefings as envisaged in the Standing Order?

10 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 11 dit sal op die vlak 2 "debriefing" wees soos verwys in die
 12 Staande Order.

13 MS JELE: If I might, the document
 14 entitled "Briefing" that I referred to earlier, Major-
 15 General, I would ask you to turn specifically to chapter 9,
 16 which I believe is at page 6 and which is entitled
 17 "Debriefing," and I would like to read that first
 18 paragraph. I certainly hope the interpreters have it in
 19 front of them. The paragraph reads –

20 CHAIRPERSON: I think the fifth word in
 21 the first line is "process."

22 MS JELE: I think it is too, Chairperson.
 23 "Debriefing is an important process which is to be
 24 considered just as important as the briefing process.
 25 Without good debriefing after public order interventions,

<p style="text-align: right;">Page 9767</p> <p>1 it is not possible to assess one's actions for the 2 improvement of techniques and better command and control 3 during the operation. During debriefing members can give 4 their input, thus the commanders are able to have another 5 viewpoint of the operation." Do you see that paragraph, 6 Major-General? 7 GENERAAL-MAJOOR ANNANDALE: Dit is 8 korrek, ek lees hom so. 9 MS JELE: If I turn to page 8 under the 10 heading "Structure," 11, again I'd like to read that first 11 paragraph. It says that, "The structure of the debriefing 12 should be done on the same structure as that in which the 13 members functioned during the public operation. In other 14 words, if a section was tasked to perform a certain 15 function, the debriefing must be done only with that 16 section. The same should be done at higher levels where 17 the commanders do their own debriefing with the information 18 received from the lower levels, as members will be 19 reluctant to air their views to higher levels, together 20 with the fact that large debriefings cannot function 21 correctly." Do you read that, Major-General? 22 GENERAAL-MAJOOR ANNANDALE: Ek het dit so 23 ge lees, dis korrek, Voorsitter. 24 MS JELE: Taken together with your 25 earlier statements about the various levels of debriefing,</p>	<p style="text-align: right;">Page 9769</p> <p>1 apologies. If you can just repeat the question. 2 Apologies. 3 MS JELE: Certainly. Major-General, when 4 one looks – and perhaps we can turn to exhibit GGG3 while 5 we're at it, if one looks at the record of the 6 Potchefstroom meeting, it has been consistently stated 7 naturally that it did not shape the fully fledged 8 debriefing that is required. However, the process would 9 have been one to identify those issues that would assist 10 these Commissioners, those issues that I would submit are 11 specified in 13(4) of the Standing Order, that that process 12 in order to assist the Commission would require 13 establishing whether there were any shortcomings, and 14 recording learning processes to enhance good practices and 15 address or prevent recurrences of identified mistakes. 16 This is part of the process, even if it were simply aimed 17 at assisting this Commission, that would have been part of 18 any such discussions. 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter 20 nee, dit was nie deel van die besprekings nie. As daar 21 enige aspekte uitgekome het was dit net soos wat die feite 22 voorgelê was wat ons dit geïdentifiseer het. 23 CHAIRPERSON: It's not quite as simple as 24 that, because in the process the facts were identified and 25 an element of hindsight was involved because you could now</p>
<p style="text-align: right;">Page 9768</p> <p>1 is it not an essential element of debriefing that the 2 junior officers, the officers on the ground also have an 3 opportunity within their units to have that debriefing 4 session? 5 GENERAAL-MAJOOR ANNANDALE: Dit is 6 korrek, dis die sogenaamde vlak 1 terugvoer wat ek na 7 verwys het. 8 MS JELE: You were obviously alert to 9 certain aspects of these difficulties, Major-General, as 10 you stated in your examination-in-chief that you avoided 11 participating in certain elements of The Roots discussions 12 in order not to stifle debate amongst members that were 13 junior to you in rank. 14 GENERAAL-MAJOOR ANNANDALE: Soos 15 geparafraseer, korrek. Ek dink ek het die woord gebruik 16 "inhibeer." 17 MS JELE: I'll apologise for my non- 18 existent Afrikaans, having been unable to read the 19 transcript. If I might simply state with respect to the 20 events at Potchefstroom, whatever their nature, the purpose 21 was in fulfilling the bills that one would identify in 22 subparagraph 4 of paragraph 13 of SO262, to the extent that 23 it might be relevant and of assistance to this Commission. 24 Correct? 25 MAJOR-GENERAL ANNANDALE: Chairperson, my</p>	<p style="text-align: right;">Page 9770</p> <p>1 see with the benefit of hindsight what happened, and 2 inasmuch as hindsight is helpful for the future to make 3 sure that when you're in a similar situation in the future, 4 what you've now discovered by hindsight in respect of event 5 A you can then factor into your plan for what's going to 6 happen in the case of event B. So there is an element 7 surely of what counsel is putting to you is what happened 8 at Potchefstroom, even if it wasn't the main purpose, but 9 it was a kind of a by-product, surely? 10 GENERAAL-MAJOOR ANNANDALE: U is reg, 11 Voorsitter, aspekte soos die video-opnames, aspekte soos 12 die radiokommunikasie, dit het voortgespruit uit die 13 terugvoer. 14 MS JELE: And if one looks specifically 15 at the attendance record in exhibit GG3, we see hardly 16 anyone below the rank of captain – I don't know if you've 17 had a chance to just peruse through, but in your 18 recollection, if you don't want to double check, there 19 weren't people below the role of captain. There might have 20 been a few warrant-officers. 21 GENERAAL-MAJOOR ANNANDALE: U is reg. 22 Dit was meestal offisiere gewees, enkele adjudant- 23 offisiere. Ek weet nie, ek kan nie onthou of daar iemand 24 onder adjudant-offisier was nie, en dit was pertinent die 25 waterkanon operateurs en dan die video-operateurs.</p>

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1 CHAIRPERSON: There was one Constable
 2 Segale of the POP Rustenburg. There were three warrant-
 3 officers, Warrant-Officer Dicks of POP Johannesburg, and
 4 two from POP North West, that's Nhlomo and Masinye, and one
 5 from POP Springs, Ramanala. All the others were
 6 commissioned officers, two lieutenants and everybody else
 7 above that rank.
 8 MS JELE: Indeed. Thank you,
 9 Chairperson, and as a result, imaging that you appreciate
 10 that you might stifle debate amongst even higher ranks,
 11 considering the positions that those view junior members of
 12 SAPS had within this framework, would it be fair to say
 13 that the Potchefstroom process did not yield the benefit of
 14 the level 1 process in full that you described to us
 15 earlier? And we do not have the benefit of that level 1
 16 process before us.
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 maar Potch was nooit bedoel om 'n vlak 1 nabetrugting te
 19 wees nie. Dit is iets, die vlak 1 wat plaasgevind het is
 20 die bevelvoerders en dan die pertinente lede op die grond
 21 wat betrokke was by die uitvoer van die operasies.
 22 MS JELE: Indeed, Major-General, and to
 23 the extent that there were elements of that process, as the
 24 Chairperson alluded to, that would be of importance and/or
 25 value to this Commission, the elements that junior officers

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1 and level 1 officers who were on the ground brought to that
 2 process was not available in Potch, and has not been made
 3 available?
 4 GENERAAL-MAJOOR ANNANDALE: Nee,
 5 Voorsitter, vlak 1 het plaasgevind reeds tussen die
 6 bevelvoerders en hulle onderskeie lede lank voor
 7 Potchefstroom, en om 'n praktiese voorbeeld te gebruik,
 8 byvoorbeeld NIU sou Kolonel Modiba, sou hy net met sy
 9 onderoffisiere sou hy gepraat het, en Luitenant-Kolonel
 10 Gaffley sou met Taakmag. So dit is die vlak 1 wat verwys
 11 word in die bladsy 8 van die paragraaf wat u na my verwys
 12 het, van 11, en 'n groot persentasie van daardie selfde
 13 bevelvoerders was dan nou teenwoordig by Potchefstroom.
 14 CHAIRPERSON: Major-General, have you
 15 looked at the heading of this document GGG3? It reads
 16 "Call-up, debriefing, and preparation for the judicial
 17 commission of inquiry," and so on. So there appears to
 18 have been some element of debriefing. Would you agree?
 19 [15:52] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 daar was verseker elemente van nabetrugting, maar soos ek
 21 verduidelik het, daar was nie 'n swot analise gedoen in
 22 terme van wat ons gaan sê het sterk punte, swak punte,
 23 ensovoorts nie.
 24 MS JELE: We certainly agree on that,
 25 Major-General, and as you indicated earlier, the process

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1 you indicated between for example Modiba and his members,
 2 Gaffley and his, is something of which there would be a
 3 record, which I'm sure this Commission would appreciate.
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 5 nee, die rekord het ek verwys na vlak 2, vlak 3. Vlak 1 is
 6 individueel bevelvoerder met die lede wat dit, baie van
 7 hulle weet ek het dit sommer die aand na die insident van
 8 die 16de, het begin met dit. So daar is nie pertinente
 9 rekords nie.
 10 MS JELE: Well, in that case we certainly
 11 look forward to the testimony of Modiba, Gaffley, and their
 12 colleagues. I'm going to turn now to an entirely different
 13 topic, Chairperson, specifically moving away from the issue
 14 of debriefing and moving into the issue of planning, which
 15 will take up quite a lengthy period of my discussions with
 16 the Major-General. I see it's 5 to 4. Chairperson, would
 17 you wish to take the adjournment or continue for a moment
 18 until we reconvene tomorrow?
 19 CHAIRPERSON: How long do you anticipate
 20 the first subheading of the topic will take?
 21 MS JELE: At least 20 minutes,
 22 Chairperson.
 23 CHAIRPERSON: Well I think in the
 24 circumstances we should take the adjournment now and resume
 25 at 9:30 tomorrow.

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1 MS JELE: Thank you, Chairperson.
 2 CHAIRPERSON: The documents, we were
 3 given a batch of documents yesterday. Are there any
 4 specific documents that you would like the Major-General to
 5 look at closely this evening to expedite matters tomorrow?
 6 MS JELE: We've already discussed that
 7 with the SAPS team. We wanted to make sure that the Major-
 8 General had seen all of these videos that we hope to refer
 9 to and we understand he'll have the opportunity do that
 10 during the course of this evening. What we will be doing
 11 is trying to curtail any of those documents that we have
 12 distributed and any use of those as much as we possibly can
 13 during the course of this evening, but unfortunately it
 14 looks like we'll have to refer to all of them.
 15 CHAIRPERSON: Thank you. Well then, it
 16 seems the sensible thing to do for us is to adjourn now
 17 until 9:30 tomorrow.
 18 [COMMISSION ADJOURNED]
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<p>aan 9644:24 9651:12 9676:7 9677:5,11 9711:9 9717:10,11 aand 9723:6 9740:17 9773:7 aandag 9725:22 aandui 9668:2 9679:20 aangedui 9669:12 9675:9 9679:17,21 9746:12 aanhaal 9645:1 aanname 9673:25 aanranding 9698:21 aanspraak 9742:5 aantal 9766:4 aanvaar 9674:12 9699:3 9723:12 9756:17 aanvaarbare 9665:1 aanval 9650:22,25 9666:24 aanvanklik 9659:19 9668:9 9677:25 aanvanklike 9679:6 aard 9756:2,11,16 able 9653:13 9661:4 9676:14 9692:16 9710:17 9726:16 9729:2 9730:19 9767:4 absolute 9652:17 absolutely 9692:21 accept 9650:13 9665:4 9665:13 9683:18,19 9684:4,5 9687:16 9688:4,7 9692:22,25 9699:13 9711:17 9723:9 9736:18 9741:24 9746:7 9754:12 9763:10 accepted 9685:9 9686:5 9688:3 9704:22 9736:8,16 9756:22 accepting 9665:12 9715:13 access 9675:23 9676:14 9676:18,21 9721:3,22 accessing 9685:20 9686:8 accords 9675:19 accurately 9660:23 achieve 9665:19,21 acquire 9713:22 act 9690:8,11 9698:24 9702:11 9709:12,16 9709:18 9743:6 acted 9743:15,21,23 acting 9744:1,1,2 action 9645:6 9701:16 9704:21 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