

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 177

29 JANUARY 2014

PAGES 21127 TO 21301



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1 [PROCEEDINGS ON 29 JANUARY 2014]
 2 [09:21] CHAIRPERSON: The commission resumes.
 3 Before we carry on with the evidence to remind everybody
 4 please to turn off their cell phones. It can be very
 5 disturbing and something that, for those who were here
 6 yesterday saw that it will not be tolerated. The second
 7 point is I understand that there are signs up, I haven't
 8 seen them myself but there are signs up that indicate that
 9 no eating of food is allowed in the chamber, that's a rule
 10 imposed by the council, it creates all sorts of cleaning
 11 problems and so on. I understand that some of those
 12 present have been eating food here in the chamber and in
 13 fact leaving things here in the chamber which cause
 14 problems for the cleaners. I accept that people concerned
 15 didn't know that's against the rule that's been imposed in
 16 respect of the use of the chamber. But please in future
 17 I'd appreciate it if everybody would comply with the rule
 18 imposed by the council. As you know they gave us the use
 19 of these premises without any charge at all and at the very
 20 least we can do to show our appreciation is to comply with
 21 the rules that they've imposed for the use of the chamber.
 22 Brigadier, I don't know whether you've been eating food in
 23 the chamber, I take it not. I take it you haven't been
 24 eating food in the chambers.
 25 BRIGADIER CALITZ: Nee, mnr die

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1 Voorsitter, nog nie kans gehad nie.
 2 CHAIRPERSON: Alright. You're under
 3 oath.
 4 BRIGADIER CALITZ: Dankie, mnr die
 5 Voorsitter. Goeie More.
 6 MR GOTZ: Thank you, Chair and good
 7 morning Commissioner, good morning Brigadier.
 8 BRIGADIER CALITZ: Morning.
 9 MR GOTZ: Brigadier, we were dealing with
 10 the final few pages, final pages of exhibit KKK52 and we
 11 had got to slide 6. If that can be put up on screen and if
 12 you could turn to that page, Brigadier. The page shows the
 13 configuration of the vehicles as well as the position of
 14 the protestors at 15:53:40 which is 10 seconds before the
 15 TRT open fires. The strikers marked by the blue cloud have
 16 just rounded the north west corner of the kraal.
 17 Brigadier, you will accept that at this point it is
 18 virtually impossible for people at the front of the group
 19 of strikers, including Mr Noki to turn around or reverse.
 20 BRIGADIER CALITZ: As u praat van op
 21 hierdie punt, dit is wat ons gister na gewys het, die fotos
 22 en ek het vir u daar gewys dat dit was moontlik gewees dat
 23 daai configuration was nie so in 'n tight formasie nie en
 24 dit was vir hulle moontlik om, om te draai.
 25 MR GOTZ: Well, no, Brigadier, we

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1 actually, the photographs that we were looking at were some
 2 ten seconds earlier than this. At this point Mr Noki has
 3 rounded the corner of the kraal. The photographs that we
 4 were looking at were before, were slightly before that. He
 5 hadn't yet got to the kraal, that was the photograph that
 6 you highlighted and what I'm putting to you is by the time
 7 he has moved around the corner, the north west corner of
 8 the small kraal it is virtually impossible for him to
 9 reverse.
 10 BRIGADIER CALITZ: Die een waarna ons
 11 verwys het was, wat u gesê het vyf sekondes vroeëre.
 12 en dis nie waar nie, hulle was toe alreeds om die
 13 kraal en nie soos u nou sê dat hulle nog nie om die kraal
 14 gekom nie. Dit was gister vasgestel, selfs in die video en
 15 selfs in u eie materiaal het ek vir u gewys en dit is op 14
 16 sekondes waar ons kan sien hulle is reeds om die kraal en
 17 op daardie stadium het ek vir u gesê daardie foto het gewys
 18 dat hulle kon omdraai toe hulle alreeds om die kraal was.
 19 CHAIRPERSON: Sorry, Mr Gotz, I don't
 20 know, why do you say that turning the corner made all the
 21 difference in this regard? If there's a reason for your
 22 contention that it did make a difference. I think you
 23 should put it to the witness so that he can deal with it.
 24 MR GOTZ: Well, Chairperson, our case of
 25 course is that it is very difficult to reverse from a much

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1 earlier stage and perhaps what I should put to the
 2 Brigadier is at the very least, Brigadier, would you accept
 3 that it in a sense becomes progressively more difficult for
 4 Mr Noki to reverse as the group moves passed the STF
 5 Casspirs and around the corner of the kraal, would you at
 6 least accept that?
 7 CHAIRPERSON: But you still, I'm afraid
 8 you still haven't dealt with my difficulty, Mr Gotz, and
 9 that is, I understand what you're putting but if there's a
 10 reason upon which you rely for saying it was more difficult
 11 than the witness doesn't agree with you, then if there's a
 12 reason for saying it's more difficult then I think you
 13 should put it to him so that he can deal with it. If he
 14 can't deal with it satisfactorily then the victory will be
 15 yours and if he can't, and if he can well then the victory
 16 will be his. But at least lets have the reason that you
 17 advance for saying that it became more difficult for Mr
 18 Noki and those with him in the front line to change
 19 direction by 180 degrees once they were around the corner.
 20 MR GOTZ: Well, Brigadier, the one reason
 21 that we did discuss yesterday was the fact that teargas
 22 been fired behind the group of protestors, some five or six
 23 seconds before that. So that's the one reason. The second
 24 reason and we can now see it on the video is that there is
 25 a push from the back as it were at this point in time and

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1 perhaps we can show the video to get the sense of what Mr
2 Noki is doing at this point. So if we can play JJJ194.16
3 from the beginning of the clip. I beg your pardon, it's
4 17, sorry about that, JJJ194.17.

5 CHAIRPERSON: Before you proceed, I'm
6 told that some people here have got their, they've got
7 headphones but they haven't got them on. So before they
8 haven't got them on the sound from the earphone is coming
9 out clearly, we can hear it and it's making it difficult to
10 hear what's been said. So those who haven't got their
11 earphones on their ears must please put them on their ears
12 or else switch them off. Yes, Mr Gotz, I can still hear it
13 somewhere, the earphones, I don't know what the problem is.
14 You see if people aren't listening, I haven't got a
15 problem, then they can turn it off. The problem is they've
16 got them on but they haven't got them their heads and so
17 the sound –

18 MR MPOFU: Interferes, yes Chairperson, I
19 was, another way of dealing with the problem is when
20 they're not using them they must put the volume down
21 because there's a volume adjustment on the thing.

22 CHAIRPERSON: Well of course if they're
23 not listening, they won't hear the translation of what you
24 said, so you might like to repeat it, what you just said in
25 Xhosa, which may be helpful.

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1 MR MPOFU: Okay.

2 CHAIRPERSON: Thank you, Mr Mpofu.

3 MR GOTZ: Chairperson 14 seconds into
4 this clip is the start of the TRT gunfire. I wonder
5 whether a warning wouldn't be appropriate under the
6 circumstances.

7 CHAIRPERSON: I don't think we've given
8 warnings simply for gunfire.

9 MR GOTZ: Mr Chaskalson did in relation
10 to this clip.

11 CHAIRPERSON: Alright. As you would
12 have heard we are told that 14 seconds, we can still hear
13 that thing. We have been told that 14 seconds into this
14 clip one can hear gunfire. It's gunfire which caused the
15 death of a number of people who, some of them who were
16 among the relatives, loved ones of those present, some of
17 those present in the auditorium. So if they feel that the
18 sound of that gunfire will cause them distress and pain
19 then I suggest they leave the chamber. We won't start the
20 video until a minute has lapsed after this. But I still
21 hear that noise of, from someone's earphones. I don't know
22 how we're going to deal with the problem.

23 MR GOTZ: Just to add one actually does
24 see the TRT opening fire as the camera pulls back. One
25 doesn't in fact see any of the people being shot but one

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1 does see the TRT line open fire.

2 CHAIRPERSON: No one has left the
3 chamber. So I assume the warning is being heard by those
4 who were listening on the earphones and it's not necessary
5 for the person concerned to leave. We'll proceed now with
6 the video.

7 MR GOTZ: Brigadier, this clip commences
8 14 seconds before the TRT open fires so the time is
9 . The point of time which we are debating is four
10 seconds later. So I want to do is play the first six
11 seconds of the clip and see what the response of the crowd
12 is towards the end of the first six seconds. In other
13 words the response of the people at the front of the crowd
14 of strikers. So if we can commence.

15 [VIDEO SHOWN]

16 MR GOTZ: Do you see, Brigadier, that
17 what happens in those moments is that there is a shot fired
18 by the strikers, at that point in time the crowd reacts as
19 it were, possibly to the sound of the gunshot and starts to
20 push forward into the channel created by the TRT vehicles,
21 do you see that Brigadier?

22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 twee goed. Daar was nie 'n channel deur TRT voertuie nie.

24 MR GOTZ: I beg your pardon, the Papa
25 Nyalas.

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1 BRIGADIER CALITZ: En ons het ook verwys
2 nie 'n channel nie, daar's 'n spatie gelaat, so om 'n
3 channelling een van ons action modes is, het ons reeds
4 daarvoor getuig, net 'n regstelling daar, en dan nee glad
5 nie, as ons dit frame by frame speel hierdie ses sekondes
6 ek sien glad nie die push waarvan u praat nie. Ek sien die
7 mense wat nog steeds glad nie hardloop nie, hulle beweeg
8 rustig, selfs toe die skoot klap. Op daardie stadium dit
9 is 'n skoot wat deur hulle self gevuur word. Selfs die
10 persoon wat die skoot afvuur kon nog omgedraai het en
11 weggehardloop het. So ons kan weer na dit kyk, ek sien
12 glad nie laat daar 'n groep is wat soos 'n, wat u kry met
13 ander woorde soos 'n stampede waar hulle druk nie.

14 CHAIRPERSON: May I suggest we play it
15 again. Let's see the slide again and this time we all look
16 at it very carefully and we know what Mr Gotz wants us to
17 look out for and we will either see it or we won't.

18 MR GOTZ: I see that the operators have
19 reduced it to a third of the speed. I'm not sure that that
20 isn't going to be too slow, but let's look at it again –

21 CHAIRPERSON: And while we're talking
22 terminology. What about a corridor constituted by the
23 Nyalas on the one side and the side of the kraal on the
24 other.

25 [VIDEO SHOWN]

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1 MR GOTZ: We can stop it there.
 2 Brigadier I suggest to you that it's perfectly obvious, the
 3 moment the shot is fired possibly because of the people in
 4 the front, people around him hear the shooting of the gun
 5 there's a distinctive push by the people around him into
 6 the corridor constituted by the kraal and the Papa
 7 vehicles. I think that is obvious, Brigadier.
 8 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 9 dink, ekskuus –
 10 CHAIRPERSON: Yes, Brigadier.
 11 BRIGADIER CALITZ: Ekskuus, mnr die
 12 Voorsitter, ek sien u was besig. Ek dink die materiaal is
 13 duidelik vir u sigbaar. My getuienis is obviously verskil
 14 van wat mnr Gotz sien. Ek sien mense loop, nie hardloop
 15 nie, ek sien geen druk nie, ek sien daar is tussen die
 16 voorste drie, vier, vyf persone kan ek sê amper 'n halwe
 17 meter tot 'n meter spasie, nadat die skoot klap het ek
 18 gesien in die agterkant persone beweeg sideways kan ek maar
 19 amper sê met ander woorde nie eers vorentoe nie. 'n Kant
 20 tree asof hulle agter die persoon skuiling inneem wat dan
 21 die skoot aftrek. So ek kan glad nie sien dat dit 'n groep
 22 is waarna u verwys wat die ander groep vorentoe druk nie.
 23 As ons gaan tel, ek weet nie die getal mense kan ons dan
 24 saamstel.
 25 CHAIRPERSON: Sorry can you do it once

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1 again please, there's something I want to see. Roll it
 2 again.
 3 [VIDEO SHOWN]
 4 CHAIRPERSON: Can we go back a bit
 5 please, go back, yes.
 6 [VIDEO SHOWN]
 7 CHAIRPERSON: I must tell you what I
 8 see, the Brigadier is quite right that the persons in the
 9 front there's a gap between them and the row behind them.
 10 What one also sees is that once the shot is fired, what I
 11 saw, I think I saw, once the shot is fired the row
 12 comprising of the person who fired and those next to him
 13 appears to stop or certainly go much slower than before and
 14 those behind it then, behind them would come into them. So
 15 that part then bunches up. That's what I saw, or least I
 16 think I saw. But whether, what caused that is, it's not
 17 possible to see from the slide, there's various
 18 possibilities. One is of course that when the shot was
 19 fired the people around the shotist feared there might be
 20 some retaliation from the POP people and decided it might
 21 be an idea to somehow get cover behind the shotist so that
 22 he would take whatever was coming. But that's just
 23 speculation. I'm not sure it's possible for us simply by
 24 looking at the slide to say why people acted in the way
 25 they did but I've endeavoured to describe it as accurately

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1 as I could what I saw. Others may differ and in which case
 2 we'd have to look at it again but I hope we won't get
 3 there.
 4 MR GOTZ: Chairperson, for the purposes
 5 of my cross-examination I don't differ substantially from
 6 that. Save to point out that the effect as it were of the
 7 bunching rather the bunching is caused by the fact that
 8 people from the back or people further back pushed forward
 9 and that's exactly –
 10 CHAIRPERSON: What I saw is that the
 11 people at the back continued moving forward.
 12 MR GOTZ: Yes.
 13 CHAIRPERSON: The row of the shotists if
 14 you what I mean, the shotists, those next to him appears to
 15 be, either to become stationary or move much slower and
 16 that causes the bunching. That's what I saw which I take
 17 it is essentially what you want.
 18 MR GOTZ: Yes. Have we accepted that
 19 shotist is an English word, Chairperson?
 20 CHAIRPERSON: I think you'll find it in
 21 the dictionary but if it isn't someone can bring a
 22 dictionary tomorrow. Referring to shooter myself.
 23 MR GOTZ: Brigadier, there's one further
 24 piece of evidence in this clip which does demonstrate my
 25 point and it comes a few seconds later if we can just take

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1 the clip up to seven seconds. I think, ja lets revert to
 2 normal speed for the moment. One can simply play it, I
 3 think it's -
 4 [VIDEO SHOWN]
 5 Let's stop here. Now, Brigadier, I'm afraid your
 6 eyes are going to have to be rather good here. In the
 7 foreground you'll see some POPS members shooting their
 8 shotguns, rubber bullets with some gusto. What I'd like to
 9 –
 10 CHAIRPERSON: Aren't they rubber balls?
 11 I thought they were rubber balls?
 12 MR GOTZ: Indeed.
 13 CHAIRPERSON: They abolished or
 14 prohibited rubber bullets because even they could cause
 15 injury.
 16 MR GOTZ: Indeed.
 17 CHAIRPERSON: And they substituted
 18 rubber balls and I think in the interest of accuracy we
 19 must use that expression. Unless rubber bullets actually
 20 are being fired which I don't think is the case.
 21 MR GOTZ: Rubber balls are being fired.
 22 BRIGADIER CALITZ: Mnr die Voorsitter,
 23 ons verwys dit na rubber rondtes, so rubber rounds is
 24 miskien die terme wat ons operasionele gebruik.
 25 CHAIRPERSON: Being balls they would be

<p style="text-align: right;">Page 21139</p> <p>1 round, wouldn't they?</p> <p>2 MR GOTZ: Now, Brigadier, what I want you</p> <p>3 to focus on is the group of protestors who appear in</p> <p>4 exactly the same position as where we saw them a couple of</p> <p>5 seconds earlier, in other words at the corner of the kraal,</p> <p>6 at this point they will be to the right of the helmet of</p> <p>7 the policeman on the left hand side of the, on the left</p> <p>8 hand side.</p> <p>9 [09:41] So if we can play the clip from that position and</p> <p>10 what I want you to focus on –</p> <p>11 CHAIRPERSON: I haven't been doing what I</p> <p>12 should be doing, but you must please when you play a clip</p> <p>13 indicate where on the clip it is so that those who follow</p> <p>14 on the record later will be able to understand what's being</p> <p>15 looked at. Am I right, are we now starting - where are we</p> <p>16 starting now?</p> <p>17 MR GOTZ: Yes, this is the start of the</p> <p>18 clip – well, we're starting at 10 seconds into the clip.</p> <p>19 CHAIRPERSON: Alright, 10 seconds.</p> <p>20 MR GOTZ: It's four seconds before the</p> <p>21 TRT opens fire and if one can - if you, Brigadier, will</p> <p>22 focus on, again on the point which is at the corner of the</p> <p>23 kraal and really at the point just to the right of the</p> <p>24 helmet of the policeman on the left-hand side of the screen</p> <p>25 that you see. So let's play it.</p>	<p style="text-align: right;">Page 21141</p> <p>1 Is that right?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter, hy</p> <p>3 het ook nie omgedraai nie. Hy het net "basically" "ge-</p> <p>4 crouch," asof hy gekoets het vir iets, en aanbeweeg –</p> <p>5 CHAIRPERSON: Yes, but I'm putting a</p> <p>6 better point, if I may say so, and that is there was no-one</p> <p>7 behind him to stop him from going back.</p> <p>8 BRIGADIER CALITZ: Ek stem daarmee ook</p> <p>9 saam met u. Dankie, Meneer.</p> <p>10 MR GOTZ: But Brigadier, do you agree</p> <p>11 with the proposition I'm putting to you, the proposition</p> <p>12 being is that he makes an attempt to reverse and fails in</p> <p>13 his attempt?</p> <p>14 BRIGADIER CALITZ: Mnr Gotz, dit is baie</p> <p>15 duidelik dat dit nie so is nie, maar dit is sigbaar vir die</p> <p>16 paneel. Mnr die Voorsitter kan self daarna kyk. Miskien</p> <p>17 'n punt wat ek net wil uitwys – ek weet nie of u daarby</p> <p>18 gaan kom nie – om 15:53:35 op die ander "slides" wat ek</p> <p>19 deurgegaan het wat ons gister bespreek het, "slide" 24 en</p> <p>20 dan nou hierdie video, as ons vinnig gaan tel – ek het so</p> <p>21 vinnig met my pen oorgegaan, die eerste gedeelte was wat ek</p> <p>22 sien 13, en hierdie persone wat verbykom kan nie meer as</p> <p>23 vyf of agt plus nog wees nie. Ek dink die eksperts kan vir</p> <p>24 ons die getal gaan gee. Ek kan nie dink daar gaan meer as</p> <p>25 20 mense – wel, ek kan bietjie een of twee uit wees, maar</p>
<p style="text-align: right;">Page 21140</p> <p>1 [VIDEO SHOWN]</p> <p>2 Stop it there. Do you see, Brigadier, we can</p> <p>3 play it in slow motion –</p> <p>4 CHAIRPERSON: We're stopping at 17.</p> <p>5 MR GOTZ: Stopping at 17. Do you see,</p> <p>6 Brigadier – did you see that there is a person in white who</p> <p>7 actually does make the attempt to reverse and finds it</p> <p>8 impossible to do so and is then, as it were, pushed down</p> <p>9 the corridor?</p> <p>10 BRIGADIER CALITZ: Ons kan maar net weer</p> <p>11 daarna kyk, miskien 'n stadiger spoed dan kan ek kyk waarna</p> <p>12 u verwys. Nee, mnr die Voorsitter, die persoon wat ek sien</p> <p>13 in wit, as ons daar kan stop, die persoon wat ek sien in</p> <p>14 wit is die persoon wat gehurk het asof hy in reaksie</p> <p>15 gekoets het vir die, sê nou maar die vuurlyn op hom. Ons</p> <p>16 gaan nou agtertoe plaas van vorentoe. Sien, daar buk hy.</p> <p>17 Hy koets vir die vuurlyn. U sê hy word "ge-push"; daar is</p> <p>18 geen niemand agter hom enigsins wat aan hom raak.</p> <p>19 MR GOTZ: No, Brigadier, what I said to</p> <p>20 you was that he makes an attempt to reverse out of the</p> <p>21 corridor, fails in his attempt, and then continues to run</p> <p>22 down the corridor.</p> <p>23 CHAIRPERSON: But the Brigadier's point</p> <p>24 is he doesn't fail because there's someone behind him</p> <p>25 blocking his way. I think that's your point, Brigadier.</p>	<p style="text-align: right;">Page 21142</p> <p>1 in daardie voorste groepie. So dit is, daar is geen</p> <p>2 massadruk van 'n groep – ek het voorheen verwys na</p> <p>3 "stampede" - waar hy gebruik word en "ge-force" word in 'n</p> <p>4 rigting nie. U sal sien daar is groot spasies tussen</p> <p>5 hulle, so die groepie, daardie groepie het deurbeweeg en</p> <p>6 toe die vuurlyn kom, so dis nie die hele groot massa wat</p> <p>7 agter gedruk het dat hulle nie kon omdraai nie, nee.</p> <p>8 MR GOTZ: Brigadier, I don't dispute for</p> <p>9 a moment that at this point there's been a dispersal in the</p> <p>10 true sense of the word in the sense that they have been</p> <p>11 broken up into smaller groups. You must take account of</p> <p>12 the fact that just prior to this the camera is not in fact</p> <p>13 focussed on that scene. As the cameraman moves back the</p> <p>14 camera points to the ground and there's a section of about</p> <p>15 four seconds where – four, five seconds where we don't see</p> <p>16 anybody. So you can't simply count them, that number of</p> <p>17 five people plus the 13 that you saw earlier because one</p> <p>18 doesn't actually see the full extent of the mass that's</p> <p>19 moved forward. But I don't dispute for a moment that at</p> <p>20 this point there's been a dispersal in the sense that the</p> <p>21 mass has been broken up into a smaller group, which then</p> <p>22 makes its way through the corridor.</p> <p>23 BRIGADIER CALITZ: Ek stem saam met u,</p> <p>24 mnr die Voorsitter, en daarom sê ek vir u weens daardie</p> <p>25 klein groepie wat opgebreek het was dit baie maklik vir</p>

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1 hulle om, om te draai selfs op daardie stadium.
 2 MR GOTZ: In fact very few of these
 3 people make their way out of the corridor. If one
 4 continues to watch the videos, only one person makes it
 5 back out – actually one person. So Brigadier, there were
 6 16, 17 people killed at scene 1. How many people were
 7 injured?
 8 BRIGADIER CALITZ: Ek het die getalle nou
 9 nie by my nie. As ek reg is, it's 78, maar ek weet nie of
 10 dit die totaal is op die dag of net op "scene" 1 nie.
 11 CHAIRPERSON: No, no, that includes scene
 12 2. What we want to know, if you can't find it immediately
 13 never mind, we'll find it later.
 14 BRIGADIER CALITZ: Ja, ek het dit nou nie
 15 by my –
 16 CHAIRPERSON: At scene 1 we know how many
 17 were killed, killed or either sustained fatal injuries -
 18 some of them didn't die on the spot – and we know some
 19 others were injured. Mr Magidiwana for example was one who
 20 was injured, but what he wants to know from you is how many
 21 people were injured? If it's information that is vital we
 22 can get it now, otherwise we can get it later.
 23 MR GOTZ: No, the Brigadier had started
 24 to do a tally and I simply wanted to suggest that one can
 25 get an accurate tally of the number of people who attempted

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1 to make it down the corridor by adding the number of people
 2 killed –
 3 BRIGADIER CALITZ: Ons sal dit vind op
 4 bladsy – "exhibit" L – ekskuus, mnr die Voorsitter, ek het
 5 op exhibit L, scene 1, deceased 16, wounded 13, 1-3, and
 6 then firearms recovered two. Dan was daar 'n aantal
 7 knopkieries, spears, iron rods, knives, pangas, all those
 8 things, they're covered. So in totaal dan –
 9 CHAIRPERSON: Could you tell us what
 10 slide is that of L?
 11 BRIGADIER CALITZ: 261.
 12 CHAIRPERSON: Thank you.
 13 BRIGADIER CALITZ: 16 gedood, 13 beseer,
 14 as my wiskunde reg is –
 15 CHAIRPERSON: That's the answer to Mr
 16 Gotz's question.
 17 BRIGADIER CALITZ: 29. So –
 18 CHAIRPERSON: 13 were wounded.
 19 MR GOTZ: Brigadier, the number of 16 of
 20 course must climb to 17 because we now know – and I mean I
 21 think this fact has been established on the record – Mr
 22 Mdze had originally been thought to have been shot with a
 23 shotgun at scene 2 and die on the way to hospital. We now
 24 know that he in fact was shot at scene 1 and died on the
 25 way to hospital, so the number of people who were shot dead

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1 or fatally wounded at scene 1 is 17.
 2 BRIGADIER CALITZ: Mnr die Voorsitter, as
 3 daardie feite wel voor die Kommissie is, ek is nie bewus
 4 daarvan nie. Ek sal u woord daarvoor vat.
 5 CHAIRPERSON: I think that is so, but it
 6 doesn't affect the number of 13 who were wounded because
 7 the gentleman to whom you referred was wrongly allocated to
 8 scene 2 when exhibit L was compiled. So the answer to your
 9 question is 13 were wounded. As far as I could make out
 10 those who were shot in the legs were the ones who were
 11 wounded and those who were shot higher up in the body died,
 12 but what is the purpose for you asking the number wounded?
 13 I take it you want to take that point further, do you?
 14 MR GOTZ: No, Chairperson, it was a
 15 response to Brigadier Calitz's statement that we simply
 16 needed to add the number of people who had been shot or
 17 fatally wounded to the five people that one saw in the
 18 video and one could get a sense of the number of people who
 19 had made their way down the corridor. I was pointing out
 20 that one could get a better sense from adding the number of
 21 people who were injured, so –
 22 CHAIRPERSON: Brigadier, I mean that
 23 sounds scientific, doesn't it? If you take the people who
 24 died, who were killed or fatally wounded and you add to
 25 that the number who were wounded, but not fatally, you get

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1 a number of about 30, I think.
 2 BRIGADIER CALITZ: 29, or then 17 if it's
 3 true, then 31.
 4 CHAIRPERSON: Well, that's the point; 17
 5 plus 13 is 30, isn't it? And there may have been some
 6 people who escaped unscathed completely, but I think on the
 7 probabilities that's very remote, we can ignore that. So
 8 it sounds as if –
 9 MR MPOFU: No, Chairperson, I'm sure –
 10 MR SEMENYA SC: No –
 11 MR MPOFU: You know all this stuff,
 12 there's hard evidence. I don't understand –
 13 CHAIRPERSON: Okay, give us the hard
 14 evidence then, Mr Mpofu.
 15 MR MPOFU: Well, Mr Phatsha, who is
 16 sitting there, testified in this Commission –
 17 CHAIRPERSON: Alright, okay –
 18 MR MPOFU: - that he, that a group of
 19 people who went through the kraal and jumped over and –
 20 CHAIRPERSON: You know, I'd forgotten
 21 that. I'm grateful to you for drawing my attention to it.
 22 So what we are busy with therefore is a number in excess of
 23 30. 31 if it was only Mr Phatsha, but he says there were
 24 others with him. I can't remember how many he said, but we
 25 now are closer, I think, to the correct numbers, thanks to

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1 Mr Mpofu's intervention. So we're looking at over 30.
 2 MR SEMENYA SC: No, Chair, again there is
 3 hard evidence that a whole host of those people who were
 4 not responding to fire, to the water, to the teargas,
 5 ultimately ran away. They must have turned somewhere.
 6 CHAIRPERSON: Mr Phatsha's evidence was
 7 he was right near the front and he actually jumped into the
 8 kraal and that's how he escaped.
 9 MR SEMENYA SC: But the others ran away,
 10 Chair, otherwise –
 11 CHAIRPERSON: No, no, there were others
 12 who ran away. In fact many of them as we know ran away to,
 13 ultimately ended up at scene 2.
 14 MR SEMENYA SC: Ja, the question is how
 15 did they run away – how do they turn if this proposition is
 16 persisted with.
 17 CHAIRPERSON: Well, the question of
 18 course is where they were in the column. If Mr Gotz is
 19 busy with those near the front of the column who he says
 20 turned around with difficulty, obviously the further you
 21 are – the closer you are to the back of the column, the
 22 easier it is for you to run. But anyway, Mr Gotz I presume
 23 is near the end of this point, so I think let's let him
 24 finish his point and then move on. Anyway, we've got a
 25 number of about, of over 30 people, it looks like, who were

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1 near the front. There were others as well, as Mr Semenya
 2 correctly points out, who succeeded in escaping from scene
 3 1 and getting to scene 3, but anyway, I take it enough
 4 facts are on record now for you to proceed with your point.
 5 MR GOTZ: Yes, Brigadier, in the light of
 6 the facts that we've seen we will argue that – let me put
 7 it this way, that one can see this almost as if it were a
 8 funnel with the corridor being the stem of the corridor,
 9 the narrow, the stem of the funnel, in other words the
 10 narrow pipe and as one enters the stem of the funnel it
 11 becomes virtually impossible for the group of people in
 12 that funnel to reverse out of the corridor, out of the
 13 funnel. That's going to be our argument.
 14 CHAIRPERSON: It sounds to me as if this
 15 is a point upon which the opposing forces', if I can call
 16 them that, positions are set in concrete. You put your
 17 position and you made it clear what it is. The Brigadier
 18 takes a different stance; he's made his view clear, and I
 19 don't know if we're going to make any further progress in
 20 getting the two opposing forces closer to each other. So I
 21 suggest we move on to the next point.
 22 MR GOTZ: Brigadier –
 23 BRIGADIER CALITZ: Mnr die Voorsitter, as
 24 ek net miskien iets kan byvoeg wat miskien nou nadat mnr
 25 Mpofu die opmerking gemaak het, vroeër is gesê dat hulle

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1 kon nie links, daar was voertuie, hulle kon nie regs, die
 2 kraal was daar. As ek die "evidence" reg verstaan het, ek
 3 was nie ten tye van daardie tyd daar nie, dat die mense wel
 4 deur die kraal gespring het en so weggehardloop het, wil ek
 5 maar net byvoeg dat regs was dan ook 'n opsie, nie net
 6 omdraai nie maar deur die kraal kon hulle ook dan
 7 weggehardloop het, as daar "evidence" is, en ons weet daar
 8 was skoene en ensovoorts, u weet, in die kraal wel opgetel.
 9 So dan is daardie opsie ook moontlik gewees. Maar ons kan
 10 aanbeweeg, dankie, mnr Gotz.
 11 MR GOTZ: Brigadier, the following slide
 12 that you'll see is slide 7 of exhibit KKK52. Brigadier,
 13 you've had an opportunity to look through this presentation
 14 and the report that underpins it. Have you got any
 15 difficulties or disagreements with what we've depicted on
 16 this slide, slide 8 and slide 9?
 17 CHAIRPERSON: I'm sorry, in the bottom
 18 right-hand corner of this slide is the number 7. So are
 19 you asking him a general question –
 20 MR GOTZ: Yes.
 21 CHAIRPERSON: - 7, 8, 9, is he happy with
 22 the positions of the vehicles? I think he may have a
 23 problem with Papa1, but which in any event is not actually
 24 on the photograph, it's in the area above the photograph,
 25 but has he got any problem with the position of the

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1 vehicles, or the position of the strikers?
 2 MR GOTZ: Yes, and let's take Papa1 out
 3 of it. It's not –
 4 CHAIRPERSON: The advancing column of
 5 strikers.
 6 MR GOTZ: Let's take Papa1 out of it
 7 because it's not material for present purposes. Subject to
 8 that qualification, Brigadier, do you have any disagreement
 9 with what we've depicted on these slides?
 10 BRIGADIER CALITZ: Mnr die Voorsitter, as
 11 ek "slides" 7, 8 en 9 vergelyk met die dokument wat gister
 12 vir my gegee is om deur te gaan sal u dan dieselfde vind
 13 vanaf bladsy 31; die tye korrespondeer daar. Wat ons sien,
 14 u sê dit is sewe sekondes voor die vuurlyn van TRT op
 15 daardie stadium en dit is vir die eerste keer wat die Nyala
 16 – ek neem aan dit is waarna u verwys, Pappa19, en nie die
 17 res van die voertuie nie – waar hy dan die uitsig vir 'n
 18 oomblik belemmer waar hy voor die TRT-lyn en Adjudant
 19 Offisier Kuhn gaan verbyry, maar soos ek vir u gewys het
 20 gister, 14 sekondes en 10 sekondes terug kon die, was daar
 21 geen obstruksie nie. So sewe sekondes is die eerste keer
 22 wat die Nyala dan daardie "view obstruct." Hy beweeg in 49
 23 sekondes verby Adjudant Offisier Kuhn en u "slide" 9, op 50
 24 sekondes het u nou nie – op 49 sekondes het hy reeds verby
 25 Adjudant Kuhn beweeg en dan op 50 sekondes staan hy op

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1 dieselfde plek waar hy dan op 49 sekondes gestaan het toe
 2 die skietery plaasvind. So dit is, ek het nie enige
 3 onduidelikheid, as dit is waarna u verwys nie, nee.
 4 MR GOTZ: Brigadier, sorry, are you
 5 saying you agree with it and you're simply giving
 6 additional commentary? Because I'm not sure that I differ
 7 from what your commentary was, or are you disagreeing with
 8 our representation –
 9 CHAIRPERSON: I understood him to – let's
 10 see if I've got it right. I understood him to be agreeing
 11 with the position of the vehicles and I think the position
 12 of the strikers. He was disagreeing with you on your
 13 contention that you advanced that for a significant period
 14 of time the TRT line was not visible to the advancing
 15 strikers. I think that's his problem; there he disagrees
 16 with you and we went into that yesterday. I don't think we
 17 need go into it again today, but am I summarising your
 18 evidence correctly, Brigadier?
 19 BRIGADIER CALITZ: Heeltemal korrek, mnr
 20 die Voorsitter.
 21 MR GOTZ: Yes, Brigadier, I'm not at this
 22 point debating questions of when the TRT line became
 23 visible to the strikers. I simply wanted confirmation that
 24 you agree with the –
 25 CHAIRPERSON: He said so. He says he

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1 agrees. So you don't have to dance a dance of triumph on
 2 this concession. Let's move on.
 3 MR GOTZ: Brigadier, the ultimate
 4 configuration that one sees of the vehicles when one
 5 compares that to their position a minute earlier is
 6 indicative – very much, I submit, or we would submit – of
 7 some coordination. This is a, there's a clear pattern to
 8 the vehicles. They have reached a position which
 9 constitutes a formation and that is not the consequence of
 10 accidents, but of coordination, Brigadier. What would your
 11 response be?
 12 CHAIRPERSON: So I think the question was
 13 asked yesterday, but apart from that, who was in charge at
 14 the time? You had gone by this time.
 15 BRIGADIER CALITZ: Nee, mnr die
 16 Voorsitter, ek is daar voor by Pappa1 –
 17 CHAIRPERSON: Yes, no, but you'd gone
 18 already, hadn't you? You were on the point of going
 19 through the fence.
 20 BRIGADIER CALITZ: On this in fact,
 21 volgens CALS se dokumente het ek vorentoe beweeg ten tye
 22 van, dit moet in hierdie paar sekondes wees. So wat ek –
 23 CHAIRPERSON: Who was in charge of the
 24 vehicles down there at the TRT end of the corridor, if I
 25 can call it that?

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1 BRIGADIER CALITZ: By die TRT self – O,
 2 van die Pappa Nyalas?
 3 CHAIRPERSON: No, no, I'm talking about,
 4 you know, where P19 alias P10 –
 5 BRIGADIER CALITZ: Die senior –
 6 CHAIRPERSON: - was, that part. Who was
 7 in charge of the vehicles there, down there?
 8 BRIGADIER CALITZ: Die senior by Pappa10
 9 sal wees Luitenant Kolonel Mere.
 10 CHAIRPERSON: Alright.
 11 BRIGADIER CALITZ: Wat dan ook agtergebly
 12 het op die toneel, en Kolonel Makhubela, maar hy was by
 13 die, net by die draadkar lyn.
 14 CHAIRPERSON: So if there was any
 15 deliberate formation of the vehicles, putting them into
 16 formation, who would have made that, taken that decision
 17 and issued that instruction?
 18 BRIGADIER CALITZ: Mnr die Voorsitter, as
 19 daar so 'n formasie was en iemand sou dit gegee het dan sou
 20 dit seer sekerlik deur die bevelvoerders gegee het en gesê
 21 het stop agter mekaar of "let's park in this way."
 22 [10:01] Maar ek weet vir seker want ek het saam met hulle
 23 beweeg en my opdrag was net vir die voertuie, gaan vorentoe
 24 en gaan disperse. Ek dink wat hier gebeur het is simply, u
 25 weet die toeval, daar is nie so 'n formasie wat u na hier

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1 verwys wat ons kan sê, gaan parkeer reguit agter mekaar,
 2 daar was nie tyd daarvoor nie. So wat hier gebeur het,
 3 elke bevelvoerder op daardie voertuig het ombeweeg en wat
 4 voor hom plaasgevind het, as die voertuig gestop het glo ek
 5 het hy gestop en die aksie wat dan plaasgevind het op hulle
 6 linkerkante soos die mense deurgekom het. So ek dink dit
 7 is individuele aksies deur die bevelvoerders wat dan sal
 8 kan getuig op daardie stadium, definitief nie gekoördineerd
 9 of opdrag gegee nie, nee.
 10 MR GOTZ: Brigadier, you gave an
 11 instruction to block, we know that and we know also from
 12 Colonel Scott's evidence that he, well, he says that you
 13 were coordinating the vehicles, you were directing vehicles
 14 at this stage. His evidence is clear and it was not
 15 challenged.
 16 BRIGADIER CALITZ: Nee, ek weet nie of
 17 dit nie met hom ge-challenge is nie, maar seer sekerlik het
 18 u dit gister met my deurgegaan. U het verwys na Advokaat
 19 Chaskalson en u het verwys na die woorde, "n perfect
 20 block." Ek het u verwys na, dit was op daardie stadium wat
 21 hulle 45 grade na die kraal toe gekom het. Mnr die
 22 Voorsitter, ek wil nie weer oor die hele ding gaan nie, u
 23 het gesê dit was glad nie so nie, ek het na die transcript
 24 gaan kyk op daardie bladsy, dit is presies wat ek getuig
 25 het, "perfekte blok" en my redes gegee en toe het ek

<p style="text-align: right;">Page 21155</p> <p>1 gepraat oor die 45 grade angle wat hulle ingekom het. Net 2 daarna het Advokaat Chaskalson vir my gevra en ons kan na 3 die bladsy toe gaan, dat, moet ons dan eers block en dan 4 disperse, en my antwoord was vir hom baie duidelik gewees 5 dat indien die bevelvoerders op so 'n posisie daar voorkom 6 en dit is te gevaarlik om 'n lyn te maak fisies met jou 7 lede en sê, klim uit, maak 'n lyn, die gevaar lyn is te 8 naby, dan sou die block glad nie plaasvind nie en dan sou 9 hulle direk oorgaan in 'n dispersion.</p> <p>10 So die block het dan heeltemal weggeval as gevolg 11 van die aanval. Dit het ek getuig en dit is op rekord, ek 12 kan u verwys, ek het toevallig daarna gekyk op bladsy 13 18,277 van dag 160. Dit is net die opvolg vraag mnr 14 Chaskalson waar ek hom verduidelik het die block val weg as 15 die gevaar so is en die bevelvoerders sien dit kan nie 16 uitwerk nie, dan gaan hulle oor in 'n dispersion.</p> <p>17 MR GOTZ: Brigadier, I don't want to go 18 over evidence that has already been given, you were the one 19 who described this is the perfect block and we agree with 20 it, but it is block of a particular nature and we showed 21 you the SAPS' training manuals which indicate that this is 22 the type of block that is used to channel people down a 23 particular corridor. I'm not going to go through that 24 again, I think it is clear.</p> <p>25 BRIGADIER CALITZ: Ek dink net een</p>	<p style="text-align: right;">Page 21157</p> <p>1 MR GOTZ: So based on that – 2 BRIGADIER CALITZ: Ek het ook nie daardie 3 proposisie accept nie, daar was 'n verskil en ek dit bewys 4 met, ek dink 17 of 19 inskrywings in die transcript, so ek 5 dink nie ons moet weer daarna toe gaan nie. Wat ek wel 6 gesê het vir hom, hy het 'n proposal gemaak dat daar 7 voorheen wel 'n block kon gewees het, toe vra mnr die 8 Voorsitter, waar wou ons die persone, en ons het gesê, baie 9 ver vorentoe en ek het dit duidelik uit die transcript uit 10 bewys wat ons bedoel het. Om die voertuie so te koordineer 11 binne die paar sekondes wat ons vir hulle gesê het, gaan 12 parker reg langs mekaar, dit is feitlik onmoontlik in die 13 operasionele omstandighede wat hier afgespeel het en ek 14 dink my getuie was, sou die voertuie wel langs mekaar of 15 teen mekaar, ek dink ons het gepraat van 'n deur spasie 16 uitmekaar uit, wat gaan hierdie persone verhoed om tussen 17 die voertuie net deur te hardloop, tussen die kraal, tussen 18 die voertuig, tussen die twee voertuie? Seer sekerlik is 19 dit nie 'n soliede, hoe kan ek vir u sê, 'n lyn nie, so u 20 moet gebruik maak van Openbare Orde Polisiëringpersone wel 21 tussen die voertuie en dit was nie moontlik gewees nie, 22 daarom val die block weg en ek het vir u getuig dit het 23 oorgegaan in 'n dispersion action.</p> <p>24 MR GOTZ: Brigadier, let's look again at 25 Exhibit KKK47 which draws various diagrams, which show that</p>
<p style="text-align: right;">Page 21156</p> <p>1 regstelling, u sê, we agreed on it, ons het glad nie 2 daaroor gestem nie. Ek het u verduidelik dat daardie 3 manual is opgestel vir as dit 'n vooraf beplande operasie 4 is en ons weet in 'n stedelike gebied, die persone gaan 5 daar kom en ons voertuie kan in so 'n posisie geplaas word. 6 Hier, ek dink die evidence leaders het die clip vir ons 7 gespeel, ek dink dit is 'n minuut en 30 sekondes, waar die 8 persone op beweeg het en om beweeg het en wat voor hulle 9 afgespeel het moes hulle 'n besluit neem, dit sou baie 10 dwaas en gevaarlik gewees het as daar wel Openbare Orde 11 lede in 'n linie daar gaan staan het, dit sou lewens 12 gevaarlik vir hulle gewees het. Ons het dit gesien en die 13 lede het terugbeweeg na hulle voertuie toe, so nee, ons het 14 glad nie saamgestem nie.</p> <p>15 MR GOTZ: And the proposition that Mr 16 Chaskalson was putting to you is that you had a number of 17 vehicles at your disposal in order to create a block which 18 stopped the protestors from advancing any further and he 19 suggested to you that you could have placed that block 20 between the north-west corner of the kraal and where you 21 see the STF Casspir was located and then you'll recall 22 there was a whole debate about whether or not the red line, 23 where the red line was drawn you had accepted the 24 proposition, I don't want to go back to that.</p> <p>25 BRIGADIER CALITZ: Ek het ook nie –</p>	<p style="text-align: right;">Page 21158</p> <p>1 you're completely wrong. 2 CHAIRPERSON: - diagram that shows he is 3 completely wrong, I think you must draw his attention 4 specifically to those that you say show he is wrong so that 5 he can deal with them.</p> <p>6 MR GOTZ: And look at slide 15, I think 7 it is slide 15, unfortunately they're not numbered. So 8 what that slide shows and indeed the one right next to the 9 one following it is that you can use vehicles touching each 10 other as it were, and you do, do that and indeed you are 11 trained to do that.</p> <p>12 BRIGADIER CALITZ: Mnr die Voorsitter, ek 13 wil nou nie vir u 'n lesing gee op 'n lesing nie, maar as 14 ons die voertuie so blok sal daar dan altyd Openbare Orde 15 Polisiëringselede wees wat daardie hoeke beman, soos met 16 ander woorde die kruisietjies wat daar aangedui is of die 17 spasies, as u sien tussen die nommertjie 2 en die Nyala is 18 daar 'n spasie. wie sou daardie spasie toegemaak het? 19 Seer sekerlik as u twee Nyalas teen mekaar trek, die neuse, 20 ons kan die praktiese oefening gaan doen, dan sal ek vir u 21 wys daar sal nog steeds gapings wees waar u dan personeel 22 moet insit. Nou dit was my getuie was waarna ek 23 verwys het in daardie evidence met mnr Chaskalson. Toe die 24 bevelvoerders gearriveer het was dit hulle call gewees. 25 Elke seksie bevelvoerder, groep bevelvoerder voor hom</p>

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1 maak 'n besluit en daar is van hulle wat gesê het
2 pertinent, ek dink Papa11 is 'n voorbeeld, as ek reg is,
3 wat vir sy lede opdrag gegee het, julle klim nie uit die
4 voertuie uit nie, dit is te gevaarlik en hy het opdrag
5 gegee om net oor te gaan in 'n dispersion wat glad nie
6 verkeerd is in operasionele terme nie, so dit is –

7 MR GOTZ: Brigadier, you said that there
8 must always be a space between vehicles when you do this
9 type of block and I'm simply putting to you on the basis of
10 your own documents that that is wrong and we can look at
11 the following page.

12 BRIGADIER CALITZ: Nee, dit is nie wat ek
13 gesê het nie, mnr Gotz, asseblief.

14 MR SEMENYA SC: No, no, that's not what
15 the witness said, he said the opposite, Chair.

16 CHAIRPERSON: Let him repeat what he said
17 and then we can move on.

18 BRIGADIER CALITZ: Mnr die Voorsitter, ek
19 het gesê al parkeer jy die voertuie teenmekaar, die Nyala
20 voertuie, daar sal altyd 'n spasie wees waardeur persone
21 kan gaan. Met ander woorde sou ons teen die kraal parkeer
22 en die ander Nyala parkeer teen die ander, die spieëltjies,
23 ons kan tog nie die karre soort van smash teen mekaar,
24 verstaan u wat ek probeer sê? Die kraal was nog steeds
25 daar. U sal nog steeds gapings vind, ons kan dit prakties

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1 gaan doen op die grond om dit vir u te demonstreeer. Daar
2 sal altyd spasies wees tussen, waar daar dan Openbare Orde
3 Polisiëringselede gesit word. Ons werk met hierdie goed
4 daagliks in omstandighede, in optogte en die terme block
5 word gebruik waar ons vooraf weet. Hoekom ek dit die dag
6 gesê het, gaan blok, is net om te probeer keer die mense en
7 indien u gaan disperse. Die hele doel was, gaan kyk of
8 hulle nie net wil stop nie en gehoor gee aan die
9 uiteendrywing aksie wat alreeds by insident 2 plaasgevind
10 het, maar die voorste militante groep weet ons daardie 30,
11 hoekom hulle wou daar deur en hulle sou nog steeds daar kon
12 deurkom.

13 MR GOTZ: Brigadier, let's go back to
14 KKK52, Exhibit KKK52, I should just put the final few
15 slides to you. Sorry, if we go to slide 11 and bearing in
16 mind the document that we've just seen in the training
17 manual, what I wanted to put to you was that it was
18 perfectly feasible for you to do a block with Nyala
19 vehicles which had the effect of preventing the striking
20 workers from moving down towards the TRT line.

21 BRIGADIER CALITZ: Mnr die Voorsitter, ek
22 dink as u hierdie voorstel vat en u vra dieselfde vraag,
23 Papa10 was Luitenant-Kolonel Mere, Papa5 was Luitenant-
24 Kolonel Pitsi. Dit is persone met jare ondervinding in
25 Openbare Orde, so u kan gerus na, as hulle kom getuig vir

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1 hulle dieselfde proposisie gee en dit is feitlik onmoontlik
2 in sekondes om presies te sê, ons weet die mense kom nou
3 hier om, kom ons gaan stop die voertuie so, die een so, in
4 aggenome waar ek was, vorentoe beweeg het. As Papa4 en 2,
5 dan wat sou die persone verhoed het om tussen Papa4 en
6 Papa2 deur te kom en wat sou die persone verhoed het om
7 deur die kraal tussen Papa2 en die kraal deur te kom, en
8 dan vir dieselfde, tussen Papa4 en die Casspir, wat sou
9 hulle daar verhoed het om oor daardie hoek van 'n buffer
10 van 'n Nyala te spring, wat sal ons in daardie spasie sit?
11 Dit is nie 'n soliede, ek weet nie of u verstaan nie,
12 miskien as ons demonstreeer hoe die lyk die Nyala buitekant
13 sal u begryp wat ek bedoel.

14 MR GOTZ: Brigadier, it is perfectly
15 obvious, what I'm suggesting to you is that you can use the
16 Papa2, Papa4 or Papa5 to create a form of block which
17 interrupts the flow of the strikers around the corner of
18 the kraal. You could have done that if you wanted to.

19 BRIGADIER CALITZ: Mnr die Voorsitter, in
20 hindsight is dit baie moeilik om te sit en sê, ja, het ons
21 geweet dat die persone sal om hierdie hoek kom en ons gaan
22 met 'n blok formasie hulle daar keer en dit was so beplan
23 gewees, kon daar sekerlik 'n blok formasie gewees het
24 met die Openbare Orde Polisiëringselede tussen-in. Wat ek
25 vir u sê is, dit sou nog steeds gevaarlik, lewens gevaarlik

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1 gewees het vir daardie Openbare Orde Polisiëringselede en
2 hulle sou dan retreat het, terug na hulle voertuie toe en
3 dieselfde gevolge miskien, tensy hulle gehoor gegee het,
4 maar daardie groep was beslissend om deur te beweeg en ons
5 weet die redes daarvoor.

6 MR GOTZ: Brigadier, I don't understand,
7 why is it lewens gevaarlik vir die polisie in die Nyalas?
8 They're in armoured vehicles. I can understand a situation
9 where you had people firing at them with canons and
10 automatic weapons, but we're not talking people, strikers
11 who have those type of weapons at their disposal. These
12 are armoured vehicles.

13 BRIGADIER CALITZ: Ja, ek het nie gepraat
14 van die lede in die voertuie nie, ek het nog nie een keer
15 daarna verwys nie.

16 MR GOTZ: And so again I put to you that
17 there is nothing to prevent you from doing this sort of
18 block and I don't ask you to accept that it has to be
19 exactly in this formation, but this type of block was not
20 attempted, correct?

21 BRIGADIER CALITZ: Mnr die Voorsitter,
22 die blok wat u hier sien, nee, glad nie. Ek getuig weer,
23 elke bevelvoerder wat voor hom afspeel, hy maak daardie
24 besluit en daardie senior offisiere, Papa5 wat ek
25 Luitenant-Kolonel Pitsi, Luitenant-Kolonel Mere, sal vir u

<p style="text-align: right;">Page 21163</p> <p>1 sê hoekom hulle wel in daardie posies was, waar hulle 2 was, indien hulle kom getuig. Dit was agter my, ek kan nie 3 vir sê wat op daardie stadium gebeur het of die een gesê 4 het, trek agter my in of trek langs my in nie. Al wat ek 5 vir u sê is, die blok is nie vooraf beplan nie, daar was 6 nie voorsien dat ons op hierdie stadium moes van 'n blok 7 aksie gebruik gemaak het nie. Indien ons dan wel van 'n 8 blok aksie moes gebruik gemaak het kon ons maar net sowel 9 van 'n draadkar opsie gebruik gemaak het en dan 'n ander 10 spasio oop gelos het iewers. So daar is verskeie 11 moontlikhede in hindsight, mnr die Voorsitter, maar nee, 12 wat u hier teken, niks sou hulle verhoed het om dan tussen 13 die voertuie ook net deur te beweeg nie.</p> <p>14 CHAIRPERSON: Mr Gotz, I think we've 15 spent a lot of time on this point. It sounds to me as if, 16 you've got as much out of the brigadier as one can expect 17 because he has left the scene at a relevant time. Colonel 18 Mere, I think, is one of those who perhaps would be able to 19 throw further light on the question. It occurs to me if 20 one looks at the various slides that you've given us, you 21 start with 15:53:30 and then 15:53:40 and then there is one 22 at, in fact there is one at 35, so if one takes 15:53:30, 23 35, 40, 45, 50, on the assumption which I think is not 24 challenged, that boldly speaking your position of the 25 various vehicles is correct, then one can see how they</p>	<p style="text-align: right;">Page 21165</p> <p>1 definition –</p> <p>2 MR GOTZ: Yes –</p> <p>3 CHAIRPERSON: And that point was made 4 yesterday, it is either a good point or a bad point, but I 5 don't know that it is improved by being repeated and being 6 approached from various angles. We've got all the basic 7 facts, we know what the witness says about these things. 8 There will be other witnesses who can be questioned about 9 this, who were actually responsible for moving the relevant 10 vehicles at the relevant times. I mean if you look at the 11 slide at the moment, the 15:53:30 one, there is what looks 12 like a block. 2, 4 and the Casspir look very similar to 13 that picture of a block in the police manual. We know from 14 your subsequent slides that that block, if one can call it 15 that, the witness may deny that it is a block properly so 16 called, but it looks like a block, apparent block shall we 17 say. We know that that apparent block didn't persist 18 because those vehicles were moved.</p> <p>19 MR GOTZ: Chairperson, -</p> <p>20 CHAIRPERSON: I don't know that he can 21 help us as to why they were moved, those who moved them can 22 come and tell us.</p> <p>23 MR GOTZ: Ja.</p> <p>24 CHAIRPERSON: But my point is, I don't 25 know that there is any point in carrying on with this</p>
<p style="text-align: right;">Page 21164</p> <p>1 moved. One can see that there was what looks like some 2 kind of a block earlier on, but for some reason, which 3 presumably will be able to be explained to us, or maybe 4 able to be explained to us by Colonel Mere, the position of 5 the vehicles was changed to what we see on the later 6 slides, but I don't know that there is any point in asking 7 this witness about it any further because he can't really 8 tell us.</p> <p>9 He denies that a specific instruction was given, 10 he says it was left to the individual Nyala commanders at 11 the time, or possibly the senior Nyala commander present at 12 the scene at the time, and I don't know that there is any 13 point in asking him anymore questions on it. The 14 comparison of the position of the vehicles at the various 15 times may well prove instructive, but that's something, any 16 instruction we get won't be from this witness, I think, so 17 I suggest that you might consider moving on to your next 18 point.</p> <p>19 MR GOTZ: Chairperson, the reason I'm 20 asking this witness of course is that he was the one who 21 gave on his own admission an instruction to block and what 22 I'm testing is –</p> <p>23 CHAIRPERSON: Yes, I know that, that 24 point has been made. A further point was made that in 25 effect there was a kind of block within the meaning of the</p>	<p style="text-align: right;">Page 21166</p> <p>1 witness at the moment on this line.</p> <p>2 MR GOTZ: Chairperson, I'm happy to leave 3 it but just one clarification. What we sought to do on 4 this slide and indeed the one following is to illustrate 5 that these types of blocks could have been attempted –</p> <p>6 CHAIRPERSON: Yes, I think you could 7 assume –</p> <p>8 MR GOTZ: It was never suggested that –</p> <p>9 CHAIRPERSON: I'm sorry to interrupt you, 10 I'm assuming you could assume that we got that point. You 11 don't have to tell us what you're about, you are here at 12 the moment to ask questions, you're asking questions. I'm 13 suggesting to you the line that you are busy going along, 14 you more or less reached the, it is a cul-de-sac, you've 15 reached the dead end, you've gone as far down this line as 16 you can go, I suggest you go on another line. There are 17 other witnesses who will be in the same avenue from whom 18 you can ask questions about this later, but I don't know if 19 there is any point in carrying on further with this 20 witness. Ms Hemraj says that this line is blocked.</p> <p>21 MR GOTZ: Chair, with that block I will 22 come to the end of my cross-examination.</p> <p>23 CHAIRPERSON: Thank you. Is there any, I 24 don't know if anyone else have to cross-examine, is there, 25 except, - it was told to us that Lonmin are not proposing</p>

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1 to cross-examine this witness.
 2 MR BURGER SC: No, indeed, not Chair,
 3 thank you.
 4 CHAIRPERSON: Re-examination, Mr Semenya?
 5 [10:21] RE-EXAMINATION BY MR SEMENYA SC: Thank
 6 you, Chair. Brigadier, this is day 26 that you have been
 7 giving us evidence and 24 of which you have been giving
 8 evidence under cross-examination. Your answers have been
 9 fairly expansive, but I would like us to deal with various
 10 topics. Maybe it is fitting that we deal with this one
 11 first.
 12 The proposition about channelling of the strikers
 13 to the TRT line, can we start with that. You tell us that
 14 you are in the 14:30 briefing. Is that right, Brigadier?
 15 BRIGADIER CALITZ: Dit is korrek, by
 16 "forward holding area" 1.
 17 MR SEMENYA SC: Was the channelling of
 18 strikers discussed in that briefing of 14:30?
 19 BRIGADIER CALITZ: Nee, glad nie, mnr die
 20 Voorsitter.
 21 MR SEMENYA SC: Were the commanders of
 22 the POP present at that briefing?
 23 BRIGADIER CALITZ: Ja, al die
 24 bevelvoerders was daar, behalwe Luitenant Kolonel Mere wat
 25 ek dan self later "gebriëf" het.

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1 MR SEMENYA SC: As far as you know there
 2 would have been a briefing of 13:30, the mid-afternoon,
 3 right?
 4 BRIGADIER CALITZ: U bedoel die JOCCOM
 5 meeting?
 6 MR SEMENYA SC: On the 13th, yes.
 7 BRIGADIER CALITZ: Ja, dit is wat, dis
 8 vir ons gesê daar was 'n 13:30 vergadering.
 9 MR SEMENYA SC: To your knowledge was
 10 there any discussion relating to channelling of strikers to
 11 the TRT line?
 12 BRIGADIER CALITZ: Nee, glad nie, mnr die
 13 Voorsitter.
 14 MR SEMENYA SC: If that was to be the
 15 operational conduct for the day, would you have expected
 16 that to be discussed in the 13:30 JOCCOM meeting?
 17 BRIGADIER CALITZ: Dit sal wel 'n
 18 belangrike besprekingspunt gewees het waar ek glo besluite
 19 oor sou geneem het.
 20 MR SEMENYA SC: You were in the JOCCOM
 21 meeting of 6 o'clock where there was reference to stage 3,
 22 were you not?
 23 BRIGADIER CALITZ: Dit is korrek, mnr die
 24 Voorsitter.
 25 MR SEMENYA SC: Was the channelling of

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1 strikers to the TRT line ever discussed there?
 2 BRIGADIER CALITZ: Nee, mnr die
 3 Voorsitter.
 4 MR SEMENYA SC: If it was part of the
 5 police planning op for the day, would it have been
 6 discussed?
 7 BRIGADIER CALITZ: Ja, dit sou beslis
 8 bespreek gewees het, mnr die Voorsitter.
 9 MR SEMENYA SC: I'm just trying to
 10 explore with you because this theory is given either that
 11 the channelling of the strikers to the TRT line was by
 12 design or default, but can we explore the design one first?
 13 After the 6 o'clock JOCCOM meeting Colonel Scott was asked
 14 to continue perfecting the plan, so to speak.
 15 BRIGADIER CALITZ: Ek glo hy het
 16 agtergebly, hy was besig daarmee, mnr die Voorsitter.
 17 MR SEMENYA SC: Now we know the plan as
 18 was given before this Commission, does it or does it not
 19 have any channelling of strikers to the TRT line?
 20 BRIGADIER CALITZ: Ek is nie bewus van
 21 enige "channelling" in daardie plan nie.
 22 MR SEMENYA SC: Would you have expected
 23 it to be there if that was part of the police plan for the
 24 16th?
 25 BRIGADIER CALITZ: Ja, beslis, mnr die

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1 Voorsitter.
 2 MR SEMENYA SC: Okay. Now the evidence
 3 leaders have trawled basically the hard drive of Colonel
 4 Scott. You are aware of that?
 5 BRIGADIER CALITZ: Ek het so verneem in
 6 die media.
 7 MR SEMENYA SC: And they have mapped it
 8 in terms of time when all the stages of the plans were
 9 contemplated and brought to the computer. Are you aware of
 10 that?
 11 BRIGADIER CALITZ: Ek is bewus van al die
 12 "drafts," die samestelling wat op sy rekenaar was. Ek het
 13 daarvan gehoor, ja.
 14 MR SEMENYA SC: Have you come across any
 15 of those drafts that are depicting a channelling of the
 16 strikers to the TRT line?
 17 BRIGADIER CALITZ: Volgens my was dit
 18 nooit bespreek of aan hom oorgegee of gevind nie.
 19 MR SEMENYA SC: Now throughout the
 20 planning of this operation did the police anticipate in
 21 advance that the strikers would approach Nyala 4, as they
 22 did?
 23 BRIGADIER CALITZ: Nee, mnr die
 24 Voorsitter, ons het eers daarna dit verwag, nie op daardie
 25 stadium nie.

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1 MR SEMENYA SC: Just so that I follow
 2 your evidence correctly, and given the questions of whether
 3 this would have happened by happenstance or coincidence,
 4 can we look at the last slide, which is KKK52, 15:53:30,
 5 and that is slide 11 that Mr Gotz has been dealing in his
 6 cross-examination of you. That is supposed to depict a
 7 scenario that, we are told, you ought to have done on the
 8 day, correct?
 9 BRIGADIER CALITZ: Dis die voorstel dat
 10 ons daardie blok, hy noem dit 'n blok formasie, moes
 11 gebruik het. Dis korrek.
 12 MR SEMENYA SC: Yes, let us see how that
 13 is achievable operationally. Would the person in Papa2
 14 have had a briefing about it before?
 15 BRIGADIER CALITZ: Nee, dit is – hy het,
 16 hy sou glad nie 'n voorligting daarvan gehad het nie.
 17 MR SEMENYA SC: What I'm asking is to
 18 achieve that result would you have to inform the driver of
 19 the Nyala what they must do?
 20 BRIGADIER CALITZ: Oh, in order to
 21 achieve – ek het u verkeerd verstaan. Ja, hy moes beslis
 22 voorligting gekry het, mnr die Voorsitter.
 23 MR SEMENYA SC: Would you have to advise
 24 the driver of Papa4 that that must be the position they
 25 must take?

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1 BRIGADIER CALITZ: Hy sal deel gewees het
 2 van daardie beplanning.
 3 MR SEMENYA SC: That of the Casspir?
 4 BRIGADIER CALITZ: Dit is korrek.
 5 MR SEMENYA SC: That of the STF?
 6 BRIGADIER CALITZ: Selfs hulle as 'n
 7 "tactical" sou ook daarvan deel gewees het, dis korrek.
 8 MR SEMENYA SC: So all of those would
 9 have to have a briefing before this is realisable?
 10 BRIGADIER CALITZ: Hulle sou dan deel van
 11 die beplanning uitgemaak het waar daar dan nou beplanning
 12 was en ook 'n voorligting.
 13 MR SEMENYA SC: As a matter of fact do we
 14 know if there was any discussions with Papa2 driver to take
 15 any particular formation on the day?
 16 BRIGADIER CALITZ: Nee, mnr die
 17 Voorsitter.
 18 MR SEMENYA SC: Do we know any
 19 information that the driver of Papa4 on the day was
 20 informed that is the formation he must take?
 21 BRIGADIER CALITZ: Nee, mnr die
 22 Voorsitter.
 23 MR SEMENYA SC: That of the Casspir?
 24 BRIGADIER CALITZ: Nee, ook nie.
 25 MR SEMENYA SC: Okay. Now I would like

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1 to throw us back to another slide.
 2 CHAIRPERSON: It's now half past 10, Mr
 3 Semenya. When it's convenient we'll take the tea
 4 adjournment, I think. If you need some time to find the
 5 slide you're going to show perhaps we can take tea now,
 6 otherwise we can see the slide and deal with the point that
 7 you're going to make in relation to the slide and then take
 8 the tea adjournment, but I'm in your hands.
 9 MR SEMENYA SC: We can take the break
 10 now, Chair.
 11 CHAIRPERSON: We take the tea
 12 adjournment.
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]
 14 [11:02] CHAIRPERSON: The Commission resumes.
 15 Brigadier, you're still under oath. Mr Semenya.
 16 ADRIAAN MARTHINUS CALITZ: Dankie, mnr
 17 die Voorsitter.
 18 RE-EXAMINATION BY MR SEMENYA SC (CONTD.):
 19 Thank you, Chair. Perhaps, Brigadier, before we go to the
 20 next slide, can we just finalise some few outstanding
 21 issues relevant to the previous slide, which is KKK52 and
 22 slide 11, the one dealing with a hypothesis of blocking.
 23 On this hypothesis, Brigadier, what would have been the
 24 protection, if at all, of Papa11?
 25 BRIGADIER CALITZ: Nee, op hierdie

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1 stadium sal daar dan nie vir hom enige "protection" wees
 2 nie.
 3 MR SEMENYA SC: Would that be consistent
 4 with how a Public Order Policing operation should happen?
 5 BRIGADIER CALITZ: Nee, glad nie, mnr die
 6 Voorsitter. Dit sal nie so beplan wees nie.
 7 MR SEMENYA SC: And in the event this
 8 formation was to be carried as proposed, what would have
 9 happened to the plan to disperse, disarm the protesters?
 10 BRIGADIER CALITZ: Daardie plan is nog
 11 steeds uitgevoer by wat ons verwys na insident 2 toe. By
 12 Nyala 4 het hulle alreeds daardie uiteendrywing gedoen, as
 13 ek u reg verstaan.
 14 MR SEMENYA SC: I may not have expressed
 15 myself well. I'm trying to understand if this blocking in
 16 the form that is proposed here had happened, i.e. the
 17 Nyalas and the Casspirs had formed in the way of that
 18 blocking, what would have happened to the plan to disperse
 19 the crowd and to disarm them?
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 net om te blok sou nie gewerk het nie, daarom het ek gesê
 22 dit is saam met die "dispersion," so daarom sal ons die
 23 Openbare Orde lede aan die buitekant hê om dan voort te
 24 gaan met daardie "dispersion action" wat ek na verwys het,
 25 wat sou gevaarlik wees.

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1 MR SEMENYA SC: Would you have still been
2 able to disperse in that formation?
3 BRIGADIER CALITZ: Ja, dit sou moeilik
4 wees in daardie formasie.
5 MR SEMENYA SC: How do you preclude them
6 going through the kraal with that formation?
7 BRIGADIER CALITZ: As ek u reg verstaan,
8 ek het voorheen getuig dat hulle kon nog steeds deur die
9 kraal gaan aan die kant van Pappa2 en die kraal.
10 MR SEMENYA SC: How would you have
11 prevented them going through the fence that is bordering
12 that property?
13 BRIGADIER CALITZ: Nie met hierdie
14 formasie nie, nee. Daar sal 'n totale ander formasie moes
15 gesit gewees het want daardie "fence" is net 'n drie-lyn
16 draad, so dit is maklik om daardeur te kom.
17 MR SEMENYA SC: Could this formation have
18 happened spontaneously?
19 BRIGADIER CALITZ: Nee, mnr die
20 Voorsitter.
21 MR SEMENYA SC: Would you have had to be
22 told as the operational commander that this becomes
23 necessary?
24 BRIGADIER CALITZ: Ja-nee, as dit
25 bespreek was, beslis.

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1 MR SEMENYA SC: In terms of the
2 timelines, how much time would have been required to
3 properly inform everybody that this blocking has become
4 necessary?
5 BRIGADIER CALITZ: Sjoe, mnr die
6 Voorsitter, as ons 'n behoorlike "blocking" in plek moet
7 sit dan beteken dit ons sal voorligting moet gee vir die
8 bevelvoerders en hulle sal dan daardie voorligting aan
9 hulle lede op die voertuie moet oordra. So definitief nie
10 in die minuut en 30 sekondes, of die tydperk wat hier, ons,
11 dit sou baie langer gevat het.
12 MR SEMENYA SC: If as the operational
13 commander you wanted spontaneously to achieve this, or
14 instantly to achieve this feat, how much time would you
15 have needed?
16 BRIGADIER CALITZ: Ek dink die, mnr die
17 Voorsitter het verwys na, van waar hulle om gekom het, die
18 30, of die 20 tot by 50, dit gee so 'n paar sekondes, 10,
19 20 sekondes, wat heeltemal te min tyd is om dit in plek te
20 sit.
21 MR SEMENYA SC: Okay, can I invite you to
22 comment on another exhibit, which is KKK51, slide 5, the
23 one below this one. That's the one. This is a blown-up
24 version of the previous slide. We are told this is now 29
25 seconds before the TRT responded to the crowd.

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1 BRIGADIER CALITZ: Ja, ek dink dit is 'n
2 in zoom van die foto van Kolonel Vermaak, as ek dit nie mis
3 het nie.
4 MR SEMENYA SC: Ja, according to your
5 study of the material, Brigadier, would scene 2 have
6 happened this time? Incident 2, rather.
7 BRIGADIER CALITZ: Incident 2 het klaar
8 plaasgevind. Hierdie is waar hulle ombeweeg na insident 3.
9 MR SEMENYA SC: And the water cannon,
10 according to your understanding of the evidence had it
11 already sprayed the crowd?
12 BRIGADIER CALITZ: Mnr die Voorsitter, ek
13 het gesê ek was nie bewus die tyd wanneer hy "ge-spray" het
14 nie, so ek kon nie daarvoor getuig nie.
15 MR SEMENYA SC: Let us look there at the
16 opportunity of people turning back and going to their
17 respective destinations of choice. Is there anything on
18 the part of the police precluding these members from going
19 to all various spaces that we see on that photograph?
20 BRIGADIER CALITZ: As u sê "precluding,"
21 ek wil net seker maak –
22 MR SEMENYA SC: Is there anything by the
23 police which prevents any of these people from going back?
24 BRIGADIER CALITZ: Nee, mnr die
25 Voorsitter, ek dink as ons kyk en dan miskien na die

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1 videomateriaal wat ons nou net gesien het –
2 MR SEMENYA SC: Shortly before –
3 BRIGADIER CALITZ: Ekskuus, mnr die
4 Voorsitter, nee, ek wil net die antwoord. Nee, as ons kyk
5 na die videomateriaal wat ons nou ook gesien het en die
6 groot groepie, sal ons sien dat die uiteendrywing wat
7 plaasgevind het, het wel gewerk, en die groter meerderheid
8 – ek dink as ons kan uit zoom sal ons sien hoe groot massa
9 het gevolg op hierdie stadium. So daardie groepie van 30
10 het dan deurgedruk. Die ander het gereageer op die
11 uiteendrywing en die aksie van die polisie. So niks het
12 hulle verhoed om, om te draai en weg te beweeg na daardie
13 uiteendrywing nie.
14 MR SEMENYA SC: And we see the Nyalas
15 there in what is called the corridor, the channel, or the
16 funnel. Was that ever discussed in any briefing that the
17 Nyalas should be in that formation?
18 BRIGADIER CALITZ: Nee, mnr die
19 Voorsitter, dit was nooit bespreek nie.
20 MR SEMENYA SC: As the operational
21 commander did you talk to any of those drivers to take that
22 formation?
23 BRIGADIER CALITZ: Nie om daardie
24 formasie te vat nie, nee. Ek het wel gesê volg my – wel,
25 ek het gesê volg my, maar van hulle was reeds daar toe ek

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1 gesê het gaan om, keer die persone, en "disperse, so die
2 "commanders" het dan, sou dan daardie posisies ingeneem
3 het.
4 MR SEMENYA SC: Were you minded when you
5 gave whatever instructions you gave to form a corridor?
6 BRIGADIER CALITZ: Nee, glad nie, nie in
7 daardie sin nie, nee.
8 MR SEMENYA SC: Were the drivers of the
9 various Nyalas aware that a corridor ought to be formed for
10 the purposes of channelling these strikers to the TRT line?
11 BRIGADIER CALITZ: Ja, dis nooit bespreek
12 met hulle nie, as ek u vraag reg verstaan. So hulle sou
13 nie bewus gewees het daarvan nie, nee.
14 MR SEMENYA SC: At the time of incident 2
15 were you as the operational commander alive to the fact
16 that the strikers would want to go around the kraal, the
17 small kraal?
18 BRIGADIER CALITZ: Mnr die Voorsitter, ek
19 dink ek het getuig dat ek kon die voorste punt sien na die,
20 waar Nyala 4 geblok het, en ek het gesê die groter agter
21 deel het ons dan gesien ombeweeg en dit is hoekom ek vir
22 die voertuie gesê het om, om te beweeg en hulle te probeer
23 stop.
24 MR SEMENYA SC: What I'm trying to
25 establish is whether at the time incident 2 happens, were

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1 you as the police aware that closing of that route by Nyala
2 4 would lead the group to go around the kraal?
3 BRIGADIER CALITZ: Nee, mnr die
4 Voorsitter, die effektiewe doel van insident 2 en dan ook
5 die opdragte om op te tree was om hulle te "disperse" en
6 hulle sou dan in 'n westelike rigting wegbeweeg het.
7 MR SEMENYA SC: And how much time did you
8 have at that point to then rearrange the Nyalas as we see
9 them on this slide?
10 BRIGADIER CALITZ: Mnr die Voorsitter, ek
11 het nie die presiese tyd nie tussen insident 2 en 3. Ek
12 dink die video wat vir ons gewys het waar ons op beweeg het
13 was so iets soos 'n minuut en 30 sekondes, ek dink, as ek,
14 onder korreksie.
15 MR SEMENYA SC: As the operational
16 commander did you talk to TRT this time?
17 BRIGADIER CALITZ: Nie spesifieke
18 opdragte aan TRT nie, nee.
19 MR SEMENYA SC: Was there anything – let
20 me ask it differently. Papa11, we see it where it is. Was
21 it through any of the direct instructions that you gave it?
22 BRIGADIER CALITZ: Om in daardie posisie
23 te parkeer, nee. Die "commander" self het besluit om
24 vorentoe te gaan en daar te parkeer.
25 MR SEMENYA SC: Okay. I would like us to

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1 also deal with various other slides and obtain your input.
2 If we go to page 25 of exhibit KKK52, that is the slide
3 dealing with 14 seconds before the action by the TRT on the
4 – no, the one which is page 25, screenshot from exhibit UU3
5 bis at 5 seconds, and which is 14 seconds before the TRT
6 line opens fire. Yes, that's the one, Brigadier. Is the
7 TRT line visible to the approaching strikers?
8 BRIGADIER CALITZ: Ja, dit is korrek, mnr
9 die Voorsitter.
10 MR SEMENYA SC: Are the members of the
11 police visible, of POP rather, to the approaching strikers?
12 BRIGADIER CALITZ: Die Openbare Orde
13 Polisiëringselede is ook "visible" vir hulle, dit is korrek.
14 MR SEMENYA SC: The Nyalas by the police,
15 are those visible to the approaching strikers?
16 BRIGADIER CALITZ: Ja, dit sal duidelik
17 in hulle sig wees.
18 MR MPOFU: Sorry, Chairperson, I don't
19 know what this means. The approaching strikers, what is
20 being spoken about here? How many people? 3 000? Two?
21 Three?
22 CHAIRPERSON: Mr Semenya, Mr Mpofu wants
23 you to clarify your question, so can you oblige?
24 MR SEMENYA SC: At least to the 10,
25 minimum of 10 on that photo, would they have reasonably

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1 been able to see what we are talking about?
2 BRIGADIER CALITZ: Dit is korrek, mnr die
3 Voorsitter, hulle sal dit wel kan sien.
4 CHAIRPERSON: I thought this was covered
5 yesterday, Mr Semenya. I don't want to stop you, but I
6 thought this matter was dealt with fairly fully. The whole
7 question of the visibility to the strikers of the TRT group
8 was gone into in some depth. The proposition was put by Mr
9 Gotz, which the witness didn't agree with, and he then
10 referred to various slides and so on, indicating there's a
11 longer period than Mr Gotz had suggested. I'm not sure
12 that anything new has been added at this stage so that you
13 have to go over this ground again in re-examination, but
14 look, you may be leading up to something so I won't stop
15 you at this stage, but it's not necessary to repeat
16 evidence that was given yesterday just because it's re-
17 examination and not cross-examination.
18 The point you're apparently seeking to make at
19 the moment is the amount of time which was available to the
20 strikers at the front to see the TRT ahead of them. That
21 point was fully dealt with yesterday and I don't know it
22 has to be repeated, unless there's something new that was
23 not drawn to our attention yesterday which puts an extra
24 aspect to the matter that we haven't got at the moment.
25 COMMISSIONER HEMRAJ: Mr Semenya, can we

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1 have some assistance about the distances between where the
 2 strikers appear on this photograph and where the POPS
 3 police can be seen, and where the TRT police line is?
 4 MR SEMENYA SC: I do not have that, but
 5 we will attempt to ascertain the distance, Commissioner.
 6 COMMISSIONER HEMRAJ: Thank you.
 7 CHAIRPERSON: I'd understood that some
 8 calculation has been done on the Google Earth, but we're
 9 going to have to have an inspection I think at some stage,
 10 one more, one perhaps final inspection, and perhaps at one
 11 of the exercises that can be performed at the inspection –
 12 I think we were told what it is in Mpofu paces, but that's
 13 not a scientific measurement. So various measurements,
 14 Mpofu paces, but at the inspection we can measure them
 15 exactly and remove any difficulty or lack of clarity on
 16 this aspect, and similar aspects.
 17 MR SEMENYA SC: I would like, Brigadier,
 18 still on that photograph, is there an opportunity for those
 19 strikers in the front to move in between the Nyalas if they
 20 so elected?
 21 BRIGADIER CALITZ: Dit is korrek, ja.
 22 MR SEMENYA SC: Was there anything in
 23 your assessment that would have prevented them from doing
 24 so, by the police?
 25 BRIGADIER CALITZ: Die Openbare Orde

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1 Polisiëringselede, daar was, wat ons op die video gesien
 2 het, een of twee lede wat tussen die Nyalas gestaan het en
 3 die uiteendryf aksie met die haelgeweer.
 4 MR SEMENYA SC: Did they respond to that
 5 at all?
 6 BRIGADIER CALITZ: Nee, nee, hulle het
 7 net verbybeweeg en hulle respons op die uiteendryf van die
 8 haelgeweer was die "striker" wat dan die pistool uitgehaal
 9 het en gevuur het op die, of in die rigting van die
 10 polisiëman.
 11 MR SEMENYA SC: Was there an opportunity
 12 for the strikers to stop right there as we see them in this
 13 frame if they so elected?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 ja, dis waaroor ek getuig het. Ek sal sê daar was.
 16 MR SEMENYA SC: Was there an opportunity
 17 for the strikers if they so elected to just put their arms
 18 there and proceed unarmed?
 19 BRIGADIER CALITZ: As hulle daar hulle
 20 wapens neergesit het, heeltemal stilgestaan het, hande in
 21 die lug en oorgegee het sou daar geen tragiese gevolge
 22 gewees het nie. Dit is korrek.
 23 MR SEMENYA SC: Do you know why that
 24 didn't happen?
 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 kan net getuig op die dreigemente wat aan ons gemaak is en
 2 dat hulle vir ons gesê het hulle, ons gaan op daardie dag
 3 doodgaan, en dis die dreigemente self wat hulle die
 4 polisiëlyn beslis wou aanval. Ons weet ook van een van die
 5 sprekers - ek dink mnr die Voorsitter het daarna verwys, ek
 6 het nie die verwysing by my nie – wat gesê het die persone
 7 van die, ek dink die, sy regte woorde, die tuisland of die
 8 wat van buitekant af kom gaan op daardie dag dood gaan of
 9 nie dood gaan nie, hulle sal, they will finish them off, ek
 10 dink was die regte bewoording, so al daardie uitlatings,
 11 dit is wat ons tot gevolgtrekking gekom het, hulle wil
 12 aanval.
 13 [11:21] MR MPOFU: Okay, at –
 14 CHAIRPERSON: We've gone over that ground
 15 a great already as well. There are two things, you can't
 16 really tell us from your own knowledge to why they didn't
 17 make the decision at that point when they saw the TRT in
 18 front of them, to lay down their arms and surrender or lay
 19 down their arms and walk forward in an unarmed way, you can
 20 speculate, you have an opinion on the matter which you've
 21 expressed before but you can't take it further than that,
 22 is that right?
 23 BRIGADIER CALITZ: Mnr die Voorsitter,
 24 behalwe dat ons die dreigemente wat direk aan my gemaak is
 25 self –

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1 CHAIRPERSON: You've testified about that
 2 already, that's –
 3 BRIGADIER CALITZ: Ja, maar ek bedoel net
 4 daardie inligting, dit is –
 5 MR MPOFU: Chairperson, sorry.
 6 Chairperson, I'm sorry, I'm sure you did not intend to do
 7 it, what I'm going to object to, but the evidence of Mr
 8 Magidiwana is that they did not see the TRT line, so let's
 9 not, we can't say when they saw the TRT line when there is
 10 hard evidence un-contradicted that they did not see it and
 11 in fact this witness and the cross-examination by me even
 12 confirmed the reasons why they did not see the TRT line, so
 13 –
 14 CHAIRPERSON: Yes, I know what –
 15 MR MPOFU: Maybe let's say if they saw
 16 the TRT line.
 17 CHAIRPERSON: Well, I think the question
 18 is put on the basis that, the contention is they could see,
 19 one assumes that they did, Mr Magidiwana says they didn't,-
 20 MR MPOFU: Ja, -
 21 CHAIRPERSON: - so the value of that
 22 evidence would have to be evaluated later. The mere fact,
 23 it is not directly contradicted, as I indicated to Mr
 24 Semanya in another context yesterday, it isn't the end of
 25 the story because there is a clear authority, Segune versus

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1 –

2 MR MPOFU: Ja, no, that I accept,

3 Chairperson, -

4 CHAIRPERSON: Okay, -

5 MR MPOFU: All I'm saying is that this

6 should not be put as a fact that when they could see the

7 TRT when there is hard evidence that they didn't, they

8 actually didn't.

9 CHAIRPERSON: Well, the hard –

10 MR MPOFU: Supported by this witness by

11 the way.

12 CHAIRPERSON: The hardness or softness of

13 the evidence is a matter that can be debated later.

14 MR MPOFU: Ja.

15 CHAIRPERSON: But Segune versus Banks if

16 the case, I think.

17 MR MPOFU: Ja, -

18 CHAIRPERSON: But –

19 MR MPOFU: - soft evidence.

20 CHAIRPERSON: But in any way the fact of

21 the matter is that there is evidence as you point out by

22 one of the advancing strikers, that he didn't see, whether

23 that evidence will be accepted is a question, we can't

24 express an opinion at this stage, we will only know at the

25 end of the case. You're correct –

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1 MR MPOFU: And –

2 CHAIRPERSON: You're correct in saying

3 that the question should be put more objectively.

4 MR MPOFU: Thank you.

5 CHAIRPERSON: And not on the basis of

6 clear fact that they could see it and therefore did see it,

7 but anyway.

8 MR MPOFU: No, Chairperson, -

9 CHAIRPERSON: I'm sure Mr Semenya will

10 take that point aboard and proceed.

11 MR MPOFU: Ja, I'm sorry, I'm sorry

12 Chairperson, I'm sorry to do this, I don't want to

13 interrupt Mr Semenya. The extra point is that that

14 evidence of Mr Magidiwana was put by me to this witness and

15 he confirmed it, that they couldn't see because of various

16 things that I put to him here.

17 CHAIRPERSON: Alright.

18 MR SEMENYA SC: We'll just refresh our

19 memory, did you agree to this proposition?

20 BRIGADIER CALITZ: Nee, ek kan nie sê dat

21 ek ooit in agreement was, dat ek gesê het hulle kon nie die

22 TRT lyn sien nie. Ons kan gaan na die transcript toe, as u

23 vir my gesê het die Nyala het hulle geblok, miskien in

24 daardie geval maar –

25 CHAIRPERSON: Ja, there was evidence

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1 about Nyalas blocking the line of sight of the strikers,

2 there is an agreement about that, whether they could see

3 between the Nyalas and so on and then a Nyala moved, Nyala

4 10 I think it was, was seen on the video moving across and

5 thereafter there was a clear view and there was a lot of

6 cross-examination about that, but anyway, Mr Mpofo has

7 raised the point which we will bear in mind. Mr Semenya,

8 you can proceed in a manner that doesn't provoke further

9 objections along those lines.

10 MR SEMENYA SC: Well, Brigadier, we are

11 told we're looking at objective evidence now. Who are the

12 men that aligned there, 14 seconds before the TRT line we

13 are told who opened fire?

14 BRIGADIER CALITZ: If I understand you

15 correctly, referring to the strikers?

16 MR SEMENYA SC: No, no, no, the people

17 with helmets and uniforms that are in a line there.

18 BRIGADIER CALITZ: Oh, this, nee, dit is

19 die TRT lyn.

20 MR SEMENYA SC: Is there anything in the

21 frame at least obstructing the line of vision of the

22 advancing strikers?

23 BRIGADIER CALITZ: Nee, glad nie, miskien

24 Adjutant-Offisier Kuhn in 'n mate, maar ons kon omtrent

25 daardie hele groep van, ons praat van 10, 16, die voorste

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1 punt van daardie groep kan ons sien.

2 MR SEMENYA SC: Is there anything

3 obstructing them using this objective evidence in seeing

4 Warrant-Officer Kuhn and the other POP member there?

5 BRIGADIER CALITZ: Nee, hulle moes hulle

6 gesien het volgens my opinie.

7 MR MPOFU: No, I'm sorry, Chairperson, I

8 mean honestly how are Mr Semenya and Brigadier Calitz ever

9 going to establish that those three who are standing

10 between the two groups that we are talking about were not

11 obscuring them? I mean honestly let's not, we can't do

12 this.

13 CHAIRPERSON: I think, Mr Mpofo, it is

14 really a matter for argument, he says they should have,

15 they must have seen it according to me, so –

16 MR MPOFU: No, that's fine, but he can't

17 say from the so called objective evidence of the picture

18 where there are three big men standing between the groups,

19 there is nothing, he used the word "nothing", please

20 Chairperson.

21 CHAIRPERSON: The person who is in the

22 middle of the picture who has the words, "the strikers over

23 him," if the camera appears to be taken, the photographer

24 appears to be standing behind him and if you look over his

25 head you look through the gap between the two POP members

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1 who were there in front of him. One can see people
 2 approaching –
 3 MR MPOFU: Yes, but what if the
 4 photographer was standing –
 5 CHAIRPERSON: It is merely –
 6 MR MPOFU: - somewhere else? I mean
 7 really, -
 8 CHAIRPERSON: It is really a matter of
 9 argument at the end of the day from what, anyone who looks
 10 at this clip, not just the witness, can see or not see, so
 11 perhaps you can bear that in mind also, Mr Semenya. Today
 12 you don't have to ask the brigadier what he sees if what he
 13 sees can be seen by anybody and everybody and form a
 14 matter, an informed argument at the end of the matter. The
 15 fact that he sees things which we all can see, doesn't
 16 strengthen his evidence. Equally if he says he sees things
 17 which we can't see then his evidence may suffer from that,
 18 but it is an objective fact, what one can see, the argument
 19 that flows from it, -
 20 MR SEMENYA SC: Chair, -
 21 CHAIRPERSON: I don't think we should
 22 waste too much time on that, if I may so.
 23 MR SEMENYA SC: Chair, we spent days on
 24 end with Mr Gotz doing precisely this in cross-examination
 25 and we objected at the time and said if the evidence is

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1 what it is we don't need cross-examination on it to make
 2 those arguments, but we spent days on end and I think in
 3 fairness –
 4 CHAIRPERSON: Alright, okay, no, the
 5 point you take is a good one, but proceed with as much
 6 brevity as you have at your command.
 7 MR SEMENYA SC: Thank you, Chair. Can we
 8 go to KKK47? These are the manuals for POP training, are
 9 they not?
 10 BRIGADIER CALITZ: Die tactical options,
 11 dit is korrek.
 12 MR SEMENYA SC: And just for context,
 13 there is a definition for blocking which we handled
 14 earlier, you would see it on the third folio. Is that
 15 right, Brigadier? Now this tells us that there are
 16 different types of blocking.
 17 BRIGADIER CALITZ: Dit is korrek, dit
 18 staan so in die manual.
 19 MR SEMENYA SC: In terms of the blocking
 20 as the hypothesis was offered, do you remember that was
 21 offered by Mr Chaskalson, it was offered by Mr Gotz and it
 22 was also proposed by Mr Budlender, do you recall that?
 23 BRIGADIER CALITZ: Dit is korrek, mnr die
 24 Voorsitter.
 25 MR SEMENYA SC: Which of the blocking

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1 would have been appropriate in terms of this manual?
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 nee, ek dink as ons hierdie manual moet gebruik,
 4 operational block, dan moet daar 'n totale
 5 beplanningsvergadering gewees het en ons moes die inligting
 6 gehad het voor die tyd, van watter kant af hulle gaan kom,
 7 watter roetes hulle gaan volg en dan eers, u sal sien aan
 8 die einde van die blok, as ek reg is, praat hulle van, ek
 9 dink dit is die vier Ms, dit is iewers in die dokument wat
 10 dan is die menace milieu wat dui op die bedreiging, die
 11 resources wat ons nodig het, wat die menace, die means die
 12 omgewing self en dan die taak, dit is op die screen. Die
 13 menace verwysend na die bedreiging self, so dit sal
 14 inderdaad bespreek moes gewees het en dan die means is die
 15 resources tot ons beskikking, die milieu is seker die
 16 omgewing, die omgewing moes vooraf gegaan het, daar staan
 17 conductor rekkie, physical inspection to the area, en dan
 18 die laaste een is die mission wat dan die taak is van die
 19 dag, die opdrag wat gedoen moet word, so die blok was nie
 20 in enige van daardie bespreek nie.
 21 MR SEMENYA SC: And if we go to the
 22 diagrams that illustrate the blockings as, for example page
 23 16 of that exhibit, that's the diagram on page 16 of that
 24 exhibit, it appears and you can correct me if I'm wrong.
 25 It appears to be an illustration of a typical urban

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1 environment, is that right?
 2 BRIGADIER CALITZ: Dit is korrek, ja.
 3 MR SEMENYA SC: On the facts and in
 4 Marikana was this realisable?
 5 BRIGADIER CALITZ: Nee, mnr die
 6 Voorsitter.
 7 MR SEMENYA SC: Around the koppie?
 8 BRIGADIER CALITZ: Nee, mnr die
 9 Voorsitter.
 10 CHAIRPERSON: But why do you say that?
 11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 weereens, ons sou moes geweet het die roete, hierdie is
 13 maklik in 'n stedelike gebied wat ons weet dit is 'n optog,
 14 ons weet vooraf waar om die punte te wees, on sweet
 15 waarnatoe ons hulle wil vat, waar wil ons hulle weghou, so
 16 dit moes 'n beplanning gewees het wat ons vooraf kennis
 17 gedra het. In hierdie geval was dit glad nie voorsien dat
 18 hulle sou om daardie koppie kom tydens die uitrol van
 19 daardie draad nie, nee.
 20 MR SEMENYA SC: The manual also deals
 21 with the canalising, on that diagram what those arrows
 22 indicate.
 23 BRIGADIER CALITZ: Dit is juis die
 24 rigting waar ons die skare wil heen vat, sou hulle dan kom
 25 kan hulle links of regs in daardie rigtings beweeg.

<p style="text-align: right;">Page 21195</p> <p>1 MR SEMENYA SC: On the facts was that 2 achievable around the kraal? 3 BRIGADIER CALITZ: Mnr die Voorsitter, 4 weereens, as ons vooraf beplan het en ons geweet daarvan, 5 maar op die feite van die dag, nee. 6 MR SEMENYA SC: Given the time that it 7 became apparent to the police that they were going to go 8 around the kraal, was this achievable? 9 BRIGADIER CALITZ: Operasioneel sal dit 10 nie moontlik gewees het om dit in die formaat te doen nie, 11 nee. 12 MR SEMENYA SC: Okay, now the other part 13 of your evidence which was challenged in cross-examination 14 is the fact that you say you did not hear when the TRT line 15 was shooting. 16 BRIGADIER CALITZ: Dit is korrek. 17 MR SEMENYA SC: Just remind us, where 18 again in Papa11 were you seated? 19 BRIGADIER CALITZ: Nee, ek het gesit in 20 Papa1. 21 MR SEMENYA SC: In Papa1, sorry? 22 BRIGADIER CALITZ: Ja, Papa1, as ons na 23 die voertuig van agter af kyk, aan die regterkant, die heel 24 agterste sitplek, regs. 25 MR SEMENYA SC: Okay, and it was put to</p>	<p style="text-align: right;">Page 21197</p> <p>1 MR SEMENYA SC: At the time that it 2 happened did the JOC contact you to tell you that it is 3 happened? 4 BRIGADIER CALITZ: Nee, mnr die 5 Voorsitter. 6 MR SEMENYA SC: Where you aware, just to 7 refresh my memory, were you aware that the TRT line was 8 where it ultimately came to stand? 9 BRIGADIER CALITZ: Hulle het wel op 10 beweeg, soos ek nou – 11 MR SEMENYA SC: No, were you aware at 12 that time that the TRT line is forming what it ultimately 13 did? 14 BRIGADIER CALITZ: O, nee, mnr die 15 Voorsitter, nee, nie vanwaar hulle daar voor was nie, nee. 16 MR SEMENYA SC: There is also a 17 suggestion that the proper course of conduct for that 18 operation would have been to do the cordon and search and 19 not the dispersal and the arrest of the strikers, do you 20 remember that? 21 BRIGADIER CALITZ: Ek onthou dit, mnr die 22 Voorsitter. 23 MR SEMENYA SC: How much of intelligence 24 was available to the police about where the strikers are, I 25 mean where the armed strikers would have been sleeping</p>
<p style="text-align: right;">Page 21196</p> <p>1 you that Colonel McIntosh did hear the shooting. Did he 2 tell you that he has heard the shooting? 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter. 5 MR SEMENYA SC: It was also put to you 6 that Nong also would have heard the shooting, and did he 7 tell you that he had heard the shooting? 8 BRIGADIER CALITZ: Nee, mnr die 9 Voorsitter. 10 MR SEMENYA SC: Did any of the TRT 11 members tell you at that time that they have just heard the 12 shooting and they are bringing it to your attention? 13 BRIGADIER CALITZ: Glad nie op daardie 14 stadium nie, nee, mnr die Voorsitter. 15 MR SEMENYA SC: Any members in your Nyala 16 that told you that they have heard or seen the shooting and 17 they brought it to your attention? 18 BRIGADIER CALITZ: Nee, dit was glad nie 19 met my gedeel of bespreek nie. 20 MR SEMENYA SC: Any of the commanders of 21 the POP who may have observed the shooting happened, did 22 they talk to you at all? 23 BRIGADIER CALITZ: Nee, dit sal agter 24 wees, Kolonel Mere, Kolonel Makhubela het ook geen rapport 25 gegee aan my nie.</p>	<p style="text-align: right;">Page 21198</p> <p>1 through that period? 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek 3 dink van die begin af het ons gesê, die woord wat gebruik 4 was, die intelligensie wat ingekom het van die myn se kant 5 af, is dat dit is faceless mense, ons weet van die 13de se 6 toneel af het ons videos en foto's probeer enlarge en gekyk 7 daarna, hulle kon nie vir ons sê waar die mense vandaan 8 kom, in watter hostel hulle is of dan waar daardie wapens 9 gebêre word nie. In hindsight het ons wel vasgestel dat 'n 10 groepie van hulle by koppie 3 geslaap het, maar daar was 11 nie inligting tot daardie effek gewees nie, nee. 12 MR SEMENYA SC: Now as we know would a 13 cordon and search have happened on Tuesday, the 14th? 14 BRIGADIER CALITZ: Die inligting, nee, 15 wat sê u, het dit gebeur of was daar inligting dat ons – 16 MR SEMENYA SC: Would cordon and search 17 have been appropriate on the 14th of August? 18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 nee, om 'n cordon and search te doen moet mens 'n 20 behoorlike beplanning doen en die inligting moet bevestig 21 word. Ons praat van information en intelligence, daar was 22 net inligting op daardie stadium maar geen intelligensie 23 bevestigende, intelligensie van watter hostel en waar 24 watter persone was of waar om dit te doen nie, daarom het 25 hulle besluit op die negotiation fase.</p>

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1 MR SEMENYA SC: Would it have been
2 prudent to do it given the negotiations that were being
3 conducted?
4 BRIGADIER CALITZ: Van die 14de af, nee,
5 mnr die Voorsitter, ek dink ons het daardie trust
6 relationship probeer bewerkstellig en dan deur daardie Cs
7 te werk, soos in die document, om eers kommunikasie te maak
8 en dan daardie verhouding met hulle op te sit.
9 MR SEMENYA SC: Would it have been
10 prudent to do the cordon and search on the 15th of August?
11 BRIGADIER CALITZ: Nee, mnr die
12 Voorsitter, ek dink die 14de het ons hulle gesê dat ons sal
13 hulle boodskap aan ons oordra aan die mynbestuur en ons het
14 ook vir hulle gesê dat ons sal die volgende oggende terug
15 wees om vir hulle die terugvoer te gee. So dit sou
16 heeltemal dan, daardie hele verhouding wat probeer opgebou
17 is verbreek het, dit sou nie gewerk het nie.
18 MR SEMENYA SC: Okay, the other area of
19 criticism, Brigadier, relates to this, it was suggested
20 that perhaps the police ought to have waited for Mr Zokwana
21 to do his investigation and then to come back to you to
22 give you the feedback as to whether he has been able to
23 help identify the troublesome elements of the strikers, do
24 you remember that?
25 BRIGADIER CALITZ: Nee, ek kan nie

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1 duidelik sê dat ek het getuig oor mnr Zokwana nie, as u
2 miskien weer vir my –
3 [11:41] MR SEMENYA SC: You remember the evidence
4 relating to Mr Zokwana making an undertaking at most, an
5 undertaking that he will go and find out who the
6 troublesome elements – I'm rephrasing – are?
7 BRIGADIER CALITZ: Ja, ek sal nie sê ek
8 is heeltemal duidelik oor –
9 CHAIRPERSON: I think what counsel is
10 referring to –
11 BRIGADIER CALITZ: - daaroor nie.
12 CHAIRPERSON: - is the evidence that on
13 the Wednesday evening in the so-called debriefing by
14 General Mpembe of Mr Zokwana and later Mr Mathunjwa, during
15 the debriefing, as it's called, of Mr Zokwana General
16 Mpembe asked if the NUM people could inform the police,
17 find out and then inform the police where the weapons of
18 the people on the koppie were at night, and so forth, and
19 Mr Zokwana undertook to do that, to ask his members to make
20 the necessary enquiries and then the information to be
21 given to the police on the clear understanding that the
22 fact that they'd provided the information was to be kept
23 secret. That's the evidence that I think Mr Semenya is
24 referring you to. That was an undertaking given on the
25 Wednesday night, and the criticism was put to you in cross-

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1 examination that instead of proceeding with the tactical
2 option on the Thursday before Zokwana or his people could
3 come back with the information, the – or no, the point put
4 to you was that instead of waiting for that information, it
5 was an error on the part of the police to proceed with the
6 tactical option on the Thursday. That was the point in
7 criticism to which I think Mr Semenya is referring. Is
8 that right, Mr Semenya?
9 MR SEMENYA SC: It's correct, Chair.
10 CHAIRPERSON: He's asking you to comment
11 on that.
12 BRIGADIER CALITZ: Mnr die Voorsitter,
13 ja, ek sal net kan sê dat ek sou aanneem dat hy dan
14 teruggekom het, sou gekom het na die generale toe, of dan
15 die JOCCOM, en daardie detail daar gedeel het, maar ons
16 weet die besluit dan gemaak is 13:30, so dit, ek kan nie sê
17 op daardie stadium of die inligting gedeel is of terugvoer
18 gegee is en of daar geen terugvoer gekom het nie.
19 MR SEMENYA SC: So you're not aware about
20 what he did about that undertaking, that is Mr Zokwana?
21 BRIGADIER CALITZ: Nee, mnr die
22 Voorsitter.
23 CHAIRPERSON: The evidence is that the
24 decision was taken not so much at 1:30 on the Thursday, but
25 the evening before, that very Wednesday evening when

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1 General Mpembe was talking to Mr Zokwana the decision was
2 taken by the Provincial Commissioner, with the endorsement
3 of certain members of the National Management Forum, but I
4 just mention that to you by way of correction of the
5 statement you made about the decision being made at 1:30 on
6 the Thursday, but that doesn't affect necessarily the main
7 thrust of your answer, I take it.
8 BRIGADIER CALITZ: Mnr die Voorsitter,
9 nee, ek kan net getuig waaroor ek bewus was. Ek het in die
10 doel van, deel van hierdie wel bewus geword van die
11 bewering dat dit die vorige aand was. As daar bewyse so is
12 of dit is getuienis, was ek nie bewus daarvan op die dag.
13 Volgens my was dit om 13:30 gemaak en so aan my meegedeel.
14 MR SEMENYA SC: So as operational
15 commander you are not aware of any feedback that was
16 brought by Mr Zokwana on that endeavour?
17 BRIGADIER CALITZ: Dit is korrek, mnr die
18 Voorsitter.
19 MR SEMENYA SC: The other area of your
20 evidence which was sought to be challenge related to the
21 briefing of 14:30 the Thursday 16 August 2012. It was
22 suggested to you, it was asked whether any of the POP
23 commanders there expressed a view that perhaps stage 3
24 should occur at a different time as opposed to 15:30 that
25 was initially agreed. You remember that piece of evidence?

<p style="text-align: right;">Page 21203</p> <p>1 BRIGADIER CALITZ: Ek onthou daardie 2 gedeelte ja, mnr die Voorsitter. 3 MR SEMENYA SC: And it was your evidence, 4 if I'm not incorrect, that no such view was expressed by 5 the commanders, POP commanders in that briefing. 6 BRIGADIER CALITZ: Dit is korrek, mnr die 7 Voorsitter. 8 MR SEMENYA SC: Now was there anything to 9 yourself as well as the POP commanders there to suggest 10 that you ought to halt the implementation of stage 3? 11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 nee, nie op daardie stadium nie. Die inligting wat ons 13 gehad het is dat hulle sou in alle waarskynlikheid hulle 14 wapens neergesit het daardie oggend, wat tot ons 15 gekommunikeer is dit het nie plaasgevind nie. Die leier 16 elemente weet ons daar was dreigemente gewees van die media 17 se kant af op ons eie persone, die wegbeweeg, so ek het 18 geen positiewe, as ek dit so kan sê, terugvoer gehad om te 19 sê maar mnr Mathunjwa of iemand het na my toe gekom of daar 20 was iets positiefs om dit miskien uit te stel of te sê wag, 21 hier is iets aan die gebeur, of die situasie het verander 22 nie. So daar was geen rede teen daardie besluit nie. 23 MR SEMENYA SC: Where there any – 24 CHAIRPERSON: Sorry, Mr Semenya. Mr 25 Burger, you turned your light on. I don't know whether</p>	<p style="text-align: right;">Page 21205</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 wat u miskien nou voorstel, dit is wat in die JOCCOM 3 gebeur, so in die JOCCOM vergadering sal al daardie 4 inligting, noem dit intelligensie en persone insit en daar 5 sal almal dan tot 'n besluit kom. As dit operasioneel tot 6 op die grond kom sal dit 'n opdrag wees. Ons het 'n 7 hiërgie in die polisie, en dit is 'n JOCCOM opdrag, so 8 sou ek dit nie uitvoer nie en iets gebeur sou ek definitief 9 aanspreeklik gewees het daarvoor. 10 MR SEMENYA SC: Brigadier, the other 11 aspect is that given the threats that had been uttered to 12 the police, I think the suggestion and the theme of cross- 13 examination there was that the police ought not to have 14 implemented stage 3. You remember that evidence? 15 BRIGADIER CALITZ: Ja-nee, ek onthou. 16 MR SEMENYA SC: In ordinary police 17 operations if the police are threatened, do you abort the 18 operation? 19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, glad nie. 21 MR SEMENYA SC: Of any of the threats 22 uttered by Noki, if it is so accepted there, and was that 23 adequate to abort the operation? 24 BRIGADIER CALITZ: Nee, mnr die 25 Voorsitter, dit is juis die rede nog meer om oor te gaan na</p>
<p style="text-align: right;">Page 21204</p> <p>1 that's intentional or otherwise. 2 MR BURGER SC: I'm so sorry. 3 CHAIRPERSON: Alright. 4 MR SEMENYA SC: Was there anything at 5 that stage of the briefing, that is 14:30, to suggest to 6 all of you that it is better stage 3 is done on a different 7 day maybe? 8 BRIGADIER CALITZ: Nee, daar was glad nie 9 so iets nie. 10 MR SEMENYA SC: Anything present in your 11 minds why it ought not to go ahead on that day as planned? 12 BRIGADIER CALITZ: Nee, die redes wat 13 gegee was, was dat daardie groep, voortgesette gewapende 14 groep nie voort kan beweeg met daardie wapens onbeheersd 15 nie, en gegewe die dreigemente tot op daardie stadium en 16 dit is die instruksie wat van die JOCCOM af kom, so daar 17 was niks anders in ons, wat ek teen dit kon gehad het op 18 daardie stadium nie. 19 MR SEMENYA SC: Typically in those type 20 of environments how is decision-making done? Do you confer 21 amongst yourself as police and make the best, and make 22 judgment on the best available information to you, or do 23 you have to consult somewhere else, other experts, to see 24 whether or not your operation would be prudent to 25 undertake?</p>	<p style="text-align: right;">Page 21206</p> <p>1 die volgende fase. 2 MR SEMENYA SC: Given the observation 3 that these militant strikers were reluctant to disarm, 4 would that be enough reason to abort a police operation to 5 disarm them? 6 BRIGADIER CALITZ: Nee, mnr die 7 Voorsitter, ek sal nie so sê nie. 8 MR SEMENYA SC: Again in relation to the 9 use of barbed wire, previous experience, you have told us, 10 the unrolling or unfurling of barbed wire did not trigger 11 the same conduct that you say happened on the 16th, the 12 Thursday, right? 13 BRIGADIER CALITZ: Dit is korrek, mnr die 14 Voorsitter. 15 MR SEMENYA SC: Now as there anything – 16 no, the information that the strikers dislike the idea of 17 barbed wire, was that sufficient for the police to abort 18 the use of barbed wire? 19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, ek dink ek het op, 'n aanduiding gegee dat ons 21 omtrent 10, 12 keer vir hulle die doel van die draad 22 verduidelik het op meer as een geleentheid, so nee, ons, 23 nie om te "abort" nie, nee. 24 MR SEMENYA SC: How central, or how 25 material was the use of the barbed wire to the operation?</p>

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1 BRIGADIER CALITZ: Dit was baie belangrik
 2 gewees en dit het daardie skeidslyn gesit en 'n
 3 beskermingslyn, kan ons dit so stel, tussen die polisie,
 4 die "strikers," asook die media wat daardie dag teenwoordig
 5 was.
 6 MR SEMENYA SC: Was the plan executable
 7 without the use of the barbed wire?
 8 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 9 dink dit sou teruggekom het dan as ons nie die "barbed
 10 wire" gebruik het nie, sou die enigste ander plan, nie
 11 daardie plan, sou nie uitvoerbaar gewees het wat op die dag
 12 beskikbaar was nie. Dit sou beteken het ons moes net met
 13 Openbare Orde soontoe gegaan het, 'n waarskuwing gegee het
 14 en net begin "disperse" het, wat nie uitvoerbaar sou gewees
 15 het nie.
 16 MR SEMENYA SC: What would be the risks
 17 of doing that without the barbed wire?
 18 BRIGADIER CALITZ: Mnr die Voorsitter, u
 19 het dan die hele oop spasio direk na die polisielyn toe,
 20 dit sou chaoties gewees het as daar persone dan tussenin
 21 beweeg het, gegewe dat die lyne dan sou gebreek gewees het
 22 en die gevaar van die media en dan die ander inwoners aan
 23 daardie kant.
 24 MR SEMENYA SC: I think it was Mr Mpfu,
 25 dealing with a different matter, suggesting that perhaps

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1 the Nyala 4, 5 and 6 ought to have lined up at the, shall I
 2 call it the mouth of the corridor before that footpath.
 3 You remember that line of cross-examination?
 4 BRIGADIER CALITZ: Ek onthou dit, mnr die
 5 Voorsitter.
 6 MR SEMENYA SC: To that theory - I don't
 7 want us to repeat what he said about the blocking earlier –
 8 would that have had to have been pre-planned for it to be
 9 realisable?
 10 BRIGADIER CALITZ: Daar sal moet
 11 voorligting gegee gewees het vir die voertuie en dan ook
 12 vir die om uit te beweeg, die roetes wat dan sou gebruik
 13 gewees het want dit sou dit toegemaak het.
 14 MR SEMENYA SC: Where the drivers told?
 15 BRIGADIER CALITZ: Nee, mnr die
 16 Voorsitter.
 17 MR SEMENYA SC: Was it part of your
 18 strategy as the operational commander to do that?
 19 BRIGADIER CALITZ: Nee, mnr die
 20 Voorsitter.
 21 MR SEMENYA SC: Was that part –
 22 MR MPOFU: Chairperson, it's not a big
 23 point, but just so that the record is accurate, I never
 24 suggested that Nyala 4 would play that part because Nyala 4
 25 had blocked the kraal. So I just don't want my silence to

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1 be interpreted to be agreeing that I put the contention as
 2 formulated by Mr Semenya. But the thrust of what he's
 3 saying, that the other vehicles could have blocked what he
 4 calls the mouth of the corridor is correct.
 5 MR SEMENYA SC: I stand corrected, yes,
 6 Mr Mpfu. Was that though something that was discussed by
 7 the commanders of the various Nyalas that they proposed to
 8 block?
 9 BRIGADIER CALITZ: Nie waarvan ek bewus
 10 was nie, mnr die Voorsitter.
 11 MR SEMENYA SC: Okay. We do find though,
 12 Brigadier, that in the statement of Colonel Makhubela there
 13 is reference to encircling on that day as the plan. Are
 14 you able to explain that?
 15 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 16 dink die heel eerste vergadering wat ons gehad het, die –
 17 wanneer was dit nou? - die 14de, die oggend, sou, na die
 18 plan sou daar aanvanklik, die plan sou gewees het om die
 19 koppie te "encircle" en dan gegewe die tyd toe ons dit wou
 20 doen, 6 uur die oggend, was daar genoegsame, reeds mense op
 21 die koppie gewees en ons het besef ons het nie genoegsame
 22 draad om dit te doen nie. Dit kan die een verduideliking
 23 wees. Ek sê maar net hoe ek dit sien. En dan die ander
 24 een kan wees dat sy groep Nyalas moes so toemaak "to
 25 enable" die Openbare Orde Polisiëring om dan uit te beweeg

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1 en dan "encirclement" te doen. So dit is miskien waarna hy
 2 kan verwys het.
 3 MR SEMENYA SC: Happily even Mr Budlender
 4 says it was not going to be possible to do that on that
 5 day –
 6 CHAIRPERSON: I don't know why you say
 7 "even Mr Budlender;" that gives him a kind of elevated
 8 status which he may not deserve.
 9 MR SEMENYA SC: Well, there was also
 10 reference at the same time to the statement of Captain
 11 Prinsloo relating to whether there was going to be blocking
 12 or encircling. You remember that piece of evidence?
 13 BRIGADIER CALITZ: Ek kan dit so vaagweg
 14 onthou, nie in detail nie, maar ek onthou daar was dit
 15 bespreek.
 16 MR SEMENYA SC: The thrust of that cross-
 17 examination, if I understood it, was to suggest that the
 18 briefing may have been unclear as to what was to happen.
 19 Now you were at the 14:30 briefing.
 20 BRIGADIER CALITZ: Dit is korrek, mnr die
 21 Voorsitter.
 22 MR SEMENYA SC: Was the briefing of a
 23 nature that could produce this confusion, if there is a
 24 confusion at all?
 25 BRIGADIER CALITZ: Nee, mnr die

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1 Voorsitter, ek dink Kolonel Makhubela was saam met ons
 2 gewees en hy was die bevelvoerder van die draad groep, en
 3 die "briefing" was baie duidelik gewees waar die draad
 4 uitgegooi word en dan die doel as ons dan uitbeweeg dat ons
 5 dan van daar af 'n "dispersion, encircling, disarming and
 6 arresting" gaan doen. So die voorligting was baie duidelik
 7 gewees en toe ons teruggaan van die voorligting nou af het
 8 Kolonel Makhubela, het ons dit ook vir die drywers en
 9 "commanders" van elkeen van daardie voertuie dit so
 10 verduidelik. So nee, ek dink die voorligting was duidelik.
 11 MR SEMENYA SC: And the time for that
 12 briefing, was it adequate, not?
 13 BRIGADIER CALITZ: Dit was 'n beperkte
 14 tyd gewees, mnr die Voorsitter, want ek, ons was van 14:30
 15 tot omtrent 3 uur, so ons het na 3 teruggekom by die koppie
 16 en dit is in daardie stadium, gegewe 15, 20 minute, wat ons
 17 daardie voorligting gegee het aan die voertuie.
 18 MR SEMENYA SC: In that limited time was
 19 the execution of the plan sufficiently explained?
 20 BRIGADIER CALITZ: Ja-nee, ek dink dit is
 21 in detail bespreek gewees met elke bevelvoerder, wat dit
 22 dan moes gaan terug net oordra aan sy seksielede.
 23 MR SEMENYA SC: Just for completeness, it
 24 is also suggested that the Lonmin interpreter who was in
 25 your Nyala would have heard shots being fired, that is at

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1 scene 1. Did he tell you that he has heard it?
 2 BRIGADIER CALITZ: Nee, nee, hy het niks
 3 vir ons gesê nie. Ek het dit net verneem in sy verklaring
 4 hy het gehoor iets teen die voertuig, tref die voertuig, as
 5 ek reg onthou.
 6 MR SEMENYA SC: In any other manner
 7 alerted you to the fact that shooting had occurred?
 8 BRIGADIER CALITZ: Nee, mnr die
 9 Voorsitter.
 10 MR SEMENYA SC: You were also asked about
 11 who would be the appropriate person to have called the
 12 operation to a halt after scene 1. You remember that
 13 evidence?
 14 BRIGADIER CALITZ: Dit is korrek.
 15 MR SEMENYA SC: Who would have been the
 16 person? Just remind me.
 17 [12:01] BRIGADIER CALITZ: Mnr die Voorsitter, as
 18 ek die inligting gehad het en hulle het vir ons gesê, dan
 19 sou ek daardie inligting deurgegee het na die JOC toe en
 20 dan die CJOC, die "overall commander" met my aanbeveling
 21 sal daardie besluit maak.
 22 MR SEMENYA SC: Would it have been
 23 competent for the TRT commanders to stop the operation for
 24 instance?
 25 BRIGADIER CALITZ: Om nie verder – as ek

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1 u reg, nie deel te neem meer nie? Nee, ek dink hulle moet
 2 nog steeds my ingelig het en dan sou hulle dan 'n opdrag
 3 gekry het.
 4 MR SEMENYA SC: I'm just trying to
 5 establish the lines of authority on the field. Would those
 6 commanders of the TRT have had the authority to stop the
 7 dispersal/arrest operation?
 8 BRIGADIER CALITZ: Nee, mnr die
 9 Voorsitter.
 10 MR SEMENYA SC: Colonel Makhubela by
 11 himself, could he have had the authority to stop the
 12 rollout of the operation if he saw scene 1 happen?
 13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter.
 15 MR SEMENYA SC: Colonel Mere?
 16 BRIGADIER CALITZ: Nee, ook nie.
 17 MR SEMENYA SC: Alright. Now we will
 18 know in the further conduct of this Commission that General
 19 Mawela was in Mpumalanga somewhere; he had a helicopter
 20 somewhere at the place where he was and saw on TV the
 21 events of the shooting on eTV, I suspect, and he came to
 22 the scene. Did you see him?
 23 BRIGADIER CALITZ: Ja, mnr die
 24 Voorsitter, ek kan nie getuig oor waar hy was nie, maar ek
 25 het hom wel, op toneel 2 by koppie 2 het ek met hom

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1 ontmoet.
 2 MR SEMENYA SC: And the alarm that was
 3 raised by the evidence leaders with you is that you would
 4 only have come to know of the incident 1 at 16:47, or
 5 something like that.
 6 BRIGADIER CALITZ: Ja, dit is toe ek die
 7 skietvoorval van mnr Mpumza, as ek reg is, "body C," as ek
 8 reg is met die van, wou deurgegee het na Generaal Annandale
 9 toe, en dit is toe hy my meegedeel het daar was 'n
 10 skietery, 'n voorval by toneel 1.
 11 MR SEMENYA SC: With the flighting of
 12 that scene by the television, was that brought to your
 13 attention at all whilst you were still on the field?
 14 BRIGADIER CALITZ: Nie terwyl ek op die
 15 grond was nie. Ek het dit gesien toe ons terug is by die
 16 JOC daardie aand.
 17 CHAIRPERSON: I'm also interested to know
 18 when you say General Mawela arrived you saw him at scene 2,
 19 is that correct?
 20 MR SEMENYA SC: Mawela.
 21 CHAIRPERSON: I'm sorry, Mawela, yes.
 22 BRIGADIER CALITZ: Die
 23 afdelingskommissaris, Luitenant Generaal Mawela.
 24 CHAIRPERSON: Yes, yes.
 25 BRIGADIER CALITZ: Ja, hy het saam met

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1 die Provinsiale Kommissaris gearriveer.

2 CHAIRPERSON: Yes, I understand. What I

3 want to know is what time was that?

4 BRIGADIER CALITZ: Mnr die Voorsitter, ek

5 dink in my verklaring, as ek nou onder korreksie, dit is so

6 rondom 5 uur, 17h00 het die tjopper –

7 CHAIRPERSON: It was after you had

8 already heard about the incident at scene 1 from General

9 Annandale. You already had that knowledge for about a

10 quarter of an hour before Lieutenant General Mawela arrived

11 with the Provincial Commissioner. Is that what you're

12 saying?

13 BRIGADIER CALITZ: Dit is korrek, ek het

14 reeds die inligting gehad en ek het ook reeds binne-in die

15 koppie inbeweeg, met Generaal Naidoo gesels, en daarna het

16 die – nie lank daarna nie, so 10 minute daarna het die

17 tjoppers geland. Of die een helikopter, nie twee nie.

18 MR SEMENYA SC: The other area of

19 criticism is that at the time, or immediately after the

20 shooting at scene 1 you nevertheless proceeded to where you

21 did without looking back at the head of the attacking

22 group, which you clearly saw was in attack. You remember

23 that area of cross-examination that you have seen the front

24 of the group attacking the police line?

25 BRIGADIER CALITZ: U praat van op toneel

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1 1?

2 MR SEMENYA SC: At scene 1, yes.

3 BRIGADIER CALITZ: Scene 1.

4 MR SEMENYA SC: Yes.

5 BRIGADIER CALITZ: Ek onthou ek was

6 daarvoor gevra, ja.

7 MR SEMENYA SC: And you gave your

8 evidence that when you saw that happen your instructions

9 were to the Nyalas, in Afrikaans, let me just say it in

10 Afrikaans, "Ek het opdrag gegee om tussen hulle te beweeg."

11 Can you explain that for us so that I at least can have an

12 understanding of what tactical move that entails?

13 BRIGADIER CALITZ: Mnr die Voorsitter,

14 ja, dit is nie 'n voorgeskrewe uiteendryf beweging nie.

15 Toe ek gesien het die voorpunt kom en dat hulle gee nie

16 gehoor aan die uiteendryf aksie van die Openbare Orde

17 Poliseringslede nie het ek besef dat indien hierdie ander

18 groep gaan volg gaan dit chaoties wees, en omdat die "non-

19 lethal" wapens wat ons gebruik het geen effek op hulle

20 gehad het nie, en ek het toe opdrag gegee dat ons moet die

21 Pappa Nyalas vorentoe kan beweeg in die sin van dat ons

22 hulle dan fisies met die voertuie uiteendryf en sodoende

23 hulle – dit is maar die doel om hulle te ontmoedig, dat

24 hulle kan sien hier kom pantser voertuie aangery in hulle

25 rigting, hulle sal dan ontmoedig wees, wat volgens my

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1 suksesvol was want dit is op die stadium waar die persone

2 ook omgedraai het en weggehardloop het in verskillende

3 rigtings.

4 MR SEMENYA SC: Was it your best judgment

5 at the time that that is what must be done?

6 BRIGADIER CALITZ: Mnr die Voorsitter,

7 ja, op daardie stadium was daar geen ander metode gewees.

8 Die "less lethal," niks het gewerk nie, en dit was miskien

9 daardie poging om die groep so op te breek, wat volgens my

10 dan gewerk het.

11 MR SEMENYA SC: In fact Mr Budlender put

12 it as high as this; that your evidence that you were

13 unaware of scene 1 is untrue on one leg. Let's deal with

14 that first. Your account, is it the truth, is it not the

15 truth?

16 BRIGADIER CALITZ: Mnr die Voorsitter, ek

17 het getuig daarvoor. Ek dink dit is bewys deur die CALS

18 dokumente ek het reeds vorentoe beweeg. Ek dink ook die

19 doel van mnr die Voorsitter, ek neem aan Adv Bizos – ag,

20 Adv Mpofu – ek vra om verskoning, ek het u van –

21 CHAIRPERSON: I never thought that Adv

22 Bizos and Adv Mpofu would be confused with each other.

23 BRIGADIER CALITZ: Nee, nee, nee, ek

24 het –

25 CHAIRPERSON: But the day has arrived,

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1 and that happened.

2 BRIGADIER CALITZ: Nee, Adv Bizos was

3 definitief nie saam met ons in die voertuig nie, ek glo

4 nie.

5 MR MPOFU: The resemblance is

6 irresistible, Chair.

7 BRIGADIER CALITZ: Ja. Ek vra om

8 verskoning vir daardie een.

9 CHAIRPERSON: I think each of them might

10 feel complimented by the fact that you confuse them with

11 each other. But anyway, let's move on. You've been

12 talking about what happened at the demonstration, are you?

13 BRIGADIER CALITZ: Dit was met respek

14 gewees, dit was niks daarby bedoel. Nee, mnr die

15 Voorsitter, ek sê net dit is – ek word gevra of ek, oor my

16 getuienis, oor die waarheid. Ek het reeds dan vorentoe

17 beweeg en my redes wat ek gegee het, het ek gedemonstreer

18 toe uself, mnr die Voorsitter, op my – ek het dat u sit

19 waar ek gesit het en die opdragte wat ek geskreeu het en

20 ons het uit die Nyala uit gevuur met die haelgeweer, en al

21 daardie gebeure, ek het agter gesit en ek was besig om

22 daardie goed te skreeu. So dis moontlik dat ander persone

23 dit kon gehoor het aan die agterkant. My visie was glad

24 nie so nie. Ek het gekonsentreer op hierdie groep wat ek

25 moet uiteendryf, my opdragte, en daarna het ek met die

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1 voertuie gepraat en opdragte fisies geskreeu. As u luister
 2 na die "transcript" sal u ook hoor my stem is nie normaal
 3 rustig soos wat ons nou gesels nie.
 4 MR SEMENYA SC: Also it was suggested
 5 that that fact illustrates a massive and fundamental
 6 failure in the planning. You remember that line of cross-
 7 examination?
 8 BRIGADIER CALITZ: Ek onthou vaagweg daar
 9 was so 'n bewering gemaak.
 10 MR SEMENYA SC: What's your reaction
 11 again to that?
 12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 nee, ek dink indien ek dit nie gedoen het nie en indien ons
 14 nie daardie groep op daardie manier opgebreek het nie, sou
 15 dit gelei het tot baie meer tragiese gevolge. As die
 16 groter groep deurgekom het, ek kan net sidder om te dink
 17 wat sou gebeur het. Dit sou, daar sou baie meer tragiese
 18 gevolge gewees het. So ek dink die feit dat ek vorentoe
 19 beweeg het en die groep opgebreek het en die "dispersion
 20 action" op daardie manier gedoen het, het dalk bygedra tot
 21 net die 17 waarvan ons vandag gehoor het.
 22 MR SEMENYA SC: The other challenge is
 23 that your subordinates ought to have kept you abreast of
 24 the information. You remember that line of cross-
 25 examination?

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1 BRIGADIER CALITZ: Dit is korrek, mnr die
 2 Voorsitter.
 3 MR SEMENYA SC: Your subordinates were
 4 not identified, but let us see at least some of the senior
 5 officers there. Do you know whether somebody like Colonel
 6 Mere was alive to the fact that you were unsighted of that
 7 event?
 8 BRIGADIER CALITZ: Nee, ek dink nie hy
 9 kon bewus gewees het dat ek nie daarvan weet nie, nee.
 10 MR SEMENYA SC: Colonel Makhubela, are
 11 you aware that he was aware that you are unsighted about
 12 the event?
 13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, hy het die "scene" 1 oorgeneem as die senior
 15 offisier daar.
 16 MR SEMENYA SC: Any of those senior
 17 officers, are you alive, are you aware that they were aware
 18 that you are unsighted and elected not to tell you?
 19 BRIGADIER CALITZ: Nee, ek sal nie so ver
 20 gaan soos dat dit doelbewus was deur hulle nie. As daar
 21 pogings was sal hulle seer sekerlik probeer het op die
 22 radio.
 23 MR SEMENYA SC: There was another area of
 24 contestation, or debate –
 25 CHAIRPERSON: Mr Semenya, seeing you're

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1 moving on to a new point, it's appropriate I think for us
 2 to take a comfort break at this point.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [12:26] CHAIRPERSON: The commission resumes.
 5 Brigadier, you're still under oath. Mr Semenya, you're
 6 moving onto your next point.
 7 MR SEMENYA SC: Thank you, Chair. When
 8 we deal with this aspect, Brigadier, you would recall, you
 9 were cross-examined around the address you gave to members
 10 on the 18th at that parade.
 11 BRIGADIER CALITZ: Ek onthou, dit is
 12 korrek.
 13 MR SEMENYA SC: Let us try and
 14 contextualise this. What was your target audience, who
 15 were you talking to?
 16 BRIGADIER CALITZ: Dit was al die
 17 operasionele lede wat daardie dag weer aan diens moet
 18 rapporteer, Openbare order polisiëring, TRT, STF, NIU,
 19 basies al die taktiese en openbare order polisiëringselede.
 20 Daar was offisiere by die bevelvoerders. Ek kan sê 'n paar
 21 honderd lede.
 22 MR SEMENYA SC: Because the cross-
 23 examination went to suggest that that is what you were also
 24 communicating to the rest of the public and it would have
 25 been rash to make the conclusions and the statements you

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1 were making to the members.
 2 BRIGADIER CALITZ: Nee, ek -
 3 CHAIRPERSON: Mr Semenya, I don't
 4 remember that line of cross-examination being pursued. Do
 5 you have a reference in the record to it?
 6 MR SEMENYA SC: I don't have it, but Mr
 7 Budlender was the one to say, that it would have been rash
 8 immediately after the events that he in his position could
 9 then be telling them that they've done nothing wrong.
 10 MR MPOFU: I think that is correct but
 11 whether he was telling them or the public nobody has
 12 suggested.
 13 CHAIRPERSON: It was a lengthy cross-
 14 examination, there was lengthy cross-examination in respect
 15 of the speech that he made. So I can't sure about it but I
 16 certainly don't recall the point being made that it was a
 17 rash thing to say these things because it was an address to
 18 the public and I think if that had been said I'm inclined
 19 to think I would have, we would have raised a question
 20 about it, because it patently wasn't an address to the
 21 public. But I could be wrong on that. But Mr Semenya
 22 hasn't made a reference to it. But anyway the short point
 23 I take it is the answer given by the witness already, that
 24 the speech wasn't intended for the public, in fact when he
 25 saw or acted rather, rather authoritarian manner, when he

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1 saw that there was someone making a video of it, he
 2 immediately spoke to Lieutenant Colonel Macintosh and did
 3 his best not only to stop the recording but obtain a copy
 4 of it so that it would, could be destroyed, is that not
 5 right?
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 ons het nooit so ver gegaan nie. Dit was net 'n voorstel
 8 gewees en nadat ons met die persoon ooreengekom het is die
 9 band of die kopie of, die konfiskering het nooit
 10 plaasgevind nie.
 11 CHAIRPERSON: But anyway the fact of the
 12 matter was you weren't intending to speak to the public and
 13 the impression I got from that little passage was you were
 14 horrified at the idea that what you were saying was somehow
 15 going to be conveyed to the public, is that correct?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 selfs nou waar ek hier sit, want daar's strategiese planne
 18 van die polisie bespreek en hoe ons te werk gaan om sekere
 19 goed te implementeer so in my oog sou ek dit nie graag wou
 20 in die openbaar wou gehad het nie, soos dit aan is nie.
 21 MR SEMENYA SC: It was also in
 22 anticipation of the arrival of Mr Malema, that that parade
 23 was called for?
 24 BRIGADIER CALITZ: Dit was deel van die
 25 operasie van daardie dag, dis ook sy arrivering, dit is

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1 korrek.
 2 MR SEMENYA SC: And there was also a
 3 thrust of questions that were saying you were schooling
 4 everybody there to - the self defence private defence
 5 thing, do you recall that?
 6 BRIGADIER CALITZ: Ek onthou dit ja.
 7 MR SEMENYA SC: Was that ever your
 8 intention?
 9 BRIGADIER CALITZ: Nee, mnr die
 10 Voorsitter. Ek het getuig daaroor. As 'n bevelvoerder met
 11 my rang en my posisie was dit net om die mense te motiveer.
 12 Dit totale en al samewerking te gee vir hierdie kommissie
 13 en dit was van dag een af my doel en ek dink deurgaans het
 14 die 26 dae in my getuie is ook my doel om net 100%
 15 samewerking te gee. Dit is wat ons vir die lede gevra het,
 16 baie van daardie lede was nie eers op die toneel op die dag
 17 nie. So die gedeelte van die gesprek was om hulle in te
 18 lig wat wel daar gebeur het.
 19 MR SEMENYA SC: Of those who had shot and
 20 who have at least alleged to have fired in self or private
 21 defence was there any information open and available to you
 22 to cast a doubt on that account?
 23 BRIGADIER CALITZ: Nee, glad nie op
 24 daardie stadium, daai 18de nie, nee.
 25 MR SEMENYA SC: There is also a line of

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1 questioning that went to, want to point to a collusion
 2 between the police and Lonmin. Do you remember that?
 3 BRIGADIER CALITZ: Ek onthou, mnr die
 4 Voorsitter.
 5 MR SEMENYA SC: To that you were pointed
 6 to a whole number of factors, the use of CCTV amongst
 7 others.
 8 BRIGADIER CALITZ: Ja, dit is korrek, ek
 9 het verwys na die goeie samewerking wat daar was, nie die
 10 voorstel wat gemaak is dat daar 'n koalisie gevorm is of
 11 wat was die woord gewees, ja.
 12 MR SEMENYA SC: Is it ordinary police
 13 operation if there is a evidential material of that kind to
 14 use it?
 15 BRIGADIER CALITZ: Ja, dit is korrek, mnr
 16 die Voorsitter. Ek dink ek het verwys na 'n voorval wat
 17 ons by Sun City gehad het wat ons dan ook die gesamentlike
 18 operasionele sentrum by hulle, gesamentlike operasionele
 19 sentrum gestig het en dan gebruik mens die CCTV wat deur
 20 hulle beskikbaar gestel word. Hulle het die fasiliteite,
 21 die polisie het dit ongelukkig nie.
 22 MR SEMENYA SC: The use of information
 23 relayed to you by the Lonmin security was it helpful to the
 24 course you were about there or not?
 25 BRIGADIER CALITZ: Ek sou sê in so ver as

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1 mnr Sinclair en mnr Botes aangaan was dit baie, baie
 2 helpful, soos u daarna verwys. Dit het ons gehelp in die
 3 sin, mnr die Voorsitter, dat met die aankom daar het mnr
 4 Sinclair ure gespandeer buiten sy normale werks ure om vir
 5 die persone te verduidelik op 'n kaart waar die sleutel
 6 punt is, hoe die myn se persele lyk, waar wat is, om die
 7 lede te orienteer en dan mnr Botes wat ingesit het in die
 8 vergadering self het vir ons baie bydrae gegee oor wat
 9 presies gebeur het, misdaad gewys, hoe, waar hulle normale
 10 dienste verrig het. So die samewerking was baie goed
 11 gewees en dit het baie gehelp.
 12 MR SEMENYA SC: Any standing orders that
 13 prohibit such type of contact the police should have any
 14 help that they could get?
 15 BRIGADIER CALITZ: Nee, glad nie waarvan
 16 ek bewus is, definitief nie, mnr die Voorsitter.
 17 MR SEMENYA SC: Did any of the Lonmin
 18 security personnel do policing work in that collaboration
 19 you had with them?
 20 BRIGADIER CALITZ: As ek miskien net
 21 duidelikheid kry van policing work?
 22 MR SEMENYA SC: Give instructions to
 23 members for instance?
 24 BRIGADIER CALITZ: Oh, nee, nee, in
 25 daardie sin glad nie. Hulle het ons wel vergesel op

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1 roetes, ek het getuig mnr Sinclair het ons vergesel die
 2 eerste dag met beskerming van die Lonmin interpreter en dan
 3 ook die helikopter wat hulle beskikbaar gestel het wat ons
 4 vergesel het om die roete vir ons te verduidelik. Na die
 5 persele toe, maar opdragte te gee en betrokke te raak by
 6 die operasie nee, nie waarvan ek bewus is nie.

7 MR SEMENYA SC: Give any instructions to
 8 the police?

9 BRIGADIER CALITZ: Nee, hulle is nie
 10 bemaagtig om dit te doen nie en dit het ook nie gebeur nie.

11 MR SEMENYA SC: The use of resources like
 12 the Coin security helicopter is that against any prescripts
 13 that direct how the police should do their work?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 nee, ek dink die enigste prescripts miskien wat u sal vind
 16 is die lugvaart wet wat dan sal bepaal die hoogte waar die
 17 helikopter en goed kan vlieg, maar nie laat ons dit nie kan
 18 gebruik nie, nee.

19 MR SEMENYA SC: There is also the line of
 20 questions that suggested what ought to have happened at
 21 koppie 3, you or somebody ought to have used a megaphone
 22 and told those in the koppie that they have been surrounded
 23 and they must surrender, do you remember that line of
 24 questioning.

25 BRIGADIER CALITZ: Ek onthou, mnr die

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1 Voorsitter.

2 MR SEMENYA SC: From your own personal
 3 observations at the time of your arrival at the koppie was
 4 that still doable?

5 BRIGADIER CALITZ: Toe ek gearriveer het
 6 by die koppie was alles, kan ek sê verby en met my
 7 arrivering daar het ek die persone gesien wat onder arres
 8 is en besig is met die arrestasies en daar was beweging op
 9 die toneel. So nee ek het geen, niks waargeneem met my
 10 arrivering daar wat dit doable kon gemaak het nie.

11 MR SEMENYA SC: So you cannot actually
 12 tell us what the circumstances were as they arrived at
 13 koppie 3, can you?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 nee, ek dink my getuienis was dat ek weet nie of die Papa
 16 Nyalas en die persone wat wel daar was wel vir die persone
 17 gewaarsku het en gesê kom uit, jy weet met die uiteendryf
 18 aksie en so aan. Ek kan nie sê of daar gesê is nie. Ek
 19 weet na die tyd op die Ryland video kan ons hoor waar hy
 20 skreeu vir die ouens, they want to come out, let them come
 21 out en jy weet waar julle sê sit neer julle wapens, sekere
 22 van daardie gesprek kon ons hoor op die Ryland video. So
 23 ek glo daar was kommunikasie met die groep.

24 MR SEMENYA SC: From the position of the
 25 operational commanders and given where you were at that

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1 time the incident, I mean scene 2 happened what more could
 2 you do?

3 BRIGADIER CALITZ: Met die inligting tot
 4 my beskikking wat Kolonel Vermaak vir my gegee het was ek
 5 heeltemal onder die indruk dat ons is besig met 'n
 6 suksesvolle uiteendrywing. Die Papa Nyalas was daar
 7 gewees. Die heeltyd het hy net met die Papa Nyalas met die
 8 waterkanon gepraat en op 'n stadium toe hy vir my sê hulle
 9 is encircle het ek opdrag gegee dat hulle moet uitklim en
 10 dan sodoende die arrestasies maak. So dit is deel van die
 11 uiteendryf proses wat net op een kant gemonitor is en dis
 12 dieselfde wat ons aan die, kan ek sê noord westelike kant
 13 gedoen het waar dan ook dan groepe opgebreek was en
 14 gearrester is. Nou in hindsight weet ons dat ander dinge
 15 gebeur wat ek nie van bewus was nie.

16 MR SEMENYA SC: And I don't think we are
 17 going to go into this one at any length but Mr Mpofu
 18 suggests that you ought to be indicted for murder or
 19 something. Do you recall that evidence?

20 BRIGADIER CALITZ: Ek onthou dit, mnr die
 21 Voorsitter.

22 CHAIRPERSON: - murder I think but an
 23 alternative charge in his indictment, it was just murder.

24 MR SEMENYA SC: Well did you fire any
 25 shots at those who were injured and those who passed on?

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1 BRIGADIER CALITZ: Ek het glad nie geen
 2 vuurwapen gebruik op daardie dag nie.

3 MR SEMENYA SC: Were you aware that the
 4 conduct of your members was in one way or another unlawful
 5 if it is so found?

6 BRIGADIER CALITZ: Nee, tot op hierdie
 7 stadium een weet ek was self defence, tot op hede het ek
 8 nog niks gehoor wat unlawful was nie.

9 MR SEMENYA SC: Would you have associated
 10 yourself with that type of behaviour?

11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 beslis nie. As iets tot my kennis gekom het op enige
 13 stadium dat iets uit plek uit was, as die operasionele
 14 bevelvoerder dan sou ek definitief daaraan aandag gegee het
 15 en seker gemaak dat daar stappe geneem.

16 MR SEMENYA SC: Could you have had shared
 17 any common purpose with an unlawful killing of a civilian?

18 BRIGADIER CALITZ: Nee, mnr die
 19 Voorsitter, glad nie.

20 MR SEMENYA SC: Would you have such an
 21 intention?

22 BRIGADIER CALITZ: Nee, nie in my posisie
 23 of in my lyn van werk nie, beslis nie, mnr die Voorsitter.

24 MR SEMENYA SC: And we have dealt in the
 25 totality of the evidence in relation to what the various

<p style="text-align: right;">Page 21231</p> <p>1 experts say and what the police is around this matters. 2 BRIGADIER CALITZ: Ek onthou dit, mnr die 3 Voorsitter. 4 MR SEMENYA SC: Chair, that would be the 5 re-examination we have of the witness. 6 CHAIRPERSON: Yes, thank you, Mr 7 Semenya. There's a few questions that I would like to ask 8 you. In your consolidated statement you referred to the 9 meeting at 6 o'clock on the Thursday morning and you 10 referred to the fact that it was necessary for a 11 contingency plan to be drawn up, this was paragraph 76 on 12 page 16, "a decision was taken that we must have a 13 contingency plan in place should the strikers fail to 14 disarm as it was indicated by the AMCU president. The 15 police were to disperse the crowd into smaller groups to 16 encircle them in order to disarm and to effect arrests". 17 I've read that paragraph 76. Now we see the kind of 18 contingency plan that had been drawn up in the past, I 19 think it was referred to yesterday, it was a plan that you 20 were responsible, would be part I think for drawing up. I 21 think it was exhibit SS3. 22 BRIGADIER CALITZ: Dit is korrek, mnr die 23 Voorsitter. 24 CHAIRPERSON: Was that the kind of 25 contingency plan that you had, you people at the meeting at</p>	<p style="text-align: right;">Page 21233</p> <p>1 even that wasn't on the laptop, is that correct? There was 2 just a picture of various positions, the koppie, the 3 strikers, their position, the position of various vehicles 4 and then he gave an oral account of what was to happen, is 5 that, that's the evidence? 6 BRIGADIER CALITZ: Dit is 'n kleurvolle 7 uiteensetting van fase 3 as ek dit so kan stel. 8 CHAIRPERSON: Now were you surprised that 9 he hadn't spent the morning preparing a detailed 10 contingency plan with hardcopies and so forth and he merely 11 relied on this oral exposition of an image on his laptop? 12 Was it not a cause for surprise on your part? 13 BRIGADIER CALITZ: Mnr die Voorsitter, ek 14 weet nie surprise of dit miskien verras, of ek dieselfde 15 woorde sou gebruik nie. Gegewe die tyd en die 16 verduideliking wat hy gegee het dat die operasie moet om 17 15:30 wees en daarom gebruik hy sy laptop en almal wat die 18 commanders wat by die vorige JOCCOM vergaderings was, so 19 almal het 'n idee min of meer gehad. 20 [12:46] En ek dink in daardie oogpunt het hy dan sy 21 laptop gebruik instead of hard copies. Ek dink nie die tyd 22 het toegelaat daartoe nie, maar miskien was ek onder die 23 indruk dat hy wel dit in die besit het van die JOCCOM en 24 dat dit daar in detail was, maar hy het dit nie vir ons 25 gegee nie, nee.</p>
<p style="text-align: right;">Page 21232</p> <p>1 6 o'clock on Thursday morning had in mind? 2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 nee, ek dink daar's meer verwys na gebeurlikheid sou hulle 4 dan nie gehoor gee aan fase 2 nie. Dat daar wel 'n 5 gebeurlikheidsplan in plek is en dit sal miskien dan die 6 volgende fase gewees het. 7 CHAIRPERSON: No, no I understand that 8 but I mean it would have been a fairly detailed plan of 9 what the following phase would have involved? 10 BRIGADIER CALITZ: Dit sal daardie van 11 Kolonel Scott wees waarna ek verwys, dis korrek. 12 CHAIRPERSON: The next point I'm going to 13 ask you, I take it the logical person to draw it up will do 14 the first draft of anyway, the first draft of it would have 15 been Colonel Scott? 16 BRIGADIER CALITZ: Dit is korrek, mnr die 17 Voorsitter. 18 CHAIRPERSON: Now when you were at the 19 briefing at 2:30 all that you had was his laptop, there 20 wasn't any piece of paper, there wasn't any hardcopy. 21 There wasn't any detailed statement of what was going to 22 happen. The laptop as far as I can remember had a picture 23 on it which we had as one of the slides but the slide we 24 have has got some writing on it, what phase 1 of the 25 operation would be, phase 2 and phase 3. That wasn't on,</p>	<p style="text-align: right;">Page 21234</p> <p>1 CHAIRPERSON: Yes, I don't know how a 2 satisfactory explanation of the reference of the time is, 3 because this was agreed at the meeting at six o'clock, the 4 meeting which began at six o'clock, some time from six 5 o'clock onwards and at what time did the meeting end, the 6 six o'clock meeting, more or less? 7 BRIGADIER CALITZ: Sê maar 'n uur en 'n 8 half, 'n uur, min of meer. 9 CHAIRPERSON: So let's be safe, we'll say 10 it ended at 7:30, there is some evidence that he was 11 preparing, helping to prepare an application for a 12 coordinated search operation and he told us he finished 13 that at 20 minutes past 8, 8:20. So he would have had from 14 8:20 until 1:30 when the JOCCOM, the second JOCCOM was 15 held, to done what it was agreed would be done, namely to 16 draw up a contingency plan, so surely he would have had 17 enough time to prepare something more comprehensive and 18 more detailed than what you merely saw on his laptop. So 19 surely it does cause one's eyebrows to rise a bit, it is a 20 bit surprising, isn't it, particularly a man like Scott who 21 I think the evidence indicates, he is a very efficient 22 capable officer, would you agree with that? 23 BRIGADIER CALITZ: Nee, hy is 'n baie 24 begaafde offisier, ek stem saam met u, daar was genoeg tyd 25 gegee net wanneer hy die inligting gekry het dat dit sal</p>

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1 miskien oorgaan na die volgende fase toe of, ek weet nie of
2 dit teen, - ons weet nou wat u sê die vorige aand, so ek is
3 -
4 CHAIRPERSON: That explanation I'm afraid
5 doesn't stand up either because remember it was a
6 contingency plan. He didn't information that they hadn't
7 laid down their arms, that information admittedly only came
8 later because there were delays, remember, before Mathunjwa
9 went and in fact Mathunjwa hadn't even come back from his
10 first visit when the 1:30 meeting started, but the point
11 was, it was the contingency plan. The contingency was if
12 they don't lay down their arms voluntarily we have to have
13 a plan in place, so that one is not going to work. So it
14 is a bit surprising, isn't it?
15 BRIGADIER CALITZ: Ek hoor wat u sê, mnr
16 die Voorsitter.
17 CHAIRPERSON: Do you agree?
18 BRIGADIER CALITZ: Ek stem saam in
19 daardie geval.
20 CHAIRPERSON: Yes, now did you ever ask
21 him about it, did you ever say to him, look here, Colonel,
22 there must have been some problem, how come we didn't have
23 a contingency plan such as it is normally drawn up, but we
24 only had to deal with what you showed us in your laptop?
25 Did you ever ask him that?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, na
2 die tyd het ons wel daarvoor gepraat en toe het hy vir my
3 die slides wat ge-attach is aan die, ek dink dit is SS3,
4 die beplanning, want in die contingency plan staan dat die
5 verdere deployments en die besluite sal dan aan hierdie
6 plan vas geheg word. So hy het vir my sy slides en sy
7 voorbereiding gewys wat hy dan vir die JOCCOM voorgelê het.
8 CHAIRPERSON: Well, a lot of those
9 apparently were compiled afterwards for the benefit of the
10 Commission, but anyway that's the explanation you say he
11 gave you, you can't take it further than that?
12 BRIGADIER CALITZ: Nee, dit is net dit,
13 mnr die Voorsitter.
14 CHAIRPERSON: Thank you. Now I would
15 like to ask you something about scene 2. I understood you
16 to say yesterday that if you had known that the people on
17 the koppie were surrounded, you didn't know that General
18 Naidoo had come, he was supposed to be at scene 1 where, he
19 was supposed to come from forward holding area 1 to scene 1
20 with the paramedics and so on. You didn't know he had
21 arrived at scene 2 and was actually taking part in the
22 action, so you can't be blamed for that, and you also
23 didn't know that Captain Kidd had come with the K9 people,
24 that's right, isn't it?
25 BRIGADIER CALITZ: Generaal Naidoo het

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1 met die K9, Kaptein Kidd het met die TRT -
2 CHAIRPERSON: Oh, sorry, yes, I had it
3 wrong, but you corrected me. You're correct, General
4 Naidoo had the K9 people and Captain Kidd had the TRT
5 people. Captain Kidd was supposed to be at holding area 2
6 regarding an informal settlement, as I understand it,
7 nearby, is that right?
8 BRIGADIER CALITZ: Met 'n filtering lyn
9 sou die persone dan -
10 CHAIRPERSON: Ja, -
11 BRIGADIER CALITZ: - deur beweeg, korrek,
12 mnr die Voorsitter.
13 CHAIRPERSON: And General Naidoo was
14 supposed to be doing something else, you didn't know that?
15 BRIGADIER CALITZ: Ek weet wat moet hulle
16 gedoen het, maar ek het nie geweet hulle was -
17 CHAIRPERSON: No, no, - so you didn't
18 know that the koppie was in fact surrounded?
19 BRIGADIER CALITZ: Nie met hulle, nee,
20 glad nie, mnr die Voorsitter.
21 CHAIRPERSON: And what you said as I
22 recall was, if you had known that it was surrounded you
23 wouldn't have given a warning to the people on the koppie,
24 did I understand you correctly?
25 BRIGADIER CALITZ: Dit is heeltemal

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1 korrek, mnr die Voorsitter.
2 CHAIRPERSON: Alright, now the next
3 question I want to ask you is, what exactly would you have
4 said in your warning?
5 BRIGADIER CALITZ: Mnr die Voorsitter, as
6 ek uit die lug uit of Kolonel Vermaak vir my meegedeel het
7 dat die persone is tipe van in ge-boks, met ander woorde
8 dat ons geweet dit is TRT of K9, dan sou ek seer sekerlik
9 daardie bevelvoerders gekontak het en probeer vasstel het
10 en dan op daardie manier behoort hulle vir my te
11 gerapporteer het dat daar 'n skietvoorval of 'n skietery
12 aan die gang is.
13 CHAIRPERSON: I'm sorry, I don't want to
14 interrupt you, but you're not answering my question, I
15 asked something different. The question was, if you had
16 known that they were surrounded -
17 BRIGADIER CALITZ: Ja, -
18 CHAIRPERSON: You said you wouldn't have
19 given them a warning. So what I want to know from you is,
20 what would the warning have contained?
21 BRIGADIER CALITZ: O, ekskuus, ja, nee,
22 ek kom nog daarby, ek wou net eers gesê het, as ek al die
23 inligting, - mnr die Voorsitter, ek sal dan dadelik die
24 opdrag gegee het en dan ook vir die CJOC, vir die JOC laat
25 weet het dat alle persone wat by daardie koppie is moet

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1 staak indien, soos ek sê daardie inligting aan my gegee is
 2 en dat daardie persone moet dekking neem onder, sê nou maar
 3 die voertuie of die klippe of wat ook al naby hulle is.
 4 Hoe dit operasioneel sal werk, ek sal dan die Nyala
 5 voertuie instuur want ek het op hierdie stadium my Papa
 6 Nyala voertuie gebruik en dit is die beskermende voertuie,
 7 so glad nie die sagte dop of persone op voet nie. So ek
 8 sou vir daardie persone almal gesê het net, stop waar julle
 9 is, geen aksie en dat die Openbare Orde Polisiëring ingaan
 10 en dan vir my situasie rapporte gee en dan myself sou ek
 11 ook soontoe beweeg het.

12 CHAIRPERSON: Yes, I'm sorry, I didn't
 13 understand you yesterday then. I thought you said that if
 14 you had known that the koppie was surrounded you would have
 15 given the warning to the people on the koppie. Do you
 16 remember Mr Mpofu asked you a question, he had a long
 17 speech that he said you would have given by way of a
 18 warning, which I thought, and I hope he won't be offended
 19 if I say, that was a little extravagant, but did I
 20 understand you correctly when you said that if you had
 21 known the koppie was surrounded you would have given a
 22 warning to the people on the koppie, to the strikers?

23 BRIGADIER CALITZ: Dit is, mnr die
 24 Voorsitter, eerstens vir die polisie beamptes, as ek geweet
 25 het hulle was daar, sodat die aksie stop en dan sou ek my

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1 Papa Nyalas en myself wat ek nou gesê het sal nader beweeg
 2 en outomaties daar sou ons dan gesien het die persone is
 3 omsingel en in daardie geval sou daar dan kommunikasie met
 4 die persone gewees het en gesê, kom uit vreedsaam.

5 CHAIRPERSON: So what exactly would the
 6 warning that you would have given the strikers, what
 7 exactly would that warning have involved, what would you
 8 have said?

9 BRIGADIER CALITZ: Mm –

10 CHAIRPERSON: You wouldn't have said
 11 everything Mr Mpofu suggested yesterday.

12 BRIGADIER CALITZ: Nee, nee, nee.

13 CHAIRPERSON: But what would you have
 14 said?

15 BRIGADIER CALITZ: Dit sou in die sin
 16 gewees het van deur die interpreter dat die persone is
 17 omsingel, kom uit, hulle is onder arres vir die besit van
 18 die gevaarlike wapens, die wat nie gaan uitkom nie, die
 19 normale waarskuwing wat ons vir hulle sou gegee het miskien
 20 voor die dispersion, maar in die sin van hulle is nou klaar
 21 opgevolg, hulle is omsingel en dat hulle besig is om
 22 arrestasie op hulle uit te voer, so onself identifiseer
 23 aan hulle en dan deur daardie stappe te gaan, om die
 24 persone dan uit die, hoe kan ek sê, die bos of agter die
 25 klippe uit te kry, as hulle dan vrylik sou uitbeweeg.

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1 Indien nie sou die dispersion action dan miskien net
 2 voortgegaan het.

3 CHAIRPERSON: You see I also understood
 4 you to say that you did realise later that they were boxed
 5 in, is that right? You used the word "boxed in" yesterday
 6 or "in-geboks", I think, -

7 BRIGADIER CALITZ: Dit is wat ek gesê het
 8 –

9 CHAIRPERSON: - is that right?

10 BRIGADIER CALITZ: In hindsight het ons
 11 gesien dit is –

12 CHAIRPERSON: No, I understood you to say
 13 yesterday that you realised that they were boxed in, this
 14 was just before the, you gave an order, - sorry, I mustn't
 15 promote him unduly. Colonel Vermaak made a report to you
 16 from the helicopter and you then gave an order to the
 17 members who were, to whom you were commanding at that
 18 point, and I understood you to say that at that point you
 19 thought or you realised that the strikers were boxed in.
 20 Did I misunderstand that?

21 BRIGADIER CALITZ: Ek dink die woorde wat
 22 ek, as ek "boxed in" gebruik het, maar wat hy vir my gesê
 23 het, die persone is ge-encircle en hy het in Afrikaans vir
 24 my gesê, Brigadier, as die waterkanonne kan wag, die
 25 persone is nou ge-encircle, julle kan arrestasies maak,

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1 waarna ek dan vir hierdie mense gesê het en toe het ek
 2 geweet volgens my mening was my Openbare Orde
 3 Polisiëringsvoertuie dan rondom daardie groep gewees.

4 CHAIRPERSON: Who effectively surrounded
 5 them?

6 BRIGADIER CALITZ: Volgens –

7 CHAIRPERSON: On your understanding –

8 BRIGADIER CALITZ: Volgens my –

9 CHAIRPERSON: Your understanding was,
 10 let's be clear what we're talking about, you didn't know
 11 that the whole koppie was surrounded because you didn't
 12 know that Naidoo and Kidd were there, we know that, but you
 13 did think, because that was the information you had been
 14 given, that the strikers were surrounded, that's right,
 15 isn't it?

16 BRIGADIER CALITZ: Dit is, hulle is ge-
 17 encircle, ja, surrounded.

18 CHAIRPERSON: Ja, you used the word
 19 surrounded. So why didn't you then give them a warning?

20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 onthou, ek was 153 meter weg van die, ten tye van daardie
 22 inligting wat aan my gegee is, daarom het ek vir die
 23 voertuie 'n opdrag gegee en gesê, klim uit en maak
 24 arrestasies. Daar is glad nie vir my meegedeel dat op
 25 daardie toneel dit 'n aggressiewe toneel was, dat daar 'n

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1 skietvoerval was waar mense dood was, so nee.

2 CHAIRPERSON: But the fact of the matter

3 was that before you gave the order to them to disarm and

4 disperse and so on and so on, you could have given the

5 people who you thought were surrounded and boxed in, you

6 could have given them a warning, couldn't you? You could

7 have moved 150 metres forward if you had to and give them a

8 warning. As you said you would have given them a warning

9 if you had known that the whole koppie was surrounded, so

10 nothing prevented you from giving them a warning if they

11 were in fact surrounded, not by Naidoo's men and Kidd's men

12 and the others, but by the people under your command, that

13 you thought they were surrounded by them. So why didn't

14 you at that point give them a warning?

15 BRIGADIER CALITZ: Mnr die Voorsitter, -

16 CHAIRPERSON: Was there a reason?

17 BRIGADIER CALITZ: Ja, nee, die enigste

18 wat ek daarvoor kan getuig is, ek weet nie of my voertuie

19 daar self, hulle 'n waarskuwing gegee het nie, die enigste

20 wat ek vir u kan sê, ek was die 150 meter weg. Wat ek vir

21 u gesê het ek sou nader beweeg het is as ek bewus was van

22 die TRT en die K9 wat dan duidelik -

23 CHAIRPERSON: So -

24 BRIGADIER CALITZ: - die toneel sou

25 verander het. Soos dit vir my op hierdie stadium was, was

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1 dit 'n gewone uiteendrywing, dit is waarmee ons aan die

2 westekant ook betrokke was en daar het ek dan ook, soos die

3 mense net encircle is gesê, arresteer, so ons het nie weer

4 waarskuwings gegee na dit nie, nee.

5 CHAIRPERSON: Ja, I understand, you see

6 what I'm interested in is, when your people were dispersing

7 and disarming them, regard being had to some of the history

8 and what had gone before and the intelligence that had been

9 obtained and so forth, that these people were unwilling to

10 hand over their arms and would fight to keep their arms and

11 so forth, wouldn't it have been, perhaps this is a

12 hindsight question, but wouldn't it had been sensible

13 before you gave that disarm order, to have given the people

14 a concerned warning, so to try to encourage them to

15 cooperate with the police rather than to put up a fight as

16 they might well have done, with a result in bloodshed?

17 BRIGADIER CALITZ: Mnr die Voorsitter,

18 ja, in hindsight, as ons nou kyk na die spesifieke toneel,

19 dit is 'n moontlikheid. Operasioneel kan ek net vir u

20 getuig, as ons opvolg waar ek verwys het na baie van die

21 Papa blokkerings en die persone groepeer weer en ons kom

22 met die voertuie nader, dan word daar nie weer waarskuwings

23 gegee, dan is dit 'n fisiese proses van arrestasies wat

24 volg, so dit is nie dat dit 'n voorgeskrewe procedure is

25 nie, maar ek stem saam met u, dit is 'n moontlikheid.

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1 CHAIRPERSON: Alright, I'm afraid I have

2 a few more questions to ask you, it is now one o'clock, I'm

3 afraid I'm going to have to ask you a few more questions at

4 quarter to two, so we'll now take the lunch adjournment

5 until quarter to two.

6 BRIGADIER CALITZ: Dankie, mnr die

7 Voorsitter.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [14:02] CHAIRPERSON: The Commission resumes.

10 Brigadier, you're still under oath.

11 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

12 die Voorsitter.

13 CHAIRPERSON: I understand that on Monday

14 a series of statements were filed by members of the police

15 service and a number of them were by people who were in one

16 of the Nyalas on Thursday, the 16th. The main one is by

17 Warrant Officer Mamabolo. Now am I correct in thinking

18 that Warrant Officer Mamabolo was in Papa11? Is that

19 right?

20 BRIGADIER CALITZ: Ek vertrou so, mnr die

21 Voorsitter.

22 MR SEMENYA SC: Chair, might I just state

23 that the witness is not aware of Mamabolo's statement. I

24 don't know where the Chair is going -

25 CHAIRPERSON: No, no, no, I don't think

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1 there will be a problem. If there is I understand the

2 point you make. Now according to this witness, and indeed

3 the others with him, other statements made by people who

4 were with him in that Nyala, after being at scene 1 he, the

5 Nyala, Nyala 11 then proceeded to, ultimately to koppie 3,

6 and he describes what happened then they got to koppie 3.

7 All I want to know from you at this stage is when Nyala 11,

8 Papa11 rather, Papa11 came to koppie 3, did you see it?

9 BRIGADIER CALITZ: Mnr die Voorsitter, as

10 ek reg is oor Pappa11 is dit die Nyala wat by ons was waar

11 ons die arrestasies gemaak het op 'n noordwestelike hoek en

12 van daar af het hulle gery na die koppie toe. Ek dink dit

13 is die "movement" van Pappa11 wat ek dink een van die

14 advokate, ek is nie seker, met ons deurgegaan het. Dit,

15 daar was so 'n gekleurde dokument wat beskryf het hoe hy

16 inbeweeg tot in die middel van daardie koppie.

17 CHAIRPERSON: Yes.

18 BRIGADIER CALITZ: Maar nee, ek het hom

19 nie gesien beweeg daar waar hy presies daar weggegaan het

20 nie.

21 CHAIRPERSON: Now perhaps I should hand

22 you the copy that I have. I will be an exhibit in due

23 course. I suppose it may have to be an exhibit already.

24 What's the latest exhibit? KKK, so it will be KKK61,

25 statement Mamabolo, Warrant Officer Mamabolo. Well,

<p style="text-align: right;">Page 21247</p> <p>1 perhaps I could read just the paragraph, it's paragraph 13. 2 "We received instructions through the radio that Papa11 3 should go and protect the Gauteng water cannon which was 4 following the protesters and spraying them with water. The 5 protesters were busy running through the open area. We 6 further received instructions through the radio from one of 7 the police choppers that we should get out of the Nyalas 8 and effect arrests. I instructed the crew of the Nyala to 9 get out and we assisted other members to effect arrests. 10 Whilst we were busy effecting arrests the water cannon 11 proceeded further to scene 2. The place where the arrests 12 were effected is reflected in the photo per movement of eTV 13 number 16:13:51 to 16:21 as per document marked movement of 14 Papa11." Anyway, you don't have to worry about that 15 because you know where this particular Nyala was. 16 BRIGADIER CALITZ: Dis korrek, mnr die 17 Voorsitter. 18 CHAIRPERSON: "After the arrest of the 19 protesters, while they were lying on the ground, we left 20 them with the members in the two other Nyalas." That's 21 correct also, isn't it? "After the arrest of the 22 protesters, while they were lying on the ground, we left 23 them with the members in the two other Nyalas." 24 BRIGADIER CALITZ: Ek dink hy verwys daar 25 na die noordwestelike kant waar hy by my was.</p>	<p style="text-align: right;">Page 21249</p> <p>1 tyd in die voertuig, so nee, ek het dit nie gehoor nie. 2 CHAIRPERSON: I understand, thank you. 3 Now I'd like – 4 MS PILLAY: Chair, I'm sorry to 5 interrupt. If I may just indicate that the last exhibit 6 number is KKK60. So it should be KKK60 instead of 61. The 7 supplementary statement of Warrant Officer Mamabolo. 8 CHAIRPERSON: Oh yes, of course, we had 9 the problem that it turned out it was in already. Yes, 10 thank you very much. So we'll correct that. I haven't 11 marked – it's now been marked exhibit KKK60, six-oh. I'd 12 like to now move on to another topic and that is it appears 13 from exhibit L that the TRT members were briefed, this was 14 after the briefing at 2:30 the commanders went back to 15 brief their sections. 16 BRIGADIER CALITZ: Dit is korrek, mnr die 17 Voorsitter. 18 CHAIRPERSON: And it appears from exhibit 19 L, it was referred to previously when I think Mr Mpfu was 20 cross-examining you, that the TRT commanders gave a 21 particular briefing to their members and what was said was 22 that there was specific instruction in respect of self- 23 defence and private defence and that it was not necessary 24 to have an instruction before firing. That's my paraphrase 25 of what was said. You remember that passage? Do you</p>
<p style="text-align: right;">Page 21248</p> <p>1 CHAIRPERSON: Yes, it sounds like it. 2 BRIGADIER CALITZ: Dit is korrek, mnr die 3 Voorsitter. 4 CHAIRPERSON: "This was after the driver 5 of the Nyala proposed that we proceed to the koppie to 6 protect the water cannon as there was gunfire in that 7 direction. I could also hear the sound made by the firing 8 of live ammunition in the vicinity of the koppie. At that 9 stage I did not know from which direction the live 10 ammunition was fired." So it appears that what Warrant 11 Officer Mamabolo is saying is that while his Nyala was 12 together with your Nyala and a third Nyala at the place at 13 the northwest corner of koppie 3, while people were lying 14 on the ground, the arrested people were lying on the 15 ground, they left because the proposal had been made that 16 they proceed to the koppie to protect the water cannon as 17 there was gunfire in that direction and he said he could 18 also hear the sound made by the firing of live ammunition 19 in the vicinity of the koppie. The question I ask you is 20 did you not hear that firing as well? 21 BRIGADIER CALITZ: Nee, mnr die 22 Voorsitter, dit is waaroor ek getuig het. Ek het nie op 23 daardie stadium enige "live fire" gehoor. Ek weet nie of 24 hy buitekant die voertuig was of waar was hulle op daardie 25 stadium geposisioneer nie. Ek was maar meerderheid van die</p>	<p style="text-align: right;">Page 21250</p> <p>1 remember that evidence? 2 BRIGADIER CALITZ: Ek onthou, mnr die 3 Voorsitter. Ek kan nie die bladsy onthou nie, maar ek 4 onthou waar u na verwys. 5 CHAIRPERSON: Now all I want to know from 6 you, is that a standard briefing that members of the TRT 7 would receive? It's slide 182 of exhibit L. "Commanders 8 of the teams of TRT who were responsible for supporting the 9 dispersion action of POP personally briefed their own 10 forces with regard to their roles and responsibilities. 11 The placement of the members of the TRT is behind the POP's 12 line, the allocation of koppie 2 for sweeping and 13 searching. The rules of engagement were emphasised, 14 advancing on command, to perform a planned role during the 15 dispersion, clarifying private defence, when to engage 16 without instruction." All I want to know from you is, is 17 it customary when commanders of teams of the TRT brief 18 their forces, as it's put here in the slide, for them to 19 emphasise the rules of engagement and to clarify the rules 20 relating to private defence and when to engage without 21 instruction? Is that a standard kind of briefing, or is it 22 something that happened on this day? 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 sal u nie rêrig kan help deurdat ek nie rêrig betrokke is 25 by die taktiese "briefing" van die TRT lede nie, maar wat</p>

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1 ek weet uit die beplanning uit is dat ons onder die term
2 "use of force" skryf ons dan gewoonlik in enige beplanning
3 in opdrag van uiteenvoering en dan ook "self-defence,
4 private defence." So onder die terme "use of force" word
5 daardie terminologie, as ek dit so kan sê, gebruik. So as
6 dit die woorde is wat die TRT "commanders" op daardie
7 stadium gebruik het, het hulle dit miskien net in 'n
8 verdere mate verduidelik. Maar die "use of force" kom
9 gewoonlik in 'n beplanning voor, in enige van ons "OCT
10 plans."
11 CHAIRPERSON: Yes, but you say the
12 impression you get from this – or perhaps we'll have to ask
13 them when they come, but as is if this particular
14 instruction in relation to the rules relating to self-
15 defence and private defence and the ability to fire without
16 instruction, that appears to have been given with more
17 detail than is customary.
18 BRIGADIER CALITZ: Dit wil so voorkom in
19 hierdie dokument, mnr die Voorsitter.
20 CHAIRPERSON: I think what I said wasn't
21 recorded. What you say is that the particular briefing as
22 summarised here in slide 182 appears to be more detailed
23 than is customary. Higher than that you can't put it. Is
24 that fair?
25 BRIGADIER CALITZ: Dit lyk my hulle het

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1 in detail ingegaan wat ek verwys net na "use of force" wat
2 ons gewoonlik in 'n operasionele beplanning skryf.
3 CHAIRPERSON: Thank you. And I'd now
4 like to ask you something else. In relation to the
5 instructions you gave just before you left the vicinity of
6 scene 1, what precisely was the instruction you gave? It
7 was paraphrased in Afrikaans at one stage. I take it you
8 gave it in English. Can you remember more or less what
9 your words were?
10 BRIGADIER CALITZ: Mnr die Voorsitter, ek
11 dink die vorige keer toe u my gevra het, ek is nie seker
12 presies die woorde nie, ek het vir u gesê ons is 18 maande
13 later toe ons daar gestaan het, en ek het die mense gesien
14 af kom – praat u van die eerste insident of toe ons
15 ombeweeg het van die begin af?
16 VOORSITTER: Van die begin af, ja.
17 BRIGADIER CALITZ: Van die begin af,
18 basies gestaan en toe het ons die persone gesien. Ek het
19 eers vir Pappa4 gesê wat voor ons was om die deure toe te
20 maak en vir die persone om in te beweeg omdat die groep
21 afbeweeg daarnatoe. Daarna het ek gesien hulle beweeg in
22 'n – wat is hulle, in die rigting van Nkaneng se kant toe,
23 die groter groep, en ek het gesê vir die Nyalas om daardie
24 "gap" toe te maak, in other words "Move forward, move
25 forward, close that gap," en toe het ek daar stasies

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1 gestaan tot ek aan die bopunt gesien het dat die bopunt, by
2 daardie, sê maar naby die kraal se gedeelte is. Toe het ek
3 vir die "vehicles" gesê, "Engage, engage," waar ek bedoel
4 het hulle moet betrokke raak, en van daar af is daar
5 gesprekvoering gewees met die Pappa Nyalas, "Papa Nyalas,
6 go to the gap, try to block them and disperse," en toe ek
7 sien dit werk nie, op daardie stadium toe ek naderbeweeg by
8 insident 2 het ons verbygery en ek het vir die "vehicles"
9 weer gesê "The Papa Nyalas, follow me so that we can block
10 them, disperse them, disperse them." So dit sal iets wees
11 soos "Move, move, move, move, move forward." So daar is
12 nie spesifieke opdragte gegee oor waar, wie, watter
13 voertuig moet parkeer nie. Omdat die roepseine op die dak
14 is, is dit baie moeilik op daardie stadium om dit so te
15 doen. So met ander woorde die uiteendryf aksie dan sou dan
16 plaasgevind het van waar ons dan voor by die draad gekom
17 het.
18 CHAIRPERSON: I understood you to say
19 that you gave an instruction that the vehicles were to be
20 used to disperse the people, the strikers. Is that right?
21 It's that instruction that particularly interests me. How
22 did you word that instruction?
23 BRIGADIER CALITZ: Mnr die Voorsitter,
24 dit sou gewees het toe ek gesien het dat dit groep verby
25 ons gegaan het, sou die woorde gewees het vir my drywer,

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1 "Move forward, move forward." Hy het gesê daar is 'n
2 draad, hy kan nie deurgaans nie, waarop ek vir al die karre
3 gesê het "Move forward and disperse these people. Use the
4 vehicles, drive in between them. Break them up. Break up
5 this group," en met ander woorde dat hulle – en dit is
6 presies wat gebeur het; toe die Pappa Nyalas vorentoe ry
7 het die groepe begin uitmekaar uit hardloop.
8 CHAIRPERSON: Was this instruction given
9 in particular to one of the senior officers there who was
10 going to be in command, as it were, of that part of the
11 operation after you left to go to koppie 2?
12 BRIGADIER CALITZ: Nee, nee, nie
13 spesifiek nie. Ek het gepraat met die Pappa Nyalas wat dan
14 almal vorentoe beweeg het tot by die, wat ons verwys het na
15 die "dry riverbed," tot daar –
16 CHAIRPERSON: Ja, I see.
17 BRIGADIER CALITZ: - tot daar, en toe het
18 ek vasgestel watter voertuie is saam met ons.
19 CHAIRPERSON: So effectively the people
20 were to be dispersed by having Nyalas driven near them, as
21 it were, between them, is that right?
22 BRIGADIER CALITZ: Dit is korrek, mnr die
23 Voorsitter. U sal onthou in die begin was daar bewerings
24 gewees dat, of gerugte dat ons het oor van die persone
25 gery, mense was gestamp. Ek dink uit die outopsieverslae

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1 wat Dr Naidoo of Perumal gedoen het, daar is geen merke op
 2 geen liggame gewees. So ek dink dit is waar daardie
 3 gerugte vandaan gekom het is omdat die voertuie juis tussen
 4 hulle ingery het en op so 'n manier hulle opgebreek het en
 5 dan "ge-discourage" het om in een groot groep te bly, maar
 6 opgebreek het en wat hulle in verskeie rigtings gehardloop
 7 het.

8 CHAIRPERSON: Now was this instruction
 9 carried out?

10 BRIGADIER CALITZ: Dit was inderdaad
 11 volgens my uitvoer, mnr die Voorsitter, want toe ons
 12 vorentoe beweeg het ek 'n groot groep gesien. Ons het
 13 vandag op die video gesien, ek dink ons het van 30 gepraat
 14 wat deurgaen. Die res van daardie mense het gehoor gegee
 15 aan die "dispersion action" en het wegbeweeg in 'n
 16 westelike asook in 'n, kan ek sê noord, noordwestelike
 17 rigting.

18 CHAIRPERSON: So what you're saying then
 19 is the 30 weren't dispersed by this action, but the
 20 remainder were. Is that fair?

21 BRIGADIER CALITZ: Die 30 wat ons vandag
 22 gesien het –

23 CHAIRPERSON: Well, it's approximation,
 24 obviously, but we got to a figure of roughly 30.

25 BRIGADIER CALITZ: Ja, dit is die getal,

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1 min –

2 CHAIRPERSON: The front 30 –

3 BRIGADIER CALITZ: Min of meer, ja.

4 CHAIRPERSON: The front group which
 5 appears to be about 30 or thereabouts. Is that right?

6 BRIGADIER CALITZ: Dit, hulle het
 7 deurbeweeg, mnr die Voorsitter, ja. Hulle was –

8 CHAIRPERSON: They weren't dispersed
 9 then?

10 BRIGADIER CALITZ: Ek sal sê onsuksesvol.
 11 Daar was pogings gewees. Ons kan dit sien op die video.
 12 Daar was "non-lethal action" op hulle gevat deur die
 13 persone wat tussen die twee Nyalas deur geskiet het.

14 CHAIRPERSON: Oh, yes, yes, sorry, I put
 15 the question badly. I know, I think teargas was fired at
 16 them and I think stun grenades. Was any water sprayed on
 17 them?

18 BRIGADIER CALITZ: Hulle sê agt sekondes
 19 volgens die CALS dokument voor die TRT "volley." Ek het so
 20 vinnig net na die dokumente gekyk. Maar –

21 CHAIRPERSON: So there was water sprayed
 22 at them.

23 BRIGADIER CALITZ: Maar ek twyfel of dan
 24 die voorpunt, ek kan sien die hele kraal se binnekant is
 25 nat.

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1 CHAIRPERSON: Ja.

2 BRIGADIER CALITZ: Asook aan die, by
 3 insident 2 waar Pappa4 was is daar ook 'n nat kol wat mens
 4 kan daar waarneem. So daar was definitief water gespuit.

5 CHAIRPERSON: So we're not sure about
 6 water, but stun grenades and teargas we do know. That was
 7 done in order to disperse them, but this other way of
 8 dispersing them by using the vehicles, did that happen as
 9 far as they were concerned? Was an attempt made to
 10 disperse them, the front 30 or thereabouts, was an attempt
 11 made to disperse them by means of the vehicles?

12 BRIGADIER CALITZ: Ek glo die voertuie
 13 wat dan op beweeg het sou dan gevolg het, mnr die
 14 Voorsitter, maar duidelik soos ons op die video gesien het,
 15 het daardie deel van 30 deurgekom voor daardie voertuie
 16 vorentoe beweeg het. Maar die, 90% van die groep, 99% kan
 17 ons maar sê het dan wel gereageer daarop.

18 CHAIRPERSON: Can we say whether an
 19 attempt was made – it would appear to have been
 20 unsuccessful if it was, but can we say that an attempt was
 21 made to disperse them by using vehicles to, as it were,
 22 push them along?

23 BRIGADIER CALITZ: U praat –

24 CHAIRPERSON: Push them apart perhaps.

25 BRIGADIER CALITZ: U praat van die

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1 voorste groep, of –

2 CHAIRPERSON: Yes, front group.

3 BRIGADIER CALITZ: Ja, die voorste groep
 4 sou ek sê meer as dit, ons het aanvanklik eers die "stuns"
 5 en die rook en dan ook die haelgewere. U moenie vergeet
 6 van die persone wat tussen die voertuie gestaan het wat dan
 7 die uiteendryf aksie, so –

8 CHAIRPERSON: The rubber rounds?

9 BRIGADIER CALITZ: Dit is korrek, mnr die
 10 Voorsitter, ja. So daardie "attempts" was definitief
 11 gedoen en dan uit 'n desperate poging om hulle op te breek,
 12 die voertuie het dan tussen hulle inbeweeg.

13 CHAIRPERSON: Did those endeavours result
 14 in them being pushed in any particular direction?

15 BRIGADIER CALITZ: Die groter deel in 'n
 16 westelike rigting –

17 CHAIRPERSON: I'm not busy with "groter
 18 deel," I'm busy with the 30.

19 BRIGADIER CALITZ: O nee, nee, mnr die
 20 Voorsitter. Ons sou hulle nie, u weet, in 'n – wat is dit?
 21 – 'n suidelike rigting, nee daar was geen druk in 'n
 22 suidelike rigting van die voertuie nie.

23 CHAIRPERSON: They weren't being pushed
 24 in the direction of the TRT group?

25 BRIGADIER CALITZ: Definitief nie, mnr

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1 die Voorsitter.

2 CHAIRPERSON: So essentially it would

3 appear that dispersal attempts in respect of the front

4 group didn't succeed at all.

5 BRIGADIER CALITZ: Die pogings wat op

6 hulle toegepas is, "non-lethal," het nie, geen effek op

7 hulle gehad nie, mnr die Voorsitter, en ons -

8 CHAIRPERSON: Thank you.

9 BRIGADIER CALITZ: Nee, ek wil net sê ons

10 weet dit as gevolg van die komberse en die "double layered

11 clothing." Ons het dit getoets na die tyd. So die "non-

12 lethal" het geen effek op hulle gehad nie.

13 CHAIRPERSON: Yes, thank you. I have no

14 further questions.

15 MR SEMENYA SC: Matters arising, Chair?

16 MR MPOFU: Yes.

17 CHAIRPERSON: In the past I've allowed

18 you to ask questions arising and I see Mr Mpofo is putting

19 up his hand too.

20 MR MPOFU: Yes, Chairperson, I was also

21 going to ask one or two things on matters arising. I think

22 it might be more appropriate that I go before Mr Semenya so

23 that he – literally just two issues, so that he can clean

24 them up, is what we say.

25 CHAIRPERSON: Yes, well, though Mr

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1 Semenya is your senior, I'll allow you to ask questions

2 first.

3 MR MPOFU: Well, he can go first then.

4 CHAIRPERSON: No, no, no, you can go

5 first. You asked to go first; you can go first.

6 MR MPOFU: Thank you, Chairperson.

7 Brigadier, I promise you, this is not going to long.

8 CHAIRPERSON: You made that promise to –

9 BRIGADIER CALITZ: I heard that before.

10 MR MPOFU: You've heard that one before,

11 yes.

12 BRIGADIER CALITZ: But you said two

13 questions, so I'll answer two questions. It's on record.

14 MR MPOFU: Only two questions, alright.

15 I just wanted, or the Chairperson asked you, the first

16 issue that he dealt with you was in respect to the briefing

17 that was done on the computer screen in that Vito. You

18 remember that?

19 BRIGADIER CALITZ: Dit is korrek.

20 [14:21] MR MPOFU: Ja, and what you are saying is

21 that the reason that that was adequate in the circumstances

22 was because the time did not allow for a proper detailed

23 briefing, correct?

24 BRIGADIER CALITZ: Ja, ek kan u net sê,

25 die vraag aan my was wat het Kolonel Scott vir ons gesê

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1 waarom daar nie 'n plan was nie en ek sê dit is wat hy vir

2 my meegedeel het, is dat daar is nie 'n behoorlike plan

3 nie, nie dat daar nie een was nie, hy het gesê hy brief ons

4 net op die skerm van sy notebook.

5 MR MPOFU: No, irrespective of what

6 Colonel Scott might or might not have said, your view is

7 that that type of briefing which would be otherwise

8 inadequate was explained on the basis that there was not

9 enough time, correct?

10 BRIGADIER CALITZ: Nee, mnr die

11 Voorsitter, dit is nie die vraag wat mnr die Voorsitter

12 gevra het nie, u vra 'n totaal different vraag. My

13 antwoord daarop sal wees, nee, die halfuur wat hy daaraan

14 gespandeer het sal ek sê die hele fase 3 is in detail

15 verduidelik.

16 MR MPOFU: Okay, then you were asked

17 about the issue of the warning that you might have given in

18 respect of, - then you were asked about the issue of the

19 warning that you might have given and I understand that it

20 is speculative, in respect of scene 2. Now your evidence

21 in respect of scene 1 was that you would have given the

22 strikers about 20 to 30 minutes to respond to the warning.

23 Would you be able to say that in respect of the warning

24 that you might have given at scene 2, how much you would

25 have given them to respond, either to own up or come out

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1 and as the chairperson said, I made it more elaborate, you

2 would have said, look, there are helicopters, there is this

3 and that, but whatever the real actual proper warning that

4 you would have given, how long would you have given them?

5 Brigadier?

6 BRIGADIER CALITZ: No, I see the

7 chairperson was just busy, I was just waiting.

8 CHAIRPERSON: No, no.

9 BRIGADIER CALITZ: Ekskuus, mnr die

10 Voorsitter.

11 CHAIRPERSON: No, I'm listening to you, I

12 listened to you even though my colleague, Advocate Tokota

13 was putting a point to me, but now you've got my full

14 attention.

15 BRIGADIER CALITZ: No.

16 CHAIRPERSON: I'm interested to hear your

17 answer.

18 BRIGADIER CALITZ: No, I was respectfully

19 waiting for you to finish –

20 CHAIRPERSON: No, no, I appreciate it.

21 BRIGADIER CALITZ: Mnr die Voorsitter,

22 ja, weereens die vraag verskil, mnr die Voorsitter het

23 gevra sou ons wel 'n waarskuwing gegee het? Ek het vir hom

24 gesê in normale praktyk is dit nie 'n voorskrif dat indien

25 ons met 'n dispersion action besig is om weer 'n

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1 waarskuwing te gee nie en toe sê mnr die Voorsitter, maar
 2 sou daar wel 'n moontlikheid gewees het en ek het gesê
 3 daardie moontlikheid kan wel bestaan, so om op daardie
 4 proposisie te gaan dat die persone wel daar was, dit hang
 5 van omstandighede af. As ek op die koppie self garriveer
 6 het en ek het gesien daar is met die Papa voertuie om
 7 hulle, dit hang alles van die omstandighede af, hoe lyk die
 8 terrein binne, of daar enige kommunikasie van hulle kant af
 9 was, sou daar geensins 'n reaksie wees nie, het ek vir mnr
 10 die Voorsitter gesê dan sou ons net voortgegaan het met 'n
 11 uiteendryf aksie, met ander woorde fisies dan uitgeklim
 12 het, die groep uiteengedryf het met non lethal force en
 13 begin arrestasies maak het.

14 MR MPOFU: Okay.

15 BRIGADIER CALITZ: So dit hang baie van
 16 omstandighede af, ek kan nie nou vir u sê –

17 MR MPOFU: No, fair enough –

18 BRIGADIER CALITZ: - 'n spesifieke tyd
 19 nie.

20 MR MPOFU: Fair enough, all I'm saying is
 21 that, can we then accept, if you're not prepared to
 22 estimate as you would have done in scene 1, can we accept
 23 that you would have given them a reasonable period within
 24 which to respond to your warning?

25 BRIGADIER CALITZ: Alles hang af, mnr

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1 Mpofo, as –

2 CHAIRPERSON: Sorry, I take it you would
 3 have given them a reasonable time to respond, what depends
 4 on the circumstances is what the reasonable period would
 5 be, but if you give a warning you've got to give a
 6 reasonable time to people to respond to it, whether the
 7 reasonable time is a minute or ten minutes is a different
 8 question, but a reasonable time you've got to give. What's
 9 the point of giving a warning and then immediately acting
 10 before a reasonable time has elapsed, I mean that must be
 11 so?

12 BRIGADIER CALITZ: Dit moet so wees, mnr
 13 die Voorsitter, daarom sê ek dit hang af of ons 'n
 14 waarskuwing sou gegee het in die omstandighede as ons daar
 15 aankom.

16 CHAIRPERSON: No, no, I understand it.
 17 The first question is, would you have given a warning,
 18 that's hypothetical, but we're now busy with what we can
 19 call the second hypothetical, that if you had given the
 20 warning how long in those circumstances would you have
 21 waited before proceeding with the operation, in other words
 22 what would you have regarded as a reasonable time for them
 23 to respond to any warning that you may have given? That's
 24 Mr Mpofo's question, I think.

25 MR MPOFU: That's correct, Chair.

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 dit is 'n baie moeilike vraag operasioneel om te antwoord,
 3 nie dat ek die vraag ontwyk nie, ek sal miskien by 'n tyd
 4 kan uitkom, dit hang alles net af van, indien 'n mens
 5 opvolg, onthou die persone is klaar uiteengedryf, so jy sit
 6 met 'n groep wat emosioneel is, jy sit met 'n groep wat nie
 7 rasionaal gaan optree nie, jy sit met 'n groep wat, so jou
 8 kommunikasie om weer te probeer terug gaan na stap 1 toe,
 9 dit kan nie, so daarom sê ek sodra 'n mens daar aankom
 10 sal 'n mens vir die mense gesê het, die polisie is hier,
 11 kom uit die dinges uit, julle is onder arres, u weet
 12 daardie tipe van en sou daar nie samewerking gewees het
 13 nie, so ons sou onmiddellik oorgegaan het met 'n verdere
 14 uiteendryf aksie.

15 As daar dan, soos u dit gestel het in die vorige
 16 kere, 'n persoon met 'n wit vlag uitgeklim het, onthou
 17 daardie stelling wat u gemaak het, glo ek hy as leier sou
 18 ons dan oor die public address system en dan vir die
 19 persone gesê het, sit neer julle wapens en kom uit en soos
 20 hulle uitgeklim het so sou daardie persone dan nog steeds
 21 gearrester gewees het onder daardie omstandighede. So
 22 gegewe die tyd, dit hang af van die reaksie van die
 23 strikers.

24 CHAIRPERSON: Does that mean that if
 25 there was no reaction you would have given them a fairly

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1 short time, but if there has been some kind of reaction you
 2 would then wait to see what form the reaction took and how
 3 many people were reacting and –

4 BRIGADIER CALITZ: Dit is –

5 CHAIRPERSON: It is difficult to give –

6 BRIGADIER CALITZ: In hindsight dit is 'n
 7 moontlikheid, mnr die Voorsitter, definitief.

8 CHAIRPERSON: Ja, that seems fair. I
 9 think those were your two questions, the correct ones, Mr
 10 Mpofo?

11 MR MPOFU: Yes, thank you very much,
 12 Chair.

13 CHAIRPERSON: Mr Semenya, were you going
 14 to ask the same questions or have you got other questions
 15 to ask?

16 MR SEMENYA SC: Other questions, Chair.
 17 Regarding the statement of Warrant-Officer Mamabula, he
 18 would have been at a certain point at the north-west where
 19 the first arrests were made, do you remember that?

20 BRIGADIER CALITZ: Dit is korrek, ja.

21 MR SEMENYA SC: And as the chair says in
 22 his statement he said he heard shots being fired at koppie
 23 3?

24 BRIGADIER CALITZ: Dit is korrek.

25 MR SEMENYA SC: Did he tell you that he

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1 is leaving 1?

2 BRIGADIER CALITZ: Nee, ek het nou vir

3 die eerste keer na die verklaring verneem, so ek was glad

4 nie bewus gewees daarvan nie.

5 MR SEMENYA SC: Neither did he

6 communicate that he has heard the shots?

7 BRIGADIER CALITZ: Dit is korrek, mnr die

8 Voorsitter, ek was nie bewus gewees daarvan nie.

9 MR SEMENYA SC: With the question of

10 contingency plans, given what you now know and using your

11 own experience, if the plan that you were to execute was

12 reduced to paper would it have changed anything?

13 BRIGADIER CALITZ: Nee, mnr die

14 Voorsitter, die voorligting wat gegee is en die uitvoering

15 daarvan is wat ons sien, wat ons verneem het, mnr die

16 Voorsitter het na dit verwys, wat voorberei is vir Exhibit

17 L.

18 MR SEMENYA SC: If it had been given in

19 paper in more detail would it, given your experience, have

20 changed anything?

21 BRIGADIER CALITZ: Nie die uitvoering

22 gedeelte nie, wat bykom gewoonlik in 'n plan is die

23 administratiewe sy, die logistiek, die radio kanale,

24 daardie tipe van, so die uitvoering gedeelte was genoegsaam

25 gewees, die tydperk wat dit gegee is, so dit sou nie

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1 regtig 'n verskil maak nie.

2 MR SEMENYA SC: Those are the questions I

3 have for the witness, Chair.

4 CHAIRPERSON: Thank you, Mr Semanya. I

5 take it that's the end of this witness' evidence?

6 MR SEMENYA SC: Indeed, Chair.

7 CHAIRPERSON: Yes, Brigadier, you're

8 excused now from further attendance on the basis that if it

9 is necessary for you to come back to answer some point that

10 has arisen in the meanwhile that you will be prepared to

11 come back, on that basis you are excused.

12 BRIGADIER CALITZ: Ek gee altyd my 110%

13 samewerking, mnr die Voorsitter.

14 CHAIRPERSON: I've heard that phrase

15 somewhere before.

16 BRIGADIER CALITZ: Mnr die Voorsitter, as

17 ek dan net mag, baie dankie vir die geleentheid, spesiaal

18 vir die advokate, die manier en die wyse waarop, hoe kan ek

19 sê, dit hanteer is. Ek waardeer dit en met respek daar

20 waar ons verskil het, dit was nie uit, hoe kan ek sê aspris

21 gewees nie, en dan my innige simpatie en mee gevoel vir

22 almal wat verlies geleë het.

23 [NO FURTHER QUESTIONS - WITNESS EXCUSED]

24 CHAIRPERSON: Thank you, Brigadier. Your

25 next witness I gather is Lieutenant-General Mbombo, is she

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1 available?

2 MR SEMENYA SC: Indeed, Chair, can I –

3 CHAIRPERSON: I understand, you came to

4 see me in Chambers and you informed me that he requests to

5 give evidence in her home language which is Xhosa and so,

6 but she is prepared to receive questions in English.

7 Obviously if she requires assistance in understanding a

8 particular question and it needs to have interpreter to

9 her, then that facility will be afforded to her. So what

10 we're going to have to do is, we're going to have to, we

11 have to return to the mode of sequential interpretation or

12 semi sequential interpretation. So what will happen is,

13 the questions will be asked in English, there is no one I

14 take it that wants to ask questions in any language other

15 than English. The witness will then reply in Xhosa, Mr

16 Mahlangu who is with us will interpret. I take it the

17 interpreter in the other room will interpret the questions

18 from English to Xhosa, so those who wish to follow the

19 questions will have to use their headphones and presumably

20 the sound track they will receive will include the Xhosa

21 answer by the witness.

22 So in that way we won't spent double the time

23 that we would with a witness who is testifying where there

24 is simultaneous translation but we will spend one and a

25 half of the time that would be spent in that way. Mr

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1 Mahlangu, I take it you don't have to interpret for us in,

2 you don't have to interpret it into, what we say in English

3 into Xhosa, because that would be interpreted by your

4 colleague across the way. What you will do is, you will

5 interpret for us the Xhosa answers of the witness into

6 English, that's my understanding.

7 MR MAHLANGU: That is, I suppose, how it

8 is going to work.

9 CHAIRPERSON: Mr Semanya, do you require,

10 shall we take a short adjournment before your witness

11 comes?

12 MR SEMENYA SC: I would appreciate it,

13 Chair.

14 CHAIRPERSON: Alright, we'll adjourn for

15 five minutes.

16 MR MPOFU: sorry, -

17 CHAIRPERSON: Cancel the order for

18 adjournment, Mr Mpfu, you turned on your light, what do

19 you want to say?

20 MR MPOFU: No, thank you, Chairperson,

21 you know just at a human level, I see that the brigadier is

22 emotional, so I just wanted to say that the words that he

23 had said to my colleagues, I'm sure I'm speaking for all my

24 colleagues to say that we also appreciate your assistance

25 and as you say we all have to perform our professional

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1 duties, you yours and we have to do what we have to do, but
 2 none of it was personal, thanks, Chairperson.
 3 CHAIRPERSON: We'll now take the five
 4 minute adjournment.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [14:42] CHAIRPERSON: The Commission resumes.
 7 Yes, Mr Semenya?
 8 MR SEMENYA SC: I beg leave to call
 9 General Mbombo, Chair.
 10 CHAIRPERSON: Yes, is it appropriate for
 11 me to swear her in, or should I ask Mr Mahlangu to do so?
 12 MR SEMENYA SC: You can swear her in,
 13 Chair.
 14 CHAIRPERSON: Lieutenant General, would
 15 you stand up, please? Are you prepared to swear that the
 16 evidence you give will be correct? If you take the oath
 17 will that be binding on your conscience, or would you wish
 18 to affirm?
 19 GENERAL MBOMBO: I wish to confirm, Sir.
 20 CHAIRPERSON: You wish to affirm?
 21 GENERAL MBOMBO: Yes.
 22 CHAIRPERSON: Very well. Would you
 23 affirm that the evidence you'll give before this Commission
 24 will be the truth, the whole truth, and nothing but the
 25 truth? Please say, "I so affirm."

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1 MIRRIAM NOSAZISO ZUKISWA MBOMBO: I so
 2 affirm.
 3 CHAIRPERSON: You may be seated.
 4 EXAMINATION BY MR SEMENYA SC: Thank you,
 5 Chair. General, there is a file before you; I hope you
 6 have it. In that file you will find a document marked
 7 GGG5. Do you have that?
 8 CHAIRPERSON: I'm sorry, Mr Semenya. We
 9 didn't put her full names on record. I see she is Mirriam
 10 Nosaziso Zukiswa Mbombo. That's correct?
 11 GENERAL MBOMBO: It is so, Mr
 12 Chairperson.
 13 MR SEMENYA SC: Do you have the document?
 14 GENERAL MBOMBO: I do have it.
 15 MR SEMENYA SC: There is also an unmarked
 16 document, but it has in a rectangle first page amplified
 17 affidavit. Do you have that one?
 18 GENERAL MBOMBO: I have got it.
 19 CHAIRPERSON: May I interrupt you at this
 20 stage? I see most of the documents in this file are
 21 already exhibits. There are only two that are described as
 22 not yet an exhibit. The first of those is the amplified
 23 statement, which is number 2 in the file. Shall we call
 24 that exhibit –
 25 MR SEMENYA SC: L.

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1 CHAIRPERSON: LLL1?
 2 MR SEMENYA SC: LLL1, Chair.
 3 CHAIRPERSON: And then there's another
 4 document which is number 12, which is a letter from, I
 5 think he's a Lieutenant Colonel Vermaak, dated the 28th of
 6 May 2012. We'll make that one LLL2, shall we?
 7 MR SEMENYA SC: No, that one is an
 8 exhibit; that is a minute of the National –
 9 CHAIRPERSON: No, no, no, there are two
 10 letters from Lieutenant Colonel Vermaak. The second one,
 11 number 12 on your list, it says "Not yet an exhibit." If
 12 it is an exhibit already, well then that's fine, but if it
 13 isn't an exhibit then we have to mark it. That's all I'm
 14 saying. Perhaps Ms Pillay can tell us.
 15 MS PILLAY: Chair, both letters are
 16 exhibits.
 17 CHAIRPERSON: Very well. So the second
 18 letter, the one the 28th of May, what exhibit number is
 19 that, so we can write it in, in the relevant column on the
 20 front page of the file, of the documents in the file.
 21 MS PILLAY: It's the 22nd of May, is
 22 exhibit JJJ137.
 23 CHAIRPERSON: JJJ?
 24 MS PILLAY: 137.
 25 CHAIRPERSON: 137. Yes, that's the

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1 letter dated the 28th of May. The previous one, the letter
 2 dated the 12th of December 2012, that's HHH68. Ja, alright,
 3 so housekeeping having been attended to, you may proceed to
 4 lead the evidence.
 5 MR SEMENYA SC: Bar one, Chair; there is
 6 an excerpt, or there should be an excerpt in that bundle of
 7 documents of the minute of the National Management Forum.
 8 That also is unmarked. If we can mark it LLL –
 9 CHAIRPERSON: I don't see it here.
 10 Number 5 is extract of National Management Forum minutes
 11 and then it says JJJ177. According to the front sheet in
 12 the file document number 5 is described as extract of
 13 National Management Forum minute, date of the next meeting
 14 9/10 October 2012, and then according to the right-hand
 15 column it's JJJ177.
 16 MR SEMENYA SC: Chair, I think the
 17 identification of the document as JJJ177 is incorrect.
 18 CHAIRPERSON: I'm sorry, document number
 19 5 in the file has got JJJ177 written at the top.
 20 MR SEMENYA SC: That should be of the 15th
 21 of August. We're talking about the next item, which is the
 22 item unnumbered.
 23 CHAIRPERSON: Oh, that doesn't appear to
 24 be in my copy of the file.
 25 MR SEMENYA SC: Chair, I will fix it at

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1 teatime. There is a document you ought to have which is
2 not in that index.

3 CHAIRPERSON: Let us in the meanwhile
4 agree it will be exhibit LLL2 and you can mark it and then
5 give it to us at teatime.

6 MR SEMENYA SC: I'm indebted to you.

7 CHAIRPERSON: And if it's in punched form
8 we can put it in our files.

9 MR SEMENYA SC: I'm indebted to you,
10 Chair.

11 CHAIRPERSON: And we'll call it – no, I
12 see the description of the document then also requires
13 amendment, is it not? So 5 is the document we have,
14 JJJ177, which is extract of National Management Forum
15 minute. The date of that is 15 August 2012.

16 MR SEMENYA SC: No –

17 CHAIRPERSON: I'm correct? JJJ177 is the
18 minutes of the meeting held on the Wednesday, the 15th of
19 August, and that's the document we've got, JJJ177. The
20 other document, which we're going to call exhibit LLL2,
21 which we will put in as 5A in the file, that is the
22 document which deals with the date of the next meeting. So
23 we've got to alter the description of the documents on the
24 front sheet. Under the description of the document 5 is
25 extract of National Management Forum minute, we can simply

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1 say 15/8/2012, and then 5A is extract of NMF minute –
2 MR SEMENYA SC: Date 9/10 of October.

3 CHAIRPERSON: Yes, that's right. That
4 will be 5A, right, and that will be exhibit LLL2. So
5 housekeeping is now in order, is it Mr Semenya?

6 MR SEMENYA SC: I thank you, Chair.

7 CHAIRPERSON: Let's proceed.

8 MR SEMENYA SC: General, can we start
9 with GGG5? If you go to page 9 of that document you will
10 see it's dated the 19th of November 2012. Do you recognise
11 the signature there?

12 GENERAL MBOMBO: It is so, Sir.

13 MR SEMENYA SC: On the first page you
14 tell us against paragraph 3 that you joined the police in
15 November of 1980. Is that right?

16 GENERAL MBOMBO: It is so, Sir.

17 MR SEMENYA SC: And that you went through
18 the ranks until you were appointed the Provincial
19 Commissioner for Northern Cape, and that was in November of
20 2005. Is that right?

21 GENERAL MBOMBO: It is so, Chair.

22 MR SEMENYA SC: And in there, Northern
23 Cape, you served until the July of 2010.

24 GENERAL MBOMBO: It is true.

25 MR SEMENYA SC: And then you were

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1 appointed beginning the 1st of August of 2010, you were
2 appointed as the Provincial Commissioner for the province
3 of the North West?

4 GENERAL MBOMBO: It is so, Chairperson.

5 MR SEMENYA SC: You do set out in this
6 affidavit the events that relate to the tragedy in Marikana
7 covering that period from the 10th to the 16th of August
8 2012. Is that right?

9 GENERAL MBOMBO: It is correct, Sir.

10 MR SEMENYA SC: And you refer to the
11 tragedy of the loss of life and injury to people, as well
12 as damage to property.

13 GENERAL MBOMBO: It is so, Mr
14 Chairperson.

15 MR SEMENYA SC: Now you tell us, General,
16 that –

17 CHAIRPERSON: I'm sorry, what you're
18 doing is you're turning your microphone off when you start
19 to talk and you have it on when you're not talking. Now as
20 I understand it, it's supposed to be the other way around.
21 You're supposed to have your microphone on when you're
22 talking; you don't have to have it on when you're not
23 talking. Is that correct, Mr Mahlangu?

24 MR MAHLANGU: That is -

25 GENERAL MBOMBO: I just wanted to check,

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1 Mr Chairperson, when it's on is it red or is it –
2 CHAIRPERSON: When it's on, it's red.

3 GENERAL MBOMBO: Okay.

4 CHAIRPERSON: And when it's not on
5 there's no colour at all.

6 MR SEMENYA SC: I'm just trying to
7 understand the technology, Chair. I think if the
8 interpreter is going to be having his mike on, the General
9 doesn't have to switch hers on and off; she's just speaking
10 in Xhosa.

11 CHAIRPERSON: I have been told by my
12 colleague Adv Tokota that if she doesn't have her
13 microphone on there may be problem for the interpreter at
14 the other end, who's across the courtyard, who is
15 interpreting the English material into Xhosa for the
16 benefit of those who are here, and also what she says in
17 Xhosa must find its way into the headphones of the people
18 who are listening to hear the Xhosa soundtrack. So that's
19 why Mr Tokota made the suggestion which I repeated.

20 MR SEMENYA SC: I'm indebted, Chair.

21 CHAIRPERSON: If we're wrong on that we
22 must be told because we've never had this arrangement
23 before, but we must get it right for the benefit not only
24 of a proper record, but also so that those people who are
25 here who prefer to hear the proceedings in Xhosa hear what,

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1 her actual words.

2 MR SEMENYA SC: General, we'll also have

3 you speak in Xhosa with your mike on. On the 11th of August

4 2012 you tell us you were on sick leave at that time. Is

5 that right, General?

6 GENERAL MBOMBO: It is so, Chair.

7 MR SEMENYA SC: And that you received a

8 call from an employee or a person who is in the employ of

9 Lonmin, advising you that some miners there have started an

10 illegal strike. Is that right?

11 GENERAL MBOMBO: It is so.

12 MR SEMENYA SC: Do you now know who the

13 person is who gave you a call?

14 GENERAL MBOMBO: I do, Chairperson.

15 MR SEMENYA SC: Give us the name.

16 GENERAL MBOMBO: Mr Blaauw.

17 MR SEMENYA SC: Do you know what position

18 Mr Blaauw holds in Lonmin employment?

19 GENERAL MBOMBO: I am not sure of his

20 position.

21 MR SEMENYA SC: But he then tells you

22 that that unprotected strike resulted in some people being

23 shot and that it appears that the strikers might continue

24 with their violent actions. Is that what he says to you?

25 GENERAL MBOMBO: It is so, Sir.

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1 MR SEMENYA SC: What do you tell him?

2 GENERAL MBOMBO: I said to him I am going

3 to talk to General Naidoo, who was then the person acting

4 at that time, for General Naidoo to offer, to give him the

5 necessary help.

6 MR SEMENYA SC: And we now know that

7 General Naidoo was acting as the Provincial Commissioner

8 during your sick leave.

9 GENERAL MBOMBO: It is correct.

10 MR SEMENYA SC: What is his otherwise

11 position within the North West province police?

12 GENERAL MBOMBO: General Naidoo is my

13 deputy. He helps me in components such as communication

14 and organisational development and inspection. He is known

15 as the operations officer.

16 MR SEMENYA SC: Having had that

17 conversation with Mr Blaauw, did you continue to carry out

18 your undertaking, that is you'll speak to General Naidoo?

19 GENERAL MBOMBO: I did so, Mr

20 Chairperson.

21 MR SEMENYA SC: What do you say to

22 General Naidoo?

23 GENERAL MBOMBO: I asked him to be of

24 assistance to the Marikana station in order to see to it

25 that what was happening is brought to an end.

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1 MR SEMENYA SC: What about the Marikana

2 Police Station? What resources are you referring to there?

3 GENERAL MBOMBO: I was referring to the

4 Marikana, the crime prevention members there, the crime

5 prevention police were the people that had to be helped at

6 that time.

7 MR SEMENYA SC: And his response to you,

8 you tell us, is that he had already contacted the Visible

9 Policing, that's in Rustenburg?

10 GENERAL MBOMBO: He said so to me, yes,

11 Sir.

12 MR SEMENYA SC: What does he say with

13 reference to Brigadier Calitz?

14 GENERAL MBOMBO: That he had also been in

15 contact with Brigadier Calitz whereby, wherein he requested

16 him to send members of the police, of the POP.

17 MR SEMENYA SC: Okay, and the following

18 day, being the 12th, you received another call from an

19 unknown person who sounded to be in a hysterical state.

20 GENERAL MBOMBO: It is so, Sir.

21 MR SEMENYA SC: Do you know who this

22 person is now?

23 GENERAL MBOMBO: I do know now.

24 MR SEMENYA SC: Give us the name.

25 GENERAL MBOMBO: Mr Blaauw.

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1 MR SEMENYA SC: And in that call Mr

2 Blaauw then tells you that two security guards in the

3 employment of Lonmin have been brutally murdered by the

4 strikers, and that mine property has been damaged as well.

5 Is that right?

6 GENERAL MBOMBO: It is so, Mr

7 Chairperson.

8 MR SEMENYA SC: What you then do next is

9 to contact General Naidoo, correct?

10 GENERAL MBOMBO: I did, yes Sir.

11 MR SEMENYA SC: And you advise him to

12 contact the South African Police Service Head Office with a

13 view to getting more resources and manpower so that the

14 unfolding situation can be effectively dealt with. Is that

15 right?

16 GENERAL MBOMBO: It is correct,

17 Chairperson.

18 MR SEMENYA SC: And later that very day

19 General Naidoo comes back to you and tells you that he has

20 followed your instruction and that members from various

21 operational response service units were being called up.

22 GENERAL MBOMBO: It is correct, Sir.

23 MR SEMENYA SC: You then give

24 instructions to Brigadier Calitz that he must set up a

25 joint operation centre at Marikana. Is that right?

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1 GENERAL MBOMBO: It is so.
 2 MR SEMENYA SC: You do so because, and as
 3 a result of the seriousness of the situation that is
 4 developing there. Is that right?
 5 GENERAL MBOMBO: Yes, Sir.
 6 MR SEMENYA SC: And also because of that
 7 you then decided to come back from your sick leave and to
 8 go assist General Naidoo, correct?
 9 GENERAL MBOMBO: It is so, yes, Sir.
 10 MR SEMENYA SC: It is on that very day,
 11 you tell us, that you telephone Major General Mpembe who at
 12 the time, or still is the Deputy Provincial Commissioner.
 13 He's your 2IC.
 14 GENERAL MBOMBO: It is so, Sir.
 15 MR SEMENYA SC: At that time General
 16 Mpembe is on leave, was he not?
 17 [15:01] GENERAL MBOMBO: It is correct,
 18 Chairperson.
 19 MR MPOFU: Chairperson, I'm sorry, I
 20 really don't want to interrupt, but I will. I'm afraid I
 21 don't understand what the point of putting – I would
 22 ordinarily be objecting against the leading questions, but
 23 I won't because obviously Mr Semenya is simply reading from
 24 the statement, but I'm not sure if there's any purpose in
 25 Mr Semenya reading the statement which is already part of

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1 the record, for the witness to just say yes, yes, yes.
 2 CHAIRPERSON: Well, there are a lot of
 3 people who are present in the chamber listening who haven't
 4 got the record, the document in front of them. There are
 5 lots of people, I take it, watching this on YouTube who
 6 haven't got the document in front of them. So he's putting
 7 – there's no question of leading questions because the
 8 points he's putting at the moment I don't think are
 9 controversial –
 10 MR MPOFU: No, no, that's it –
 11 CHAIRPERSON: But this is why you don't
 12 object.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: But it's important that the
 15 people who are interested in what happens here, both
 16 because they're present, also because they're watching
 17 through YouTube for example, it's important that they
 18 should know what's being said and there's no other way of
 19 doing it, I'm afraid. It's better that he does it in
 20 English, speed things up from the point of view of the
 21 translation, because for the reasons that we did before, so
 22 I think there's no avoiding what's happening. He's also, I
 23 think, putting facts on record that he thinks is important
 24 the public should be aware of, but I take it that when we
 25 get to the more controversial matters then the –

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1 MR MPOFU: Mode of questioning –
 2 CHAIRPERSON: - Lieutenant General will
 3 give her evidence in the normal way and then we will then
 4 hear the translation from Xhosa into English.
 5 MR MPOFU: Thanks, Chairperson.
 6 CHAIRPERSON: So I think that's the way
 7 it's proceeding and I don't see a problem with it. Mr
 8 Semenya, you may proceed.
 9 MR BURGER SC: Chair, speaking for
 10 Lonmin, we have no objection to my learned friend simply
 11 putting to the witness what she had said. It sounds
 12 strange on the ear that she acknowledges that she signed a
 13 statement and my learned friend then sentence by sentence
 14 asks her whether that's what she'd said. So if –
 15 CHAIRPERSON: No, I understand that, but
 16 you see the point I raised was the people here who come all
 17 the way from Pondoland to witness and hear what's
 18 happening, they don't know what's in the statement and the
 19 people who are watching on the world wide web through
 20 YouTube don't know either, so I'm afraid – I don't propose
 21 to allow Mr Semenya to go through the whole statement, but
 22 I think some of this preliminary material can best be dealt
 23 with in the way that he's dealing with it. I share your
 24 concern that we must use the time we have as profitably as
 25 we can, but I think that the other considerations have some

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1 relevance, so I think we must proceed for the moment.
 2 MR SEMENYA SC: General, you were at a
 3 point where you told us, or you were telling us that you
 4 then once more got in touch with General Naidoo arising out
 5 of the hysterical telephone call that you got from Mr
 6 Blaauw. Is that right?
 7 GENERAL MBOMBO: It is correct.
 8 MR SEMENYA SC: And the whole purpose was
 9 to really get more manpower resources to deal effectively
 10 with the unfolding situation.
 11 GENERAL MBOMBO: That's correct,
 12 Chairperson.
 13 MR SEMENYA SC: What does General Naidoo
 14 then tell you in response?
 15 GENERAL MBOMBO: He mentioned that he had
 16 been in contact, he tried to be in contact with our office,
 17 head office, asking for assistance there.
 18 MR SEMENYA SC: And we were at a point in
 19 your statement where you got in touch with Major General
 20 Mpembe and that he too was on leave. Is that right?
 21 GENERAL MBOMBO: That is correct,
 22 Chairperson.
 23 MR SEMENYA SC: What do you say to him?
 24 GENERAL MBOMBO: I asked him that we
 25 please hurry to Lonmin the following day, though he was

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1 about to come back on leave the following Monday.
 2 MR SEMENYA SC: What was his response to
 3 you?
 4 GENERAL MBOMBO: He mentioned that he had
 5 also heard of the problem at Lonmin.
 6 MR SEMENYA SC: Chair, does it matter
 7 that it is the time that it is now, or we should just
 8 proceed?
 9 CHAIRPERSON: I'm in your hands. If you
 10 would find it convenient for me to take the tea adjournment
 11 at this stage, I'll do so. We'll take the tea adjournment
 12 now.
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]
 14 [15:25] CHAIRPERSON: The Commission resumes.
 15 Lieutenant General, you're still bound by the affirmation
 16 that you made.
 17 MIRRIAM NOSAZISO ZUKISWA MBOMBO:
 18 Affirms.
 19 CHAIRPERSON: Mr Semenya.
 20 EXAMINATION BY MR SEMENYA SC (CONTD.):
 21 Thank you, Chair. On the 13th you drive to Marikana
 22 together with General Mpembe and General Naidoo.
 23 GENERAL MBOMBO: It is correct,
 24 Chairperson.
 25 MR SEMENYA SC: And you then meet with

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1 the local POP members who you find in Marikana there.
 2 GENERAL MBOMBO: It is correct, Sir.
 3 MR SEMENYA SC: As a body of people you
 4 go and you get to Lonmin Mine with a view to discuss with
 5 the management there.
 6 GENERAL MBOMBO: That's right, Sir.
 7 MR SEMENYA SC: The delegation you find
 8 representing the Lonmin management is, as you tell us, led
 9 by Mr Mark Munroe. Is that right?
 10 GENERAL MBOMBO: I say so, Mr
 11 Chairperson, because that's how he introduced himself.
 12 MR SEMENYA SC: And tells you that he is
 13 the head of mining in Lonmin.
 14 GENERAL MBOMBO: It is correct,
 15 Chairperson.
 16 MR SEMENYA SC: Do you recall who also
 17 was part of the Lonmin delegation there?
 18 GENERAL MBOMBO: Yes, Sir.
 19 MR SEMENYA SC: Tell us.
 20 GENERAL MBOMBO: Mr Barnard Mokwena -
 21 MR SEMENYA SC: Just have your mike on.
 22 GENERAL MBOMBO: There was Mr Barnard
 23 Mokwena present, Mr Kgotle, there was a Mr Kwadi, Mr
 24 Sinclair. Possibly there were others which I don't
 25 remember.

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1 MR SEMENYA SC: You later get to learn
 2 that Mr Sinclair I think is head of security in Lonmin.
 3 GENERAL MBOMBO: It is so, Mr
 4 Chairperson.
 5 MR SEMENYA SC: He is the one who then
 6 gives you a briefing or a report about the situation that
 7 had transpired up to that time, right?
 8 GENERAL MBOMBO: It is so, Chairperson.
 9 MR SEMENYA SC: He tells you about the
 10 violent incidents of the previous days.
 11 GENERAL MBOMBO: It is so.
 12 MR SEMENYA SC: This would have been a
 13 report involving and including the unfortunate killing of
 14 the security personnel the day, the Sunday.
 15 GENERAL MBOMBO: It is correct,
 16 Chairperson.
 17 MR SEMENYA SC: And you say in your
 18 statement that you requested a full briefing of the,
 19 amongst others the causes for those outcomes. Is that
 20 right?
 21 GENERAL MBOMBO: To Mr Sinclair, yes it
 22 is so.
 23 MR SEMENYA SC: What does Mr Sinclair
 24 tell all of you were the causes for this strike at Lonmin?
 25 GENERAL MBOMBO: Mr Sinclair only told us

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1 about what had happened there which went up to the killing
 2 of the guards. We did not discuss with him the causes,
 3 what actually led to the unrest there.
 4 MR SEMENYA SC: Did you get to know
 5 though that information about the causes for the unrest?
 6 GENERAL MBOMBO: After we had come and we
 7 had met the management at Lonmin. That's where that
 8 explanation was given to us.
 9 MR SEMENYA SC: What were you told?
 10 GENERAL MBOMBO: We were told that from
 11 Friday the 10th of August that there were people that were
 12 marching, that started marching, who marched and came to
 13 Lonmin. We then asked, we were told that their problem was
 14 not known, that management did not know what their problem
 15 was.
 16 MR SEMENYA SC: No, Mr Interpreter, I
 17 think you got that wrong a little.
 18 MR MAHLANGU: I'm sorry.
 19 GENERAL MBOMBO: What their problem was,
 20 that it was not known what their problem was.
 21 MR SEMENYA SC: Was it known who were the
 22 marchers?
 23 GENERAL MBOMBO: Because even the people
 24 that were marching were not known. One other thing was
 25 that they had not submitted any document laying out their

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1 complaints.

2 MR SEMENYA SC: Yes?

3 GENERAL MBOMBO: We went on in the

4 meeting, enquiring; we asked, "If it is so then why are

5 they marching to you?" We were told that some of the

6 people who were marching were dismissed by the company

7 Lonmin.

8 MR MAHLANGU: Or I'm sorry, Sir; that

9 they could be some of the people that had been dismissed.

10 GENERAL MBOMBO: We then questioned them

11 as to, "If you say these are not your workers, where are

12 your workers?" That was a question we put to them. They

13 said, it was said it was possible that some of their

14 workers could be part of those, but the people that

15 actually organised this march are those that they had

16 mentioned who are not known. They did not know who the

17 leaders were or the organisers, people from whom they could

18 ask what the actual problem is. That is where the word

19 "faceless" came up.

20 We then proceeded asking – this was in the

21 meeting, we asked them according to them what do they think

22 could be the cause of all this. They said maybe it's a

23 problem that started some times ago where the organisation,

24 the National Union of Mineworkers, where the organisation

25 dismissed or chased away some of its members, that those

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1 members that were dismissed, that those people that were

2 dismissed from the National Union of Mineworkers started

3 their own union called AMCU. Then they said this AMCU,

4 that AMCU has started recruiting and they are doing a lot

5 of recruitment in their company, which has caused that NUM

6 gets worried about this because of the loss of membership.

7 We then asked and they explained to us that there

8 are some other unions, such as UASA. There was another

9 mentioned, which I unfortunately don't remember, but they

10 kept on saying that the fact is for AMCU where it is

11 recruiting more from the NUM. We then asked them, we

12 questioned them about, "You people are saying AMCU is

13 making a lot of recruitment over here," and we then asked

14 them which is the union that is now recognised. They then

15 explained to us that NUM still enjoys more members. They

16 also explained to us that they have an agreement with NUM

17 which is still valid for two years, that this agreement was

18 in connection with the salaries of the workers. They said

19 in terms of this agreement the discussions would only be in

20 October of 2013.

21 We kept on questioning them, telling them this is

22 not – we are not satisfied with these explanations, that as

23 far as we know that trade unions have got a right to

24 recruit. We asked them what was the problem, what is the

25 cause of people behaving in this manner. We got the

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1 explanation again that one other thing is the management,

2 that the management has made an agreement with – a decision

3 that some money would be given to the people working

4 underground, known as the RDOs. They said what was done

5 which possibly could have had an influence on this is that

6 this decision, or this agreement that was made, was made

7 between them and the RDOs themselves without involving the

8 unions.

9 We then said if there is a union in the work or

10 in the company, according to our thinking, or as far as we

11 know that if any discussions are being made pertaining to

12 money, salaries of the workers, that this should be made in

13 such a way where the unions could be involved or have an

14 input in that discussion. They then told us, Chairperson,

15 that they as management had decided that this was a gift

16 that they were offering their workers. According to them

17 this was to be paid at the end of the week during which we

18 were there. At the end the complaint was that this

19 allowance was only given to those people working

20 underground and those working on the surface would not get

21 anything.

22 We agreed together with them that a way had to be

23 found in which this problem could be solved, the matter

24 between the NUM and AMCU, so that an agreement should be or

25 that things that have to be done to the workers should be

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1 done peacefully. They told us, Mr Chairperson, that they

2 could not bring these two organisations together because

3 the NUM had mentioned publicly, in the public, that they

4 cannot sit together with AMCU. We promised that on our

5 side that we would make all endeavours, we'll try to get

6 both organisations together so that we could talk to them

7 together and together with management, Lonmin management

8 encourage them to talk about this problem. At the end we

9 agreed that we as the police would do whatever it is that

10 we are to do to bring about peace, but they as management

11 have to try their level best as a company to try and get a

12 solution.

13 MR SEMENYA SC: Who on the part of Lonmin

14 is giving you this information?

15 GENERAL MBOMBO: The meeting in which we

16 were, Mr Chairperson, was chaired by Mr Mokwena. Most of

17 our discussion was between Mr Mokwena, Mr Kgotle, and Mr

18 Kwadi. They are the people that were giving us these

19 explanations.

20 MR SEMENYA SC: Against paragraph 9.6 of

21 your statement you do tell us that Lonmin requested you to

22 remain in their precinct in order to assist in preventing

23 further damage to the property.

24 GENERAL MBOMBO: Correct, Chairperson.

25 MR SEMENYA SC: Is this an unusual

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1 request?

2 GENERAL MBOMBO: No, it's usual, Sir.

3 MR SEMENYA SC: What was your response to

4 that request?

5 [15:45] GENERAL MBOMBO: We agreed with them

6 after they had said to us they would show us those places.

7 MR SEMENYA SC: After having that meeting

8 with the Lonmin people you then went back to the JOC. Is

9 that right?

10 GENERAL MBOMBO: It is correct,

11 Chairperson.

12 MR SEMENYA SC: You were given further

13 details at the JOC and I want to know by who was this

14 further briefing given.

15 GENERAL MBOMBO: We were given this by

16 Brigadier Calitz and Colonel Merafe.

17 MR SEMENYA SC: And in addition you were

18 being told what additional resources have come to assist.

19 Is that right?

20 GENERAL MBOMBO: Correct, Chairperson.

21 MR SEMENYA SC: You are also in that

22 session shown some live footage, I presume this would have

23 related to – to which events did this relate to?

24 GENERAL MBOMBO: We were shown a footage

25 whilst we were there, Chairperson, of people who were

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1 marching along a road where there is a railway line.

2 MR SEMENYA SC: And just so that we step

3 back, this is live footage that you're watching now?

4 GENERAL MBOMBO: Correct, Chairperson.

5 MR SEMENYA SC: And what do you see

6 there?

7 GENERAL MBOMBO: We saw men who had

8 knobkieries, spears, pangas. We could not see clearly

9 other things they had.

10 MR SEMENYA SC: What are they doing next

11 to the railway line?

12 GENERAL MBOMBO: They were walking.

13 MR SEMENYA SC: And then as the

14 Provincial Commissioner looking at that, do you give any

15 instructions?

16 GENERAL MBOMBO: It is correct,

17 Chairperson. I deemed it necessary that I give an

18 instruction.

19 MR SEMENYA SC: And you tell us that one

20 of the instructions you gave was that that gathering of

21 people who were armed must be dispersed. Who do you tell

22 this to?

23 GENERAL MBOMBO: That's an instruction

24 that I gave, it was General Mpembe that I instructed that

25 the people we are seeing over there who are armed in this

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1 manner and that the situation as has been explained to us,

2 I said "I now ask you, put you here to work together with

3 Brigadier Calitz in this matter." Those conditions I gave

4 in terms of the OB-entry that I made at the time, this was

5 to General Mpembe.

6 MR SEMENYA SC: It was part of your

7 instruction that those weapons must be confiscated?

8 GENERAL MBOMBO: Correct, Chairperson.

9 MR SEMENYA SC: And those who can be

10 arrested, should be arrested too?

11 GENERAL MBOMBO: Correct, Chairperson.

12 MR SEMENYA SC: And that there must be

13 further deployment to key areas, key strategic areas there?

14 GENERAL MBOMBO: Correct, Chairperson,

15 and this was also requested by Lonmin.

16 MR SEMENYA SC: You do say though to

17 General Mpembe that the members must act professionally and

18 they must ensure that peace prevails.

19 GENERAL MBOMBO: I did, Chairperson.

20 That was my aim.

21 MR SEMENYA SC: Can I invite you to look

22 at the occurrence book, which is exhibit FFF25, and in

23 particular – alright, I think they will post it on the

24 screen. If you look to the big screen you will see item

25 number 37. If I read it to you, General, there it is

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1 recorded in the OB, "JOC visit," this is now 12:45 the OB

2 reads, "and is shown the different points of the gathering.

3 The planning has been adjusted to disperse the gatherings.

4 All police officials on duty to conduct searches and

5 confiscate all dangerous weapons. All those that can be

6 identified on the footage should be picked up and

7 deployments to key strategic areas should be enhanced. In

8 terms of our policing on crowd management all members to

9 conduct themselves within the limits of this policy unless

10 the situation dictates otherwise. Ensure that peace

11 prevails," and the OB is signed Lieutenant General Mbombo.

12 Is that what you are referring to?

13 GENERAL MBOMBO: This is correct,

14 Chairperson.

15 MR SEMENYA SC: Just for completeness,

16 why did you find it necessary to inform the police that

17 they ought to act professionally and to ensure that peace

18 prevails?

19 GENERAL MBOMBO: At all times, Mr

20 Chairperson, when we send police out on duty it is my duty

21 as a person in charge to remind them about the

22 responsibility that is on their shoulders as they are

23 conducting their job.

24 MR SEMENYA SC: How does General Mpembe

25 respond to this instruction?

<p style="text-align: right;">Page 21299</p> <p>1 GENERAL MBOMBO: General Mpembe went to 2 do what was supposed to be done. 3 MR SEMENYA SC: And you then left for 4 Potchefstroom? 5 GENERAL MBOMBO: It is correct, 6 Chairperson. 7 MR SEMENYA SC: Can I interrupt us here, 8 General; perhaps it would help explain some elements of 9 these events. Your professional background within the 10 police service, in what area is it, or has it been? 11 GENERAL MBOMBO: It has been more on the 12 side of the finances. 13 MR SEMENYA SC: And the National 14 Commissioner former, Judge Fivaz, he was also from the 15 police service. He had a police service career, did he 16 not? Did he not, Judge Fivaz? 17 GENERAL MBOMBO: Yes, it is so, Mr 18 Chairperson. 19 MR SEMENYA SC: In the main what was his 20 career path within the police service? 21 GENERAL MBOMBO: At the time that he was 22 appointed as the National Head of the Police he came from 23 the side of the Efficiency Services. 24 MR SEMENYA SC: Is that side different 25 from Operational Response Services?</p>	<p style="text-align: right;">Page 21301</p> <p>1 that way, Mr Chairperson. 2 MR SEMENYA SC: How does it happen? 3 GENERAL MBOMBO: Having given the 4 authority to General Mpembe to be in charge of the 5 operation, I by so doing give him all the rights, the full 6 right to be in charge of that operation, knowing him to be 7 a person that is knowledgeable, that he has complete 8 knowledge of seeing to the success of that operation. 9 Another thing; when I appointed him, I knew that there were 10 some others there who had extensive knowledge. 11 MR SEMENYA SC: Who are those? 12 GENERAL MBOMBO: One of them is Brigadier 13 Calitz, Colonel Merafe, and others. 14 MR SEMENYA SC: Okay, and we have heard 15 that the POP experience of the individuals that you 16 mention, and then you go to Potchefstroom. Where in 17 Potchefstroom do you go? 18 GENERAL MBOMBO: I went to the office 19 from where I operate my work, Mr Chairperson. 20 MR SEMENYA SC: We're going to be dealing 21 in greater detail with this, Chair. Would this be an 22 appropriate stage? 23 CHAIRPERSON: Yes, I think so. We will 24 adjourn now until 9 o'clock tomorrow morning. 25 [COMMISSION ADJOURNED]</p>
<p style="text-align: right;">Page 21300</p> <p>1 GENERAL MBOMBO: Yes. 2 MR SEMENYA SC: And talking about the 3 other Provincial Commissioners in the country now, do they 4 all come – but yourself – from Operational Response 5 Services as a career line? 6 GENERAL MBOMBO: At the moment, as of now 7 the eight Provincial Commissioners, that's including 8 myself, there's only one Provincial Commissioner who has 9 got sufficient knowledge of the ORS. 10 MR SEMENYA SC: Okay, so you then give 11 the instruction that the people be intercepted, they be 12 disarmed, and General Mpembe leaves. We're back there, 13 General. 14 GENERAL MBOMBO: It is so, Sir. 15 MR SEMENYA SC: And you leave for 16 Potchefstroom. 17 GENERAL MBOMBO: Yes. 18 MR SEMENYA SC: Just to give you a heads- 19 up, as they use the expression, some criticism is levelled 20 that having given this type of instruction you would then 21 leave for Potchefstroom and not oversee to the carrying out 22 of that instruction. Normally, and in the past, do you 23 give these type of instructions and then get involved 24 operationally? 25 GENERAL MBOMBO: No, it doesn't happen</p>	

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