

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 124 27 AUGUST 2013 PAGES 12759 TO 12930



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<p style="text-align: right;">Page 12759</p> <p>1 [PROCEEDINGS ON 27 AUGUST 2013] 2 [09:34] CHAIRPERSON: The Commission resumes. 3 When we arrived this morning we were told there was a 4 difficulty with the video and that has had to be sorted out 5 before we could commence and since that happened we've had 6 to deal with other matters in chambers. So that's why 7 we're starting now. I apologise to those who were 8 inconvenienced by the delay in commencing. Major-General, 9 you're still under oath. 10 MAJOR-GENERAL MPEMBE: Correct, 11 Chairperson. 12 CHAIRPERSON: Ms Le Roux. 13 MS LE ROUX: Thank you, Chair. Good 14 morning, Major-General. 15 MAJOR-GENERAL MPEMBE: Good morning, 16 Advocate. 17 MS LE ROUX: I'd like to start with a 18 point that I said I would come back to yesterday and just 19 to orientate you, this is with respect to the questioning 20 for the cross-examination done by Advocate Bizos of General 21 Annandale which is at day 84, page 8842 to 8870 for record 22 purposes. You don't need to go there. The gist of that 23 cross-examination was that the plan referred to the smaller 24 group in the 3000 and his testimony was that there had been 25 discussions at the JOC around actions that could be taken</p>	<p style="text-align: right;">Page 12761</p> <p>1 So in that sense none of the commanders could 2 have ever mentioned at the JOCCOM meeting or any other 3 briefing that we had at the JOCCOM meeting that their 4 members were not briefed and that or any other indication 5 from members that they did not understand. But what is 6 more important is that each commander did brief each member 7 during the parade and they did inform all their sections 8 and units about their roles and responsibilities. 9 Chairperson, the Commission will recall that I 10 did testify that all well experienced officers both from 11 POP, Special Task Force, National Intervention Unit and TRT 12 did take place in terms of the planning processes. In the 13 JOCCOM meeting the efficacy of the plan was discussed. So 14 each commander had a well understanding in terms of the 15 plan and the execution of the plan. Chairperson, referring 16 to the smaller group, in any crowd management when you 17 disperse the group others will be dispersed voluntarily, 18 others when the dispersal process takes place they will be 19 dispersed, for example when immediately before the barbed 20 wire is put in place. Immediately when the barbed wire is 21 put in place they will disperse from the show of force 22 putting the barbed wire, and after putting the barbed wire 23 if they are warned by the operational commander in terms to 24 disperse, they will also disperse. In a normal process of 25 dispersing there will be that group that will be left that</p>
<p style="text-align: right;">Page 12760</p> <p>1 to deal with the smaller group once the dispersal plan had 2 occurred. And then that there had been some discussion 3 outside of the JOC as well. So returning to that topic, 4 but this is the new point that was not covered by Advocate 5 Bizos and it is this, the South African Human Rights 6 Commission has now reviewed all of the 400 odd statements 7 that are before this Commission from the SAPS and not a 8 single statement mentions knowledge of this plan or these 9 discussions as to how to deal with the smaller group. So 10 my question to you is why don't all of these 400 odd SAPS 11 know that there was a plan and there had been discussions 12 about how to deal with the smaller group? Do you think 13 that there was inadequate briefing of all members as to how 14 to deal with the smaller group? 15 MAJOR-GENERAL MPEMBE: Chairperson, 16 adequate briefing was given and referring to the 17 discussions of Major-General Annandale, Major-General 18 Annandale did have a lot of discussions at the JOC because 19 he was at the JOC. That could not be recorded because it 20 was not a formal meeting but what is more important is the 21 question that - I answered it yesterday, to say the plan 22 that was discussed at the JOCCOM meeting, each commander or 23 section leader who represented that unit in the JOCCOM 24 meeting have briefed the members in terms of their roles 25 and responsibilities according to the plan.</p>	<p style="text-align: right;">Page 12762</p> <p>1 will have to be attended to by the police and in Marikana 2 it was not different in terms of that. We did expect that 3 a small group will remain after the dispersal process and 4 that is the group that was targeted in terms of the plan. 5 MS LE ROUX: Major-General, I'm going to 6 give you one more opportunity to deal with the point of my 7 question and then I will move on and it is that the South 8 African Human Rights Commission will submit to this 9 Commission in due course that the fact that more than 400 10 statements from SAPS members are entirely silent on the 11 question of how to deal with the smaller group, if the 12 dispersion plan takes place, demonstrates that there was 13 inadequate briefing to the members on the ground as to what 14 was discussed in the JOC by the commanders as to how to 15 deal with that smaller group. So if you could take one 16 more opportunity to deal with the point of my question and 17 not - 18 CHAIRPERSON: Mr Ngalwana, you turned 19 your light on, do you want to say something? 20 MR NGALWANA: That is not factually 21 correct, Chair. Perhaps our learned friend could tell us 22 which 400 statements she looked at but I'm looking at the 23 witness's own statement, GGG12 and I shall consider others 24 in due course, on page 13 of that statement which is a 25 lengthy paragraph 27, where he delineates the various</p>

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1 stages of the plan. He talks about how the focus on the
 2 smaller group would be. He says the dispersion strategy
 3 would enable the police to deal with the more manageable
 4 disorganised groups and that this would prove the easier,
 5 this would prove easier to handle than a group of about 3
 6 000 persons. And he goes on to set out how they are going
 7 to do that.

8 MS LE ROUX: Chair, I'm reluctant to
 9 interrupt my learned friend but his objection is misplaced
 10 it is not the Major-General's knowledge that is the point
 11 of the question.

12 CHAIRPERSON: Ms Le Roux, Mr Ngalwana is
 13 busy arguing his objection. I would be very cross with him
 14 if he interrupted you while you were arguing, I am equally
 15 cross with you for interrupting him. Please carry on, Mr
 16 Ngalwana.

17 MR NGALWANA: Major-General Annandale
 18 also deals with this at paragraph 22 of his statement which
 19 is also a lengthy statement. One of the things he says, he
 20 says the details of the plan were discussed, it was agreed
 21 that the operational commander must communicate with the
 22 group and again try to convince them to lay down their
 23 weapons and to leave the koppie. They were to put down
 24 their weapons where they are seated and leave. After which
 25 the police would collect the weapons. Then he goes on to

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1 deal with stage 3. Dispersal, disarm and arrest tactics
 2 would only have been deployed as the last resort and only
 3 those who would refuse to lay down their weapons and
 4 remained. This would have allowed the police to isolate
 5 smaller groups in order to research and so on. There's
 6 also been numerous references to this in the statement of
 7 Calitz. There has also been numerous reference in the
 8 statement of Calitz, numerous references in the plan
 9 itself, SS3. Various slides on SS3 to which I referred,
 10 Chairperson, at the - if one has regard to the transcript
 11 day 108 and at 11621 beginning at line 25, numerous
 12 references to SS3 about how the smaller group was going to
 13 be dealt with. So it is factually an incorrect premise to
 14 put to the witness that more than 400 statements of the
 15 police make no mention about how the smaller group was to
 16 be dealt with. Certainly those witnesses who would have
 17 been at the JOC when this was discussed and stage 3 was
 18 discussed have said this in their statements.

19 CHAIRPERSON: Let the interpreter
 20 interpret first.

21 MS LE ROUX: Thank you, Chair. Chair, my
 22 learned friend's objection is misplaced. The point that is
 23 being put to Major-General Mpembe for his comment is that
 24 in the more than 400 statements of the members of the SAPS
 25 on the ground in the operation are silent as to the plan.

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1 CHAIRPERSON: I'm sorry to interrupt you.
 2 Are you saying these 400 - these statements you've gone
 3 through are people who weren't in the JOC?
 4 MS LE ROUX: Correct.
 5 CHAIRPERSON: Who wouldn't have known
 6 from their own knowledge what was said in the JOC.
 7 MS LE ROUX: Correct.
 8 CHAIRPERSON: They would only have known
 9 what they knew based upon the briefings that they received.
 10 MS LE ROUX: Correct.
 11 CHAIRPERSON: Yes, please carry on.
 12 MS LE ROUX: And accordingly the absence
 13 -
 14 COMMISSIONER HEMRAJ: Ms Le Roux, the 400
 15 statements that you refer to, are these warning statements
 16 and are they from the IPID files?
 17 MS LE ROUX: Through you Chair,
 18 Commissioner Hemraj, it's the IPID statements that appear
 19 in the SAPS indexes, documents as well as the warning
 20 statements. It's every statement of a SAPS member that we
 21 have access to before this Commission and they all reveal
 22 that if you weren't in the JOC you didn't know about a
 23 plan. And the question to General Mpembe is just does that
 24 not reveal inadequate briefing by the commanders on the
 25 aspect of the plan as to how to deal with this remaining

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1 militant group that's been identified. If I can just deal
 2 with the fact that it appears in SS3, the circumstances of
 3 the preparation of SS3 are, of course, something that will
 4 be canvassed in due course with subsequent witnesses. But
 5 again SS3 doesn't place before this Commission the
 6 knowledge of SAPS members as to their briefing around how
 7 to deal with the militant group that will remain if the
 8 dispersal plan is implemented. And it is that point that
 9 I'm putting to the witness.

10 COMMISSIONER HEMRAJ: The statements are
 11 silent about it. They don't say that they did not know how
 12 to deal with them, they just do not deal with that issue at
 13 all. Is that what you're putting?
 14 MS LE ROUX: Through you, Chair, yes,
 15 Commissioner, they are silent as to once dispersion has
 16 happened these are the steps we must take to deal with the
 17 smaller group. They deal with many other aspects of the
 18 plan that they were briefed on but they are silent as to,
 19 if the plan were implemented as it was contemplated, how
 20 will they deal with the group that remains, the smaller
 21 group that remains. Chair, if I can just be even more
 22 precise, they address a dispersal plan and the notion that
 23 there will be disarmament, they are silent on the militant
 24 group that is identified, the warrior group, the leader
 25 group that is identified and discussed in the JOC as being

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1 a smaller group that will need some intervention, some
 2 action taken by SAPS members. The briefing as to that
 3 aspect of the plan does not appear in any of the statements
 4 that South African Human Rights Commission has reviewed.
 5 CHAIRPERSON: How many of the statements
 6 are warning statements and how many are other statements
 7 that you found in the police hard drive, approximately?
 8 MS LE ROUX: Chair, I don't have the
 9 precise breakdown, there are more than 200 in the fax index
 10 and then there are more than 100 in the IPID files. I
 11 don't know the precise breakdown between where they were
 12 all sourced.
 13 CHAIRPERSON: What you're saying is
 14 there's a significant number of non IPID statements made by
 15 members of the police service which were made available by
 16 the police as part of their hard drive deal with the plan
 17 but don't deal with the fact that part of the plan was
 18 specifically devoted to the militant group. Is that the
 19 point you're making?
 20 MS LE ROUX: Yes, Chair, General Mpmembe
 21 has testified that he anticipated this militant group to
 22 remain behind and have to be dealt with.
 23 CHAIRPERSON: Yes, yes I heard his
 24 evidence, thank you.
 25 MS LE ROUX: That does not appear in any

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1 SAPS statement we have reviewed.
 2 CHAIRPERSON: Mr Ngalwana's answer to you
 3 was that the people in the JOC knew and that I take it that
 4 the implication would be that they then conveyed that to
 5 the men on the ground. You say so far as we've got
 6 information from the men on the ground they don't mention
 7 it, that's your point is it?
 8 MS LE ROUX: Correct.
 9 CHAIRPERSON: I understand Ms Pillay
 10 wants to say something.
 11 MS PILLAY: Chair, just in relation to
 12 the issue of the statements. Our understanding is that all
 13 of the statements on the SAPS hard drive in the directory
 14 on the SAPS hard drive for statements, apart from witness
 15 statements, are warning statements.
 16 CHAIRPERSON: How many witness statements
 17 are there?
 18 MR NGALWANA: Hundreds.
 19 CHAIRPERSON: Do you know how many
 20 witness statements there are? I'm not asking for an exact
 21 figure, I'm interested in an approximation.
 22 MS PILLAY: We don't have a precise
 23 figure, Chair, and neither does the SAPS team of how many
 24 witness statements were prepared for the purposes of the
 25 Commission.

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1 CHAIRPERSON: Perhaps we could find out.
 2 You see the IPID statements there may be difficulties with
 3 that. I don't want to stop the point you're trying to make
 4 but surely it would be helpful if we knew how many witness
 5 statements as opposed to IPID statements there were. And
 6 if there was a significant number and these witness
 7 statements were made by people on the ground who deal with
 8 the plan and it was explained to the them and don't deal
 9 separately with that part of the plan that related to the
 10 small group. If that's the case then I'll allow the
 11 question.
 12 [09:54] But perhaps you can point us to one or two or
 13 half a dozen of them. Perhaps you're not ready to do that
 14 now, perhaps you need a bit of time and perhaps your
 15 instructing attorney, Mr Fisher, can look at that while we
 16 move onto the video material that you want to put to the
 17 witness. Is Mr Fisher not the instructing attorney? Is he
 18 counsel from the English Bar, Mr Fisher? Oh the
 19 interesting question is whether it's a diminution of status
 20 or the opposite.
 21 MS LE ROUX: Chair, Ms Mahonde is my
 22 instructing attorney.
 23 CHAIRPERSON: Well she can look at it
 24 then. No seriously, someone in your team or some people
 25 can look at that question. Can we get on with the matter

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1 dealing with the videos? Now I've indicated what my
 2 attitude is and if you have a number of statements, you
 3 know just a selection of statements of people on the ground
 4 who made statements, fairly full statements dealing with
 5 the briefing and don't deal with that then I'll allow the
 6 question. It seems from what you say as if that may well
 7 be the case but it would be helpful, I think if specific
 8 statements were put and if necessary, the witness can be
 9 given an opportunity to read them and consider them before
 10 giving his answer. But can we move onto something else in
 11 the meanwhile? Mr Fisher, I'm sorry are you a member of
 12 then English Bar?
 13 MR FISHER: Yes.
 14 CHAIRPERSON: No I would think a member
 15 of the English bar and a member of the South African side
 16 bar are of equal status, but anyway let's carry on with the
 17 cross-examination.
 18 MS LE ROUX: Thank you, Chair and for the
 19 record the South African Human Rights Commission is working
 20 on a document that analyses all of the statements before
 21 the Commission, particularly in light of the fact that it
 22 appears we will not be able to hear from the vast majority
 23 of those in person. And that analysis will include these
 24 issues but I'll see if I can obtain one or two examples to
 25 deal with Major-General Mpmembe.

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1 CHAIRPERSON: - sensible approach, we
 2 have asked the Presidency for an extension but we didn't
 3 take into account that we'd have to hear 400 policemen.
 4 The extension we would have asked for in those
 5 circumstances, if we were going to do that would have
 6 obviously been very different but I think it would be
 7 totally inappropriate for us, in a Commission like this to
 8 be expected to hear 400 policemen or women or other
 9 witnesses in general.
 10 MS LE ROUX: Thank you, Chair, I'll then
 11 move onto my next topic which is an aspect of the video
 12 which has been exhibited as Z2. This is footage of the
 13 events of the 13th. And Chair, for the record if we could
 14 commence watching it at 14:27:30 and then pause at
 15 14:27:56. To speed things along we'll see the teargas be
 16 deployed, the protester group continues walking in the
 17 direction that they are travelling already and then we'll
 18 pause at 14:27:56 which is prior to the use of the stun
 19 grenades.
 20 [VIDEO SHOWN]
 21 Thank you, so this is just prior to the use of
 22 the stun grenades. Major-General, can I ask you to look at
 23 a document which has not yet been exhibited? It's a power
 24 point presentation entitled Crowd Management Equipment,
 25 Demonstrate the Use and Maintenance of Crowd Management

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1 Equipment. It was in the index and in the bundle of
 2 documents provided on Friday to the Commissioners.
 3 MR NGALWANA: Chair, while we look for
 4 the document to which our learned friend is referring the
 5 General it might save my learned friend a bit of hard work
 6 if we were to mention just regarding the previous point she
 7 was making regarding analysing 400 statements, that it has
 8 always been the contemplation of the police to provide
 9 supplementary statements in respect of the people who shot
 10 at scene 2, in particular. So perhaps she should bear that
 11 in mind.
 12 CHAIRPERSON: I think that's a valuable
 13 point. Thank you for making it. Is it going to happen? I
 14 know there are all sorts of logistic problems, I'm not
 15 endeavouring to be unreasonable and I'm trying not to be
 16 unreasonable but can you tell us more or less when we're
 17 likely to see those statements?
 18 MR NGALWANA: Consultations are under
 19 way, Chair, with a view to preparing those. I think Mr
 20 Semenya is looking into that.
 21 CHAIRPERSON: Thank you. You heard that,
 22 Ms Le Roux. It may well be that once those statements are
 23 at hand the point you want to raise can then be dealt with
 24 because otherwise it sounds as if you may have to come back
 25 later anyway. So I think that's -

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1 MS LE ROUX: Yes, Chair, it may be
 2 prudent to await the supplementary statements and then -
 3 CHAIRPERSON: It sounds like it and of
 4 course, I want to say something, once you've finished this
 5 point about the other point that stood over from yesterday
 6 about written plans and so forth, that point. But anyway
 7 let's deal with your point, this one and then I'll give my
 8 ruling on that aspect.
 9 MR NGALWANA: Just one last thing, Chair,
 10 may I just emphasise that this is not as a result of the
 11 cross-examination. This has always been the contemplation
 12 of the police.
 13 CHAIRPERSON: But clearly if it's
 14 underway you've been doing it already, so it's not a
 15 belated response to cross-examination. I don't think
 16 anyone could infer that. Is this the document you wanted
 17 to refer to?
 18 MS LE ROUX: Yes, Chair.
 19 CHAIRPERSON: So it's - I don't know who
 20 prepared it, it will be HHH39. It's a document on Crowd
 21 Management Equipment.
 22 MS LE ROUX: Major-General, can you
 23 identify this document, have you seen it before?
 24 MAJOR-GENERAL MPEMBE: Chairperson, I saw
 25 it when it is in this presentation form. I did not also

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1 see the policy and as I have testified earlier on I don't
 2 know whether this is already in the policy or what status
 3 of it.
 4 MS LE ROUX: Chair, my instructions are
 5 that this was provided by the SAPS, not terribly much turns
 6 on the precise status of the document but Major-General
 7 what we've done is attached as a second page an excerpt
 8 from this presentation which is displayed on the screen -
 9 CHAIRPERSON: Sorry, I've described it as
 10 document on Crowd Management Equipment, you say it was
 11 provided by the SAPS.
 12 MS LE ROUX: Yes.
 13 CHAIRPERSON: Perhaps I should add that
 14 in the description. Provided by SAPS. And they can
 15 perhaps tell us in due course, we won't waste time now,
 16 what it is but if they gave it to you you're entitled to
 17 use it, I would imagine. And what you are specifically
 18 referring to is the second sheet that we got which deals
 19 with stun grenades.
 20 MS LE ROUX: Correct, Chair.
 21 CHAIRPERSON: And what it describes as
 22 safety considerations relating to stun grenades.
 23 MS LE ROUX: Correct, Chair. And Major-
 24 General, this slide of this presentation around the use of
 25 Crowd Management Equipment and in particular Pyrotechnical

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1 aids and the safety considerations relating to stun
 2 grenades highlights four points for SAPS when using stun
 3 grenades. It's stated "They should not be thrown directly
 4 to the participants, roll it down to avoid injuring
 5 participants. Members must be warned before throwing and
 6 do not use in a confined space." Now if we could return to
 7 the video to see how the stun grenades were used on the 13th
 8 and the simple point is that the submission the South
 9 African Rights Commission will be that that these two stun
 10 grenades are thrown from a helicopter without warning,
 11 directly into the faces of crowd members, as you can see
 12 when they explode. Clearly not in line with the safety
 13 considerations identified in the SAPS document that there
 14 must be a warning, that they must be rolled and that they
 15 must not be thrown.

16 MR NGALWANA: Chair, perhaps our learned
 17 friend can see what she's talking about. I certainly can't
 18 see anything of what she's referring to, that this stun
 19 grenade was thrown from a helicopter, it wasn't rolled -

20 CHAIRPERSON: Sorry to interrupt you, I
 21 don't think we've got there on the video clip yet, am I
 22 right?

23 MS LE ROUX: We just need to - yes. If
 24 we could just go back to the stun grenade deployment.
 25 Chair, that is the first stun grenade which I'm instructed

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1 was thrown from the helicopter, that is the second. From
 2 the flash you can see how it is in very close proximity to
 3 the protesters that are walking.

4 CHAIRPERSON: Yes, the point that
 5 Advocate Hemraj puts to me which I must put to you, I don't
 6 know where your instructions come from but you remember the
 7 evidence was that the first teargas canister was fired by
 8 Warrant Officer Kuhn from the left-hand side of the police
 9 as they were proceeding behind the strikers. Thereafter,
 10 Lieutenant Baloyi from near one of the Nyalas, the Nyala he
 11 was in fired a stun grenade and then there what could be
 12 described as chaos, attacks and sorts and so forth. And
 13 after that, as I understand it, according to Lieutenant-
 14 Colonel Vermaak's statement he then threw stun grenades
 15 from the helicopter. Now I must tell my impression is that
 16 the stun grenade you referred to, remember and it goes off
 17 twice so you get two explosions, I must confess I thought
 18 was Baloyi's one and that was the evidence too that we've
 19 had. Now if the stun grenade you pointed to was the first
 20 one we can see on the video clip then it's undoubtedly
 21 Baloyi's one because his was the first. And I take it that
 22 the first teargas is what we can call Kuhn's teargas. So
 23 that's my understanding. If I'm wrong on that then you
 24 must please tell me but that's certainly the way - the
 25 understanding of the three of us here, the three

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1 Commissioners. But I put that to you so you can deal with
 2 it as you consider it appropriate.

3 MS LE ROUX: Yes, Chair, perhaps if you
 4 could let -

5 CHAIRPERSON: I think Mr Ngalwana has got
 6 his hand on the button of his microphone, it looks as if he
 7 wants to say something too. He may also be of help.

8 MR NGALWANA: Well at the risk of
 9 delivering a concurrent judgment you could add the police
 10 are also in agreement with your recollection of what the
 11 evidence was, Chair.

12 CHAIRPERSON: I think that's as
 13 concurrent concurrence as we can accept, thank you. Ms Le
 14 Roux.

15 MS LE ROUX: Yes, Chair.

16 CHAIRPERSON: I'm not sure how it affects
 17 the validity of the point you're trying to make -

18 MS LE ROUX: It doesn't.

19 CHAIRPERSON: The factual basis of it may
 20 well be incorrect.

21 MS LE ROUX: Yes, thank you, Chair. And
 22 my instructions accord with the evidence as were accounted
 23 by the Chair. At this stage and this line of cross-
 24 examination will be developed further so this point is
 25 actually preliminary to my next point. Major-General, the

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1 point is simply this, from what we see on the video and in
 2 particular two stun grenades being thrown from a helicopter
 3 into the crowd does not comply with the safety
 4 considerations that are in the -

5 CHAIRPERSON: I'm sorry, do we see that on
 6 the video? You see that's the point of my intervention.
 7 If what we see is not stun grenades being thrown from the
 8 helicopter, I mean for example we don't see a helicopter on
 9 the video clip at all. They may be, of course, higher up
 10 and we can see but my impression is that the stun grenade
 11 we saw with the two explosions was Baloyi's stun grenade
 12 which was thrown from the ground. Now I'm not sure what
 13 "roll it down" means but presumably he should have it
 14 rolled it along the ground rather than throwing it but
 15 that's a matter you can ask him presumably when he comes.
 16 And Vermaak can also be asked about what he did from the
 17 helicopter but at the moment I haven't seen what seemed to
 18 me to be unmistakably stun grenades thrown from a
 19 helicopter, that's my problem.

20 MR NGALWANA: There's another point,
 21 Chair, with your leave, another point, Chair, with your
 22 leave is our learned friend hasn't even established that
 23 what we see are protesters and not policemen.

24 MS LE ROUX: Chair, to that point
 25 regardless of whether it's being thrown at the protesters

<p style="text-align: right;">Page 12779</p> <p>1 or the members it's not in compliance with the safety 2 considerations.</p> <p>3 MR NGALWANA: No, I have never suggested 4 that stun grenade were thrown at policemen. The simple 5 point I'm making she hasn't established that the people we 6 see there are not policemen but are rather protesters. You 7 can't assume things and put -</p> <p>8 CHAIRPERSON: Sorry, I think the answer 9 to that may be if one rolls the clip back, if the correct 10 verb you see strikers marching in a column, now you 11 remember the evidence was that the police were in a semi- 12 circular arc behind them and I must confess my impression 13 was that the people we see here on the clip at the moment 14 were people who were previously part of that column. But 15 if we look at the clip earlier than this I think that point 16 may disappear but the major point with the problem that 17 we've got is it looks as if the stun grenade she's relying 18 on was not Vermaak's stun grenade but Baloyi's. And 19 therefore if that's so the whole premise on which the 20 question is based would be incorrect.</p> <p>21 COMMISSIONER HEMRAJ: Mr Ngalwana, can 22 you assist me with the origin of this document because I'd 23 like to understand the context in which the safety 24 considerations are suggested.</p> <p>25 MR NGALWANA: That's the question we</p>	<p style="text-align: right;">Page 12781</p> <p>1 have been raised. I understand the point that you're 2 seeking to make. Perhaps you could approach it slightly 3 differently by asking the Major-General if he knows what 4 safety considerations should be applied in the case of stun 5 grenades, from your own knowledge as a Major-General. If 6 he doesn't know the answer to that then I don't think 7 perhaps he is going to take it any further as far as he's 8 concerned and if he does know then he may be able to give 9 you the kind of answer that you're looking for or you may 10 get the kind of answer that you're not looking for. But 11 that's a chance you take when you ask the question. 12 Perhaps I can do that. Major-General, you've been 13 following the debate. You're a member of the service for a 14 long time with extensive experience. Are you aware of any 15 safety considerations which members of the force are urged 16 to comply with when stun grenades are used?</p> <p>17 [10:13] MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson, it has to be rolled out in a manner that when 19 it explodes it's not going to cause any hearing problems to 20 the participants or injure them, and it has to be done in a 21 manner that is actually a distance, because when it 22 explodes it makes a very high noise, and that when 23 participants actually, when protesters actually respond, 24 they respond in a manner that they get disorientated. It 25 is almost similar like the bulletproof which when you roll</p>
<p style="text-align: right;">Page 12780</p> <p>1 wanted to put with respect, Commissioner. We understand it 2 comes from us, we understand it comes from us but we don't 3 know what the status of it is because when we discovered 4 this document, we discovered everything that we considered 5 to be relevant. But what the actual status of it is, it's 6 like for example there was a document on public policing 7 that we provided but it was a draft document which has no 8 official status but we provided it nonetheless.</p> <p>9 COMMISSIONER HEMRAJ: Well are you able 10 to tell us whether there's something that precedes this 11 first page, is it an annexure to a document? Do you know 12 at all?</p> <p>13 MR NGALWANA: Apparently it was part of a 14 presentation training, on training but we don't know slides 15 precede this.</p> <p>16 CHAIRPERSON: You see you gave the 17 document to them on the basis of relevance. I take it you 18 take instructions on the exact status of it. It looks to 19 me like a police document because it talks about members 20 must be warned before throwing and that's obviously 21 reference to members of the service. But -</p> <p>22 MR NGALWANA: Perhaps it might have been 23 useful if our learned friend had provided the entire 24 document, Chair.</p> <p>25 CHAIRPERSON: So a number of problems</p>	<p style="text-align: right;">Page 12782</p> <p>1 out and you cannot roll it out in such a manner that it has 2 to be rolled out in 20 metres, 20 metres away from the – 3 and it should not be done in a manner that it can ricochet.</p> <p>4 Chairperson, there is also another side of it which it has 5 to be considered, is that in the case of self-defence these 6 safety procedures normally under any other circumstances or 7 situations, they are not complied with and members will say 8 I did it in self or private defence.</p> <p>9 CHAIRPERSON: If all you've got to defend 10 yourself with is a stun grenade and somebody is coming to 11 kill you, you can throw the stun grenade at him in order to 12 defend yourself, and the ordinary rules don't apply because 13 you're acting to defend yourself or defend a colleague or 14 something. Is that –</p> <p>15 MAJOR-GENERAL MPEMBE: Correct –</p> <p>16 CHAIRPERSON: Do I understand correctly?</p> <p>17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson.</p> <p>19 CHAIRPERSON: But this document now, we 20 don't know the status of the document, but I'm not 21 interested in the status of the document, I'm interested in 22 your knowledge as a Major-General and a Deputy Provincial 23 Commissioner. What it says here is don't throw it direct 24 to participants. Is that also an instruction? We're not 25 talking about a self-defence situation now, but is that an</p>

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1 instruction also normally given to members of the service;
 2 when you're using stun grenades, don't throw them directly
 3 to participants? You've got a public protest or something
 4 of that kind, you're using stun grenades. Are they told
 5 don't throw the stun grenades directly at the participants,
 6 or don't you know about that?
 7 MAJOR-GENERAL MPEMBE: Chairperson, only
 8 what I know is that don't throw it in such a manner that it
 9 injured the protesters.
 10 CHAIRPERSON: If you refer to injury, it
 11 can include injury to the hearing?
 12 MAJOR-GENERAL MPEMBE: Yes.
 13 CHAIRPERSON: Yes, for the reasons you
 14 gave.
 15 MAJOR-GENERAL MPEMBE: That's right.
 16 MS LE ROUX: Major-General, I want you to
 17 assume that the stun grenade that you've seen going off in
 18 the video is that deployed by Lieutenant Baloyi. Assume
 19 that that first one we see is the one shot by Lieutenant
 20 Baloyi –
 21 CHAIRPERSON: I take it we can accept
 22 that the first one must have been Lieutenant Baloyi's one
 23 because that's the evidence.
 24 MS LE ROUX: Yes.
 25 CHAIRPERSON: You don't have to make an

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1 assumption. It seems to be correct.
 2 MS LE ROUX: Yes, and then Major-General,
 3 from the video it is clear that that explodes in the face
 4 of those people. Whether they are members of SAPS or
 5 protesters. The stun grenades explode very close and in
 6 the face of those people that we see on the video, whoever
 7 they are.
 8 MR NGALWANA: I object, Chair. That
 9 video doesn't show that.
 10 CHAIRPERSON: In the vicinity of, and I'm
 11 not sure whether the Major-General can testify as to what
 12 the permissible, or acceptable or recommended distance is,
 13 but I'm not sure that absent that evidence as to what the,
 14 an impermissible or unacceptable distance would be, that we
 15 can say just by looking at the video clip that that
 16 distance was exceeded, but I think that's the thrust of Mr
 17 Ngalwana's objection, which sounds prima facie to be right.
 18 There's another problem, you know. I understand
 19 this video was taken from some distance away. It's one of
 20 the Lonmin videos, and you have sort of parallax problems
 21 and problems of perspective. It's sometimes difficult to
 22 see what a distance is just by looking at the video clip.
 23 So one's got to be careful about the way one frames
 24 questions based on what one can see. I'm not stopping you,
 25 but I'm seeking to be ensured that the questions we get are

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1 such that they elicit answers that will help us.
 2 MS LE ROUX: Major-General Mpeembe, it
 3 appears from the video that – and I'm not getting into a
 4 debate about what the distance was that was used by
 5 Lieutenant Baloyi, but it appears from the video that the
 6 stun grenades explode very close, in the face of those
 7 people, and there is no evidence before this Commission –
 8 CHAIRPERSON: I'm sorry, Ms Le Roux,
 9 that's the problem, you see. You're using the words "very
 10 close," and that's why Mr Ngalwana, I think if I may say
 11 so, correctly objects to, that if you've got a video taken
 12 from a distance and it's very hard to work out how far the
 13 stun grenade exploded from the nearest person just by
 14 looking at the video. Maybe when we get some direct
 15 evidence on that you'll be in a stronger position, but you
 16 can perhaps put the question less precisely than you have
 17 and see what answer you get, but I don't think I should
 18 allow you to say "very close" because I'm not sure that's
 19 right.
 20 MR NGALWANA: Chair, it might be helpful
 21 to my learned friend; my learned friend to my left has just
 22 usefully pointed out to me that perhaps the person to put
 23 this question to would have been Lieutenant Baloyi, who
 24 would have been closer to the action, not this witness.
 25 She might want to think about that –

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1 CHAIRPERSON: Yes, I understand that.
 2 She's laying a foundation, as good cross-examiners do
 3 sometimes, by asking a question of a preliminary witness
 4 with a view to dealing with the main witness on the point
 5 later. So, but I take the point; the person best able to
 6 answer these questions will be, the persons will be
 7 Lieutenant Baloyi and one or other of the miners who was
 8 present at the time.
 9 MS LE ROUX: Chair, this is not a
 10 critical point in the cross-examination. I'm going to move
 11 on and I'll take it up with other witnesses.
 12 CHAIRPERSON: I certainly say I think
 13 you've got some useful information on record which will
 14 help you with subsequent witnesses, but I think you've
 15 exhausted this point for the moment. You've extracted as
 16 much as you can and you're wisely moving on to the next
 17 point.
 18 MS LE ROUX: Major-General, what actions
 19 had been taken to investigate or discipline the SAPS
 20 members who fired teargas and/or stun grenades without
 21 authority?
 22 MAJOR-GENERAL MPEMBE: Chairperson,
 23 firstly is that with regard to Warrant-Officer Kuhn, he
 24 said that he had an instruction, even though he doesn't
 25 know who gave the order, but currently I don't know what is

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1 the status in terms of investigation, but from my point of
 2 view that is that he heard that instruction.
 3 CHAIRPERSON: Well, this is what he says,
 4 but he didn't have an instruction from the only person
 5 authorised to give the instruction, but I think that point
 6 was covered quite extensively before and I don't think
 7 there's anything new that – the facts are on record, I
 8 think, that the Major-General reported the facts as he's
 9 given them to us to the Provincial Commissioner. It
 10 doesn't appear as if any steps were taken. That's a matter
 11 which can be asked of other witnesses. I don't know if he
 12 can take it any further, and the material facts I think are
 13 before the Commission. They may call for further
 14 questioning of other witnesses and possibly argument later,
 15 but I don't know that this witness can help us anymore than
 16 he has.
 17 MS LE ROUX: Yes, Chair, and I intend to
 18 move on. I just wanted to establish whether the Major-
 19 General knew of any update on disciplinary steps that had
 20 been taken against members.
 21 CHAIRPERSON: He says he doesn't.
 22 MS LE ROUX: Chair, turning now to
 23 precisely that, Major-General, what you told the Provincial
 24 Commissioner, and to recap the evidence as I understand it,
 25 if you could just confirm it for me, you briefed the

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1 National Commissioner and the Provincial Commissioner and
 2 General Annandale about this incident on the 13th, correct?
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson, in different times.
 5 MS LE ROUX: And focussing specifically
 6 on what you told the Provincial Commissioner now, what did
 7 you tell her about the use of stun grenades and teargas on
 8 the 13th? Specifically stun grenades and teargas, what did
 9 you tell the Provincial Commissioner about their use on the
 10 13th?
 11 MAJOR-GENERAL MPEMBE: Chairperson, I did
 12 testify that I informed the Provincial Commissioner about
 13 the incident on that day, meaning that by that time I did
 14 tell her that there was the utilisation of the teargas, and
 15 that there is a utilisation of the stun grenades, and at
 16 that time I could not establish whether the stun grenades
 17 were utilised under which circumstances. I informed her
 18 telephonically while I was still on the scene, and that
 19 there are members who have been killed, the other one was
 20 killed already on the scene, and the other member I also
 21 said that he should be taken to the hospital, and he later
 22 passed on, and the other one I informed the Provincial
 23 Commissioner is that it's Lieutenant Baloyi who's been
 24 critically injured and he's also being airlifted to
 25 Ferncrest Hospital in Rustenburg. Chairperson, later on

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1 that day it was then discovered that Lieutenant Baloyi
 2 utilised the stun grenade, as well as Lieutenant, it's
 3 Lieutenant Baloyi and Lieutenant-Colonel Vermaak utilise
 4 it, and both of them, they were saying that it was in self-
 5 defence.
 6 CHAIRPERSON: You're saying that Baloyi
 7 alleged on the 13th that he fired off his stun grenade in
 8 self-defence?
 9 MAJOR-GENERAL MPEMBE: Not on the 13th,
 10 Chairperson, but I said later –
 11 CHAIRPERSON: Oh, subsequently.
 12 MAJOR-GENERAL MPEMBE: Subsequently.
 13 Lieutenant Baloyi, it was subsequently.
 14 CHAIRPERSON: Subsequently he alleged
 15 that he fired it in self-defence?
 16 MAJOR-GENERAL MPEMBE: Yes, when his
 17 statement was taken –
 18 CHAIRPERSON: Yes, I understand.
 19 MAJOR-GENERAL MPEMBE: But Lieutenant-
 20 Colonel Vermaak on the 13th.
 21 CHAIRPERSON: Yes. Yes, I see, thank
 22 you.
 23 MS LE ROUX: Major-General, just follow-
 24 up questions on that testimony as to what you told the
 25 Provincial Commissioner, and if you can just tell me if I

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1 understand your testimony correctly. With respect to
 2 Lieutenant Baloyi using a stun grenade, you told the
 3 Provincial Commissioner on the 13th that Lieutenant Baloyi
 4 used a stun grenade, but you didn't tell her, because you
 5 didn't yet know, that he said he did it in self-defence,
 6 correct?
 7 MAJOR-GENERAL MPEMBE: Not correct,
 8 Chairperson.
 9 MS LE ROUX: What did you tell the
 10 Provincial Commissioner on the 13th about Lieutenant Baloyi
 11 using his stun grenade in self-defence?
 12 MAJOR-GENERAL MPEMBE: Nothing,
 13 Chairperson.
 14 MS LE ROUX: Major-General, could you
 15 clarify your answer? When you say "nothing," what did you
 16 tell the Provincial Commissioner about Lieutenant Baloyi
 17 and his use of stun grenade on the 13th?
 18 MAJOR-GENERAL MPEMBE: Chairperson, even
 19 following your questioning I said specifically with regard
 20 to Lieutenant Baloyi it was subsequently, later on, not on
 21 the 13th, with regard to utilisation of the stun grenade,
 22 but with regard to Lieutenant-Colonel Vermaak, it was on
 23 the 13th –
 24 MS LE ROUX: Major-General Mpeembe, can we
 25 not move on to Lieutenant-Colonel Vermaak, just staying

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1 with Lieutenant Baloyi? I want to understand your evidence
 2 because the detail is important. Are you saying that on
 3 the 16th you told the – sorry, on the 13th you told the
 4 Provincial Commissioner nothing about Lieutenant Baloyi
 5 using a stun grenade?
 6 CHAIRPERSON: I don't understand him to
 7 say that, but perhaps, you know you did interrupt him while
 8 he was giving his evidence. Perhaps you must give him a
 9 chance to finish his answer and then you can ask your
 10 question. But did I understand you correctly to say you
 11 did tell her, you spoke to her on the telephone initially,
 12 she then came to Marikana and you saw her again, and you
 13 also saw General Annandale and the National Commissioner,
 14 but you said you saw them separately. When you spoke to
 15 the Provincial Commissioner at Marikana, I thought I heard
 16 you say that you did tell her that Baloyi had fired off a
 17 stun grenade, but you didn't mention that he alleged he did
 18 so in circumstances of self-defence because you only heard
 19 that later. Is that an accurate summary of what you say?
 20 MAJOR-GENERAL MPEMBE: Chairperson, when
 21 I inform the Provincial Commissioner, by that time on the
 22 13th I did not know that Lieutenant Baloyi used it. I said
 23 subsequently, later on –
 24 CHAIRPERSON: Okay, I misunderstood.
 25 MAJOR-GENERAL MPEMBE: But I knew of

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1 Colonel Vermaak.
 2 CHAIRPERSON: Yes, you knew of course, I
 3 take it – or am I wrong? – did you know that a stun
 4 grenade had been used by a member on the ground, but you
 5 didn't know who it was, and Baloyi of course had gone by
 6 this time, he was in Ferncrest Hospital, so you only heard
 7 subsequently that he was the member on the ground who fired
 8 the stun grenade, and that he said so in circumstances of
 9 self-defence. Is that correct? That's what you knew only
 10 subsequently?
 11 MAJOR-GENERAL MPEMBE: Subsequently, yes,
 12 Chairperson, but not on the 13th.
 13 CHAIRPERSON: Yes, yes, I understand.
 14 You did know that Lieutenant-Colonel Vermaak had used stun
 15 grenades from the air, from the helicopter, on the 13th?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MS LE ROUX: And Major-General, you
 19 advised the Provincial Commissioner on the 13th that a stun
 20 grenade had been used by a member on the ground; you didn't
 21 yet know who it was or in what circumstances, and you also
 22 advised her that Lieutenant-Colonel Vermaak had used two
 23 stun grenades that he threw from the helicopter on the 13th,
 24 correct?
 25 [10:33] MAJOR-GENERAL MPEMBE: No, Chairperson.

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1 On the ground I did not know on the 13th. I knew
 2 subsequently, later, but I knew of Colonel Vermaak.
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 summarise your evidence incorrectly when I said I
 5 understood you to say - but I may have misunderstood you,
 6 I'm not putting anything to you – that you knew that a stun
 7 grenade had been used on the ground and that also stun
 8 grenades had been used from the air from a helicopter. Is
 9 that wrong? You say you knew about Lieutenant-Colonel
 10 Vermaak's stun grenades from the helicopter. Did you not
 11 know at the time that a stun grenade had, before
 12 Lieutenant-Colonel Vermaak threw his stun grenades, that a
 13 stun grenade had been used on the ground? Did you not know
 14 that at all on the 13th?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MS LE ROUX: Major-General, did you tell
 18 the Provincial Commissioner that stun grenades were used
 19 before the attack on SAPS members?
 20 MAJOR-GENERAL MPEMBE: No, Chairperson.
 21 CHAIRPERSON: I take it you knew that a
 22 teargas canister had been fired before the attacks on SAPS
 23 members. In fact you described it earlier in your evidence
 24 as being the spark that caused the problem. You remember
 25 that was the evidence you gave? You obviously knew that.

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1 Did you tell that to the Provincial Commissioner?
 2 MAJOR-GENERAL MPEMBE: Chairperson, I
 3 told her about the teargas which is a spark, but not the
 4 hand grenade.
 5 CHAIRPERSON: Stun grenade.
 6 MAJOR-GENERAL MPEMBE: The stun grenade,
 7 yes.
 8 MS LE ROUX: Major-General, did you tell
 9 the Provincial Commissioner that teargas and stun grenades
 10 had been used without authority?
 11 CHAIRPERSON: Before you answer the
 12 question, I don't think that the question is correctly
 13 phrased as far as it relates to the stun grenades.
 14 Remember the evidence of the witness was that a member can
 15 use stun grenades, or presumably even teargas, in
 16 circumstances of self-defence without instruction. So they
 17 would have implied authority from the common law relating
 18 to self and private defence to use a stun grenade even
 19 without an instruction, if it was necessary for the
 20 purposes of defence. So -
 21 MS LE ROUX: Thank you, Chair, let me
 22 reformulate –
 23 CHAIRPERSON: The evidence of the Colonel
 24 is that he, what he saw going on, on the ground with people
 25 being attacked, that's why he threw the stun grenade. So

<p style="text-align: right;">Page 12795</p> <p>1 he would, if his evidence is correct, be entitled to say I 2 acted in private defence and I didn't need instruction from 3 anybody. The teargas is in a different category and 4 perhaps I could – if you'll forgive me, I'll phrase the 5 question. You told us that you didn't give an instruction 6 that teargas be thrown, and there's a debate as to whether 7 there was an instruction, and if it was, whether it was 8 authorised, but we won't go there. The question is, did 9 you tell the Provincial Commissioner, as you've told us, 10 and as you told the people at Rustenburg that you never 11 gave an instruction to that effect? Did you tell her that? 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 13 that I did not give the instruction. 14 CHAIRPERSON: Yes, thank you. 15 MS LE ROUX: Major-General, did you tell 16 the Provincial Commissioner of the threat to your life on 17 the 13th? 18 MAJOR-GENERAL MPEMBE: Chairperson, as I 19 testified yesterday, I said that I spoke with the 20 Provincial Commissioner about that threat at the JOC when 21 she has arrived, and I told her the circumstances of that 22 threat and how do I feel about the threat itself, as I have 23 explained yesterday to say in the first place Lieutenant- 24 Colonel Vermaak informed me, I did not see any imminent 25 threat. Chairperson, I went on to say I did not know even</p>	<p style="text-align: right;">Page 12797</p> <p>1 peacefully. It's not for her to decide – 2 CHAIRPERSON: Why can't she say – 3 MR NGALWANA: It's not for her to decide 4 whether they were marching peacefully or not – 5 CHAIRPERSON: I'm sorry to interrupt you, 6 but asking a leading question, which is permissible in 7 cross-examination, doesn't amount to giving evidence. 8 There's nothing wrong with asking did you say this, and by 9 stating, or including in the question what the person is 10 asked about what was said doesn't amount to evidence that 11 what was said was correct. So I think, with respect, 12 that's not a good point. So carry on, Ms Le Roux. 13 MS LE ROUX: Thank you, Chair. Major- 14 General, did you tell the Provincial Commissioner, using 15 your words, that the teargas was the spark of the attack? 16 MAJOR-GENERAL MPEMBE: I said to the 17 Provincial Commissioner that the group that was being 18 escorted by us, the protesters, I saw them turning into the 19 informal settlement and I said to her that keeping on with 20 my earlier briefing, I thought that the member was 21 complying with what I've said, because I'd briefed the 22 commanders about that to say that we should make sure that 23 the protesters do not enter into the informal settlement, 24 but not that they were marching peacefully, and then later 25 on it was discovered that the member who fired the gas, the</p>
<p style="text-align: right;">Page 12796</p> <p>1 who was the attacker, and secondly Colonel Vermaak 2 requested me in a manner that it, I should enter into a 3 Nyala as quick as possible, and I indicated to him that – 4 CHAIRPERSON: You did tell us all that 5 yesterday. 6 MAJOR-GENERAL MPEMBE: Yes. 7 CHAIRPERSON: I think counsel is 8 interested in a narrower point than that. She simply wants 9 to know did you tell the Provincial Commissioner that you'd 10 been told in turn by Lieutenant-Colonel Vermaak that there 11 had been threats to kill you, as a result of which you were 12 removed from the scene. That's her question, and I think 13 you've answered that by saying yes, you did tell her, and 14 you said so yesterday also. 15 MS LE ROUX: Thank you, Chair. Major- 16 General, did you tell the Provincial Commissioner that 17 until the teargas and later stun grenades were used, that 18 the group, while armed, was moving peacefully towards the 19 koppie? Did you tell the Provincial Commissioner they were 20 just walking and you were escorting them to the koppie? 21 MR NGALWANA: Chair, I object to an 22 aspect of that question. My learned friend cannot give 23 evidence from the bar as regards the peacefulness of the 24 march. She can't say did you ask her, did you tell the 25 Provincial Commissioner that the people were marching</p>	<p style="text-align: right;">Page 12798</p> <p>1 teargas, is Warrant-Officer Kuhn, and he did not know who 2 gave the order. 3 MS LE ROUX: Major-General, my question 4 is a very limited one. Did you tell the Provincial 5 Commissioner that the teargas was, as you've described it, 6 your own words, the spark for the attack? Did you tell 7 that to the Provincial Commissioner? 8 MR NGALWANA: Chair, I take it this is 9 the version of the Human Rights Commission and that they're 10 going to call a witness to testify to this version? 11 MS LE ROUX: Chair, it was Major-General 12 Mpeembe's own testimony – 13 CHAIRPERSON: No, no, I asked him long 14 ago, you'll remember, whether the teargas was the – I used 15 the Afrikaans word "vonk," and then said the spark that 16 caused the attack, and he said yes. So the question is 17 based upon the answer that he gave earlier. So I don't 18 think the objection has got substance. Carry on, Ms Le 19 Roux. 20 MS LE ROUX: Thank you, Chair. So Major- 21 General, my question again; did you tell the Provincial 22 Commissioner that the teargas was the spark for the attack? 23 MAJOR-GENERAL MPEMBE: Chairperson, as I 24 said, the teargas was a spark after they turned into the 25 informal settlement, and this is what I said, and when the</p>

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1 teargas was used, it's when the attack then started to
 2 happen, but – and I did also indicate to this Commission to
 3 say that I thought that the member who utilised the teargas
 4 could have been briefed by his commander with my earlier
 5 briefing. That's what I told the Provincial Commissioner.
 6 MS LE ROUX: Now Major-General, all of
 7 the questions I've asked you related to what you told the
 8 Provincial Commissioner on the 13th. Between the 13th and
 9 the 16th, did you brief the Provincial Commissioner again
 10 about the events on the 13th?
 11 MAJOR-GENERAL MPEMBE: Chairperson, maybe
 12 I need the clarity; is it with regard to specifically the
 13 incident of the 13th or with all what was happening at
 14 Marikana by then?
 15 CHAIRPERSON: No, I think the question is
 16 only confined – Ms Le Roux will perhaps tell us if I'm
 17 wrong; all she wants to know, I think, is after your
 18 conversation with the Provincial Commissioner on the 13th
 19 when you told her what had happened earlier that day at
 20 Marikana, do you subsequently between that conversation and
 21 the 16th speak to her again about what had happened on the
 22 13th? That's the question, is it, Ms Le Roux?
 23 MS LE ROUX: Yes, Chair.
 24 MAJOR-GENERAL MPEMBE: Chairperson, what
 25 I was telling the Provincial Commissioner it was to take

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1 what happened on the 13th and to build it on to the 16th,
 2 but not that I was briefing to her to say to avoid what
 3 could have happened on the 16th, now this is what we are –
 4 CHAIRPERSON: Yes, I'm sorry to interrupt
 5 you. I understand the position is that she went back to
 6 Rustenburg. I take it her office is in Rustenburg, is it?
 7 The headquarters –
 8 MAJOR-GENERAL MPEMBE: No, in
 9 Potchefstroom.
 10 CHAIRPERSON: In Potchefstroom, I see.
 11 So she came to Marikana on the 13th after the incident that
 12 you've described, and you spoke to her and told her what
 13 had happened, that you told us. The National Commissioner
 14 came as well and General Annandale came as well. She then,
 15 the Provincial Commissioner I take it then went back to
 16 Potchefstroom, did she?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson, almost in the early hours of the 14th.
 19 CHAIRPERSON: Yes, and did you have
 20 occasion to speak to her at all on the 14th?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 CHAIRPERSON: Did you? Did you speak to
 24 her on the 14th?
 25 MAJOR-GENERAL MPEMBE: I did speak to

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1 her, but not specifically, not only on the 13th issue, but
 2 also with what is taking place at Marikana.
 3 CHAIRPERSON: Did you repeat the account
 4 that you'd given of what had happened on the 13th? You
 5 know, you told us you'd told her what had happened on the
 6 13th, what you'd seen and so on. Did you repeat that on the
 7 14th to her?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson,
 9 not to repeat, but to say what we are doing in terms of the
 10 plan –
 11 CHAIRPERSON: Yes, yes, I understand.
 12 MAJOR-GENERAL MPEMBE: Yes.
 13 CHAIRPERSON: And then that's the 14th.
 14 The evidence I think is that on the 15th she was at a
 15 meeting at Midrand, and I think the evidence also is that,
 16 did you speak to her that evening after you'd spoken to Mr
 17 Mathunjwa?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 CHAIRPERSON: Did you speak to her at all
 21 that day before you spoke to her in the evening and told
 22 her what Mr Mathunjwa had said?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson.
 25 CHAIRPERSON: Did you? Did you speak to

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1 her during the day? You say correct; I'm not sure if you
 2 mean that. During the course of the 15th when she was at a
 3 meeting in Midrand and you were, I take it, attending to
 4 various things at Marikana, did you speak to her at all? I
 5 know you spoke to her in the evening and reported to her
 6 what Mr Mathunjwa had said, but apart from that, did you
 7 speak to her at all on the 15th?
 8 MAJOR-GENERAL MPEMBE: The last time that
 9 I spoke to her it was after I gave her the feedback of what
 10 Mr Mathunjwa said.
 11 CHAIRPERSON: Yes, I see, and during that
 12 day, before you gave her that feedback, did you speak to
 13 her at all?
 14 MAJOR-GENERAL MPEMBE: Earlier on I speak
 15 to her that the unions have agreed to go to the meeting –
 16 CHAIRPERSON: I see.
 17 MAJOR-GENERAL MPEMBE: - and after the
 18 meeting I gave her the feedback in terms of –
 19 CHAIRPERSON: Yes, yes, no, I understand.
 20 No, okay.
 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 22 CHAIRPERSON: But I think what Ms Le Roux
 23 wants to know is, did you speak to her again on the 15th
 24 about what had happened on the 13th? It doesn't sound as if
 25 it was necessary for you to do so.

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1 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 2 didn't on the 15th. I only spoke to her only on the 14th to
 3 tell her in terms of what we built on from what has
 4 happened on the, on Monday.
 5 CHAIRPERSON: Ja. No, no, I see.
 6 MS LE ROUX: Thank you, Chair. Major-
 7 General, when you spoke to the Provincial Commissioner, as
 8 you've just testified, on the 14th and the 15th, did you
 9 tell her that you had established that the teargas had been
 10 used without authority?
 11 MAJOR-GENERAL MPEMBE: Chairperson, I
 12 told her that according to Warrant-Officer Kuhn is that he
 13 heard an instruction, even though he did not see the
 14 command, he did not see the person who gave the command.
 15 MS LE ROUX: And when you briefed, when
 16 you spoke to the Provincial Commissioner on the 14th or the
 17 15th, did you tell her that Lieutenant Baloyi was of the
 18 view, that Lieutenant Baloyi says he used the stun grenade
 19 in self-defence?
 20 MAJOR-GENERAL MPEMBE: With regard to
 21 Lieutenant Baloyi it was long after he has also gone out
 22 from hospital, not on the 15th.
 23 MS LE ROUX: Major-General, could you
 24 turn to a document that has been provided to you, I believe
 25 it will become exhibit HHH40, which is the transcript of

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1 the media briefing by the Provincial Commissioner on the
 2 16th of August.
 3 MR NGALWANA: I'm not aware of any HHH40,
 4 Chair. The last I heard is HHH39 –
 5 MS LE ROUX: That will be the next
 6 number.
 7 CHAIRPERSON: She spoke prophetically.
 8 She said she thought it would be HHH40. The next exhibit
 9 number is HHH40. It's the document I'm holding up. Is
 10 that correct?
 11 MS LE ROUX: Yes, Chairperson. Major-
 12 General, do you have that transcript?
 13 CHAIRPERSON: No, let's put Mr Ngalwana
 14 out of his misery. I'm marking it HHH40.
 15 MS LE ROUX: Thank you, Chair.
 16 CHAIRPERSON: [Microphone off, inaudible]
 17 document that I'm holding up to you, Major-General, this is
 18 the document that's referred to. Do you see it?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 20 I just –
 21 CHAIRPERSON: It was in the bundle of
 22 documents that we got and you got.
 23 MAJOR-GENERAL MPEMBE: Yes.
 24 CHAIRPERSON: You may take time to find
 25 it. When you've found it, will you let me know and then we

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1 can carry on?
 2 MAJOR-GENERAL MPEMBE: I just wanted to
 3 ask what is the number in terms of the document that you
 4 give it to me?
 5 CHAIRPERSON: It didn't have – you see
 6 the problem which you have and Mr Ngalwana had as well was
 7 it didn't have a number; it's just got a number now. This
 8 is what it looks like.
 9 MAJOR-GENERAL MPEMBE: Okay.
 10 CHAIRPERSON: You see? It's headed
 11 "Realtime Transcriptions," and then it goes "Transcription
 12 of the Commission of Inquiry, Marikana, Media briefing held
 13 on 16 July 2012." It hasn't got a number, but I've marked
 14 it HHH40.
 15 MS LE ROUX: Chair, if I could assist the
 16 witness, it's item 21 on the list of documents provided to
 17 you to be used in cross-examination. Item 21.
 18 MAJOR-GENERAL MPEMBE: Okay. Thanks,
 19 Chairperson.
 20 CHAIRPERSON: Now the next question I
 21 must ask you before counsel proceeds is have you had a
 22 chance to read the document?
 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 24 I did have a chance to read the document. Maybe if, before
 25 the question is asked, I just wanted to check the date

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1 there, which date was that, because I see it says "Held on
 2 16 July" –
 3 CHAIRPERSON: It says 16 July.
 4 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 5 CHAIRPERSON: Yes, some of the people
 6 connected with the events are challenged as far as months
 7 of the year are concerned. They get the months wrong.
 8 This is one of the examples. It should obviously be 16
 9 August.
 10 [10:53] MAJOR-GENERAL MPEMBE: Okay, Chairperson.
 11 MS LE ROUX: Major-General, could I ask
 12 you to turn to page 3 of that transcript, and if you could
 13 direct your attention to the middle of the page at line 8
 14 to line 15 where the Provincial Commissioner, and I'll just
 15 read it for the record, the Provincial Commissioner is
 16 describing the incident of the 13th of August, she says the
 17 following, someone whose name is inaudible, I don't know if
 18 we can assume that that is you, but she says, "reported to
 19 me they moved. They showed interest of leaving, although
 20 they indicated that they are not going to lay down their
 21 weapons and they were leaving. Our cops were trying to
 22 assist the move. All of a sudden they turned and advanced
 23 to the police. In that advancement, confrontation started,
 24 and that's when we lost two of our cops and three members
 25 from the public of those members that were there. Very

<p style="text-align: right;">Page 12807</p> <p>1 unfortunate; very sadly."</p> <p>2 CHAIRPERSON: Yes, you've read on to line</p> <p>3 15 in fact. You've read lines 8 to 15.</p> <p>4 MS LE ROUX: Yes, Chair. So Major-</p> <p>5 General, the South African Human Rights Commission in due</p> <p>6 course will make submissions to this Commission that the</p> <p>7 Provincial Commissioner's briefing, to the extent that it</p> <p>8 was informed by your briefing of her about the 13th of</p> <p>9 August, doesn't seem to take account of the provocative</p> <p>10 effect that using the teargas and the stun grenades would</p> <p>11 have had on the strikers. Her account is that all of a</p> <p>12 sudden the protesters turned and attacked the police</p> <p>13 members, but as you yourself have said, the teargas was the</p> <p>14 spark to the confrontation. Could you comment on the</p> <p>15 Provincial Commissioner's account set out in the press</p> <p>16 briefing? Do you have any comment on that?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, what</p> <p>18 I do know is that when any, when the Provincial</p> <p>19 Commissioner before she gives a media statement, there</p> <p>20 should have been notes made, and in this case I don't know</p> <p>21 whether they were made by her or they were made by a</p> <p>22 communication officer, so for me to comment on something</p> <p>23 that I don't know whether it comes direct from her or from</p> <p>24 the notes that she was made for her is going to be very</p> <p>25 difficult.</p>	<p style="text-align: right;">Page 12809</p> <p>1 records that 17 of the 28 make no mention of the use of</p> <p>2 teargas and stun grenades before the attack on police.</p> <p>3 Chair -</p> <p>4 CHAIRPERSON: So I see, sorry -</p> <p>5 MS LE ROUX: So I don't want to go</p> <p>6 statement by statement with Major-General.</p> <p>7 CHAIRPERSON: Thank you, thank you for</p> <p>8 the document. Before you proceed I said I would give the</p> <p>9 ruling on the point that stood over from yesterday in</p> <p>10 relation to the question that was asked about the criticism</p> <p>11 which Mr White makes in relation to the preparation of the</p> <p>12 plan and the briefing of the members. I discussed it with</p> <p>13 my colleagues and we have come to the conclusion, we think</p> <p>14 the fair way of dealing with it as follows. That you</p> <p>15 should obtain a statement from Mr White of his views on the</p> <p>16 matter, have it reduced to writing, his views on the matter</p> <p>17 and his reasons. In other words, this will form part of</p> <p>18 the final statement that will be produced in due course,</p> <p>19 make it available to the witness so that he - and we will</p> <p>20 then - I will then allow the question to be put. His</p> <p>21 views, his reaction to what Mr White says but I think at</p> <p>22 the moment, in fairness to the witness, he's entitled to</p> <p>23 get what he would have got if the final statement were</p> <p>24 ready to hand, I know why the final isn't there and I'm not</p> <p>25 being critical about that but as far as this question is</p>
<p style="text-align: right;">Page 12808</p> <p>1 CHAIRPERSON: Ms Le Roux, did you hear</p> <p>2 the answer he gave? He said that he presumes she spoke</p> <p>3 from notes. He doesn't know whether it's her notes or</p> <p>4 compiled by somebody else, and he isn't really able to</p> <p>5 comment.</p> <p>6 MS LE ROUX: Yes, and Chair, we'll take</p> <p>7 it up when the Provincial Commissioner -</p> <p>8 CHAIRPERSON: Yes, I can understand the</p> <p>9 witness's feelings in this regard because - is this perhaps</p> <p>10 a suitable stage to take the tea adjournment?</p> <p>11 MS LE ROUX: Certainly, Chair.</p> <p>12 CHAIRPERSON: The Commission will adjourn</p> <p>13 for tea.</p> <p>14 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>15 [11:28] CHAIRPERSON: The Commission resumes.</p> <p>16 Major-General, you're still under oath. Ms Le Roux.</p> <p>17 MS LE ROUX: Thank you, Chair. Chair, in</p> <p>18 the interests of progressing the cross-examination I've</p> <p>19 asked my instructing attorney to hand out a summary of</p> <p>20 analysing the statements that have been provided to the</p> <p>21 Commission and that are listed on the index of documents at</p> <p>22 item 30. This is the collection of statements of members</p> <p>23 that were present on the 13th and we've done the analysis as</p> <p>24 to when they failed to mention teargas. The document</p> <p>25 that's being handed out just lists the statements and</p>	<p style="text-align: right;">Page 12810</p> <p>1 concerned that seems to us to be the fairest way forward.</p> <p>2 What Mr White says and his reasons so the witness can then</p> <p>3 have an opportunity to deal with it. And in particular -</p> <p>4 perhaps, there's a further rider to that or elaboration to</p> <p>5 that which Advocate Hemraj will now state.</p> <p>6 COMMISSIONER HEMRAJ: I think your</p> <p>7 question related to whether the commanders or the</p> <p>8 commanders did not draw up their own plan but I think</p> <p>9 whatever Mr White's views are on that in particular, need</p> <p>10 to be put to the witness and then let him comment so that</p> <p>11 it's an informed view.</p> <p>12 MS LE ROUX: Understood.</p> <p>13 CHAIRPERSON: If you can't get that ready</p> <p>14 by the time he has finished his evidence I'm afraid we may</p> <p>15 have to get him back just for that point. But I would urge</p> <p>16 upon you that try to do it while he's still with us even if</p> <p>17 he's being cross-examined by somebody else if you want to</p> <p>18 pursue the point. But I think in fairness to him he's</p> <p>19 entitled to that. Ms Le Roux, must this document be given</p> <p>20 an exhibit number or is it just a guideline for use in</p> <p>21 cross-examination? I suppose it should be an exhibit</p> <p>22 because when we read the record later or other people read</p> <p>23 it after us your cross-examination on this point will more</p> <p>24 easily be understood if this document is part of the</p> <p>25 record.</p>

<p style="text-align: right;">Page 12811</p> <p>1 MS LE ROUX: Yes, Chair, I think for 2 document management purpose let's give it an exhibit 3 number. 4 MR NGALWANA: Chair, I'm not going to 5 object it being made an exhibit number, I just add one 6 rider. The Chairperson has, of course, provided a rider to 7 say this should be taken into account that they are 8 supplementary statements that are going to be made in this 9 regard. And secondly - 10 CHAIRPERSON: I'm sorry to interrupt you. 11 I'm dealing with something different now. I'm not stopping 12 you, I take it that you're referring to the ruling I made. 13 What Ms Le Roux and I are now dealing with is whether this 14 document should be given an exhibit number. I take it you 15 don't object to that. 16 MR NGALWANA: I started off by saying 17 that, Chair. 18 CHAIRPERSON: Are you talking about that? 19 MR NGALWANA: Yes. 20 CHAIRPERSON: I see, well carry on. 21 MR NGALWANA: Thank you, Chairperson. To 22 make it clear again, I'm not objecting to this document 23 being made an exhibit subject to the following, firstly, we 24 did indicate that the police - it has always been in the 25 contemplation of the police to provide supplementary</p>	<p style="text-align: right;">Page 12813</p> <p>1 whether you were listening attentively is neither here nor 2 there although that kind of klap given by one counsellor to 3 another is not acceptable. It seems fair that we should 4 get Mr Semenya here before we fix a deadline. So I will 5 consider your application and when Mr Semenya is here we'll 6 hear his views on it. He may well accept that that's an 7 appropriate date and I'm sure he will appreciate the 8 desirability of getting the statements before the 9 Commission concludes its work. 10 MR CHASKALSON SC: I should also put on 11 record that if these statements finally emerge it may be 12 necessary to recall some witnesses for further cross- 13 examination in the light of what these statements say 14 because we can only cross-examine witnesses on what we have 15 before us. It's very undesirable for statements of 16 material eye-witnesses to arrive a year into the 17 proceedings. 18 MS LE ROUX: Chair, for the record, the 19 Human Rights Commission supports the evidence leader's 20 application for a firm deadline on the provision of 21 supplementary statements, obviously in consultation with Mr 22 Semenya. And again for the record, the Human Rights 23 Commission will undertake the analysis of the statements 24 requested by the Chair. But, of course, the utility of 25 statements that arrive more than a year after the events in</p>
<p style="text-align: right;">Page 12812</p> <p>1 statements from possibly all or some of these members. I 2 don't know the identity of them yet, people who were 3 involved in the discharge of ammunition at scene 2 at 4 least. Secondly, we still don't know whether these are 5 warning statements or IPID statements or whether there's 6 anything in substance something similar to the statement of 7 Lieutenant-Colonel Scott for example. So I think perhaps 8 our learned friend was still to make that clear. Thank 9 you, Chair. 10 MR CHASKALSON SC: Mr Chairperson, I 11 don't want to complicate this matter further but we are 12 more than a year after the event now, almost a year into 13 the life of this Commission, I think it's time for the SAPS 14 to commit to a deadline furnishing these statements. 15 They're not much use to us if they arrive after the 16 Commission has finished, it's business. Can I ask the 17 Chairperson to make a ruling that all of these statements 18 must be made available by 15 September? They've had more 19 than enough time to do that. 20 MR NGALWANA: Perhaps our learned friend 21 wasn't here when this issue was dealt with. Maybe he 22 wasn't listening attentively. I did say that Mr Semenya is 23 attending to this. For me to commit him in his absence 24 would be unfair. 25 CHAIRPERSON: Mr Chaskalson, I think</p>	<p style="text-align: right;">Page 12814</p> <p>1 question and clearly after lengthy cross-examination on 2 some material issues, the Human Rights Commission is more 3 likely to content itself with the more contemporaneous 4 statements because those are likely to accord greater 5 weight by the Commission. But in any event to return to 6 exhibit HHH41, if I could just again for the record and for 7 the evidence leaders note a statement that appears on the 8 second page which is that by Makhubela. 9 MR NGALWANA: Chair, before my learned 10 friend continues I am reminded that the supplementary 11 statements to which I referred to relates to, in large 12 measure scene 2 on the 16th, not on the 13th. 13 CHAIRPERSON: You see we haven't had much 14 evidence about scene 2, so to be fair it doesn't as if the 15 kind of problems that people have anticipated will 16 necessarily arise. There has been a dearth of evidential 17 material about what happened on scene 2, that's one of the 18 problems actually and hopefully that problem will be 19 addressed by the statements that we've been promised. But 20 obviously a deadline is desirable. It's also, as I've 21 said, not fair to extract a deadline from Mr Ngalwana when 22 Mr Semenya is involved and he's the leader of their team 23 and he should have a chance to have an input in relation to 24 the deadline date. So you were saying something about Mr 25 Makhubela, that's 148, this is on page 2 of exhibit HHH41.</p>

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1 MS LE ROUX: Yes, Chair, and it's just to
 2 make a request of the evidence leaders when they are
 3 considering the witness list of witnesses to be called in
 4 future that we ask that Makhubela be placed on that list
 5 because the phrasing he uses is difficult to understand.
 6 It's recorded there, it says "The problem, teargas was
 7 used." We don't know what he means by that and so I've
 8 included him in the list of statements relating to the use
 9 of teargas. We don't know what he means though, the other
 10 statements are clearer. They're either silent or they're
 11 clearer on what the member means.
 12 CHAIRPERSON: Yes, teargas was used, he
 13 seems to suggest it was a problem but we don't know exactly
 14 what he means, but anyway he is a witness or rather a
 15 statement maker who says teargas was used, I'd say.
 16 MS LE ROUX: Thank you, Chair, so I don't
 17 intend to then go through the 28 statements. They have
 18 been provided to the Commission and to the witness, of
 19 course, but the critical point is that the vast majority of
 20 these statements are silent on the use of teargas before
 21 the attack. And so, Major-General Mpeembe, one final
 22 question on this line of cross-examination and it is this
 23 because the reason that this matters, of course, is that it
 24 sets the tone for what happens later in the week. This
 25 morning you've testified that you took into account the

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1 attack on the 13th and the circumstances of that attack in
 2 your planning on the 14th, 15th and ultimately on the 16th
 3 and so therefore it matters whether you're dealing with a
 4 group of protesters who lashed out and killed two officers
 5 when provoked, without warning by teargas and stun
 6 grenades. Or whether you're dealing with a group of
 7 protesters who just spontaneously murdered two police
 8 members without provocation. And so will you agree with me
 9 that the difference between those two accounts matters as
 10 you plan as to how to deal with the protesters later in the
 11 week?
 12 CHAIRPERSON: Before you answer, Major-
 13 General, we know from the video that this may be difficult
 14 in relation to stun grenades although from the police
 15 presentation, exhibit L, slide 47 I think we know what
 16 happened in relation to stun grenades as well as far as the
 17 police case is concerned. But we know from the video that
 18 the attack by the strikers only happened after the teargas,
 19 that we can see with our own eyes and I take it that is
 20 your evidence. You've very candidly admitted that. Now I
 21 assume, I hope correctly, that insofar as you were involved
 22 in the plan, commenting on the plan, making input in
 23 relation to the plan, you bore in mind what you had seen
 24 happen on the 13th. Am I correct in that assumption?
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 CHAIRPERSON: Before we move on,
 3 according to slide 47 of exhibit L it appears to have been
 4 suggested that the teargas and the stun grenades which
 5 produced two large explosive sounds were discharged, the
 6 first ones, before what is referred to in the third bullet
 7 in slide 47; namely the protesters, as they are called,
 8 turning around and charging at the members behind them. So
 9 it seems, am I correct in thinking that the police version
 10 is that the strikers turned around and charged the members
 11 behind them which is effectively the onset of the attack
 12 after the teargas had been used by Warrant Officer Kuhn and
 13 at least the stun grenade which was discharged by
 14 Lieutenant Baloyi? At least those two things had happened
 15 before what is described in the third bullet, slide 47 took
 16 place. Is that correct?
 17 MAJOR-GENERAL MPEMBE: Chairperson will
 18 recall that those that were there we were thinking that the
 19 turning of the protesters and the use of the teargas
 20 sparked that.
 21 CHAIRPERSON: Anyway the point is you
 22 took what you had seen happen -
 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 24 CHAIRPERSON: - on that field on the 13th
 25 you bore in mind when you participated in discussions at

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1 the JOC on the plan.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 CHAIRPERSON: Or the plans, I think there
 5 was more than plan actually but your participation
 6 obviously involved what you'd experienced, seen and
 7 understood and so on, on the 13th. That's correct, you've
 8 said that.
 9 MAJOR-GENERAL MPEMBE: Yes correct,
 10 Chairperson.
 11 MR NGALWANA: It appears the police
 12 version is clear from the second bullet of that slide,
 13 slide 47.
 14 CHAIRPERSON: Whether it's correct or not
 15 may be a matter of debate but we won't spend time on that.
 16 What also is clear is what police says - well the witness
 17 agreed to that. So Ms Le Roux would you like to carry on?
 18 MS LE ROUX: Thank you, Chair. Major-
 19 General, I'd like us to move now to the events of the 16th.
 20 And, Chair, if I could just lead the Major-General quickly
 21 through some slides and photographs that you've received so
 22 that I can position the cross-examination at a new point.
 23 Major-General, could I ask you to start with slide 148 of
 24 exhibit L? And this is a document that we know from its
 25 properties was created at 8:29am on the morning of the 16th

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1 and then if I could ask you to turn -
 2 CHAIRPERSON: I'm sorry you say that - of
 3 course, I'm not sure the witness knows that to be correct.
 4 That is something I take it you say you learnt from the
 5 properties, so you must have got it from a computer.
 6 MS LE ROUX: Yes, Chair, and it will be
 7 confirmed when Scott comes to testify as well because it's
 8 his computer.
 9 CHAIRPERSON: Yes, so that's really a
 10 question to be asked of Lieutenant-Colonel Scott. Colonel
 11 Scott is in our heads but my point is this witness doesn't
 12 know about that, at least I don't think he does
 13 MS LE ROUX: Yes, Chair, I'm just
 14 identifying the document for the record.
 15 CHAIRPERSON: Alright.
 16 MS LE ROUX: I'm not asking Major-General
 17 Mpembe about his knowledge of its properties. So if we
 18 could have slide 148 from exhibit L and then, Major-
 19 General, if you could turn up a document that is identified
 20 Vermaak IMG4524. This is an aerial photograph taken at
 21 11:22am on the morning of the 16th of August.
 22 CHAIRPERSON: Now you are in a position
 23 of advantage over me which causes me some concern. We were
 24 given a batch of documents for which we're grateful but
 25 they didn't have the markings to which you refer so if you

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1 want me to extract the document from the bundle you must
 2 give me further and better particulars. And then I take it
 3 you want it to be an exhibit do you? So I'll have to mark
 4 it but firstly I must find the document.
 5 MS LE ROUX: Yes, Chair, it's the
 6 photograph that is now displayed on the screen. It's an
 7 aerial photograph taken on the morning of the 16th.
 8 CHAIRPERSON: I think I have now
 9 succeeded in identifying it, let me hold it up. Is that
 10 correct?
 11 MS LE ROUX: Yes, Chair.
 12 CHAIRPERSON: All right. Now I take it
 13 this has got to be an exhibit.
 14 MS LE ROUX: Yes, Chair.
 15 CHAIRPERSON: And we'll call it HHH42.
 16 [11:48] MS LE ROUX: And then, Major-General, if
 17 you could have before you a third photographs that has been
 18 provided to you, it is item 17 on the index of documents.
 19 Chair, this is, it's marked as – it comes from SAPS hard
 20 drive, Photos/General/Dispersion Plan.jpeg. It's a – yes,
 21 Chair.
 22 CHAIRPERSON: We've got what looks like a
 23 Google photograph I think –
 24 MS LE ROUX: Yes, Chair.
 25 CHAIRPERSON: And someone has written in

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1 pencil "dispersion" in the bottom right-hand corner.
 2 MS LE ROUX: Yes, Chair.
 3 CHAIRPERSON: So that will be HHH42, will
 4 it?
 5 MS LE ROUX: 43.
 6 CHAIRPERSON: HHH42 is aerial
 7 photograph -
 8 MS LE ROUX: Yes.
 9 CHAIRPERSON: Of what? How do I describe
 10 it?
 11 MS LE ROUX: Chair, if I could suggest,
 12 aerial photograph taken by Vermaak at 11:22AM, 16 August –
 13 CHAIRPERSON: Taken by – hang on -
 14 Lieutenant-Colonel Vermaak?
 15 MS LE ROUX: 11:22AM, 16 August. Again
 16 we'll confirm that with –
 17 CHAIRPERSON: 11:22AM on 16 August.
 18 Alright, I've got that.
 19 MS LE ROUX: We can only confirm that
 20 with Lieutenant-Colonel Vermaak.
 21 CHAIRPERSON: We'll provisionally call it
 22 that and if we have to revise it later, we will, and the
 23 next one is HHH –
 24 MS LE ROUX: 43.
 25 CHAIRPERSON: HHH43, and that's a

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1 photograph, a Google photograph, yes, and how do I describe
 2 that further?
 3 MS LE ROUX: Chair, on the SAPS hard
 4 drive it's recorded as dispersion plan.
 5 CHAIRPERSON: Alright, so I'll call it
 6 Google photographs, dispersion plan, and I've marked that
 7 as well.
 8 MS LE ROUX: Thank you, Chair. Now
 9 Major-General Mpembe, you have testified that –
 10 CHAIRPERSON: I'm sorry, before you carry
 11 on. Sorry, Major-General, you've got the documents that
 12 counsel referred to.
 13 MAJOR-GENERAL MPEMBE: Correct, Chair.
 14 CHAIRPERSON: And you've marked them with
 15 exhibit numbers, so when counsel refers you to them you'll
 16 know which document she's referring to.
 17 MAJOR-GENERAL MPEMBE: The last one, just
 18 the exhibit number.
 19 CHAIRPERSON: The last one is the so-
 20 called dispersion plan, that's HHH43, and the previous one,
 21 HHH42 is the photograph described as aerial photograph
 22 taken by Lieutenant-Colonel Vermaak at 11:22AM on the 16th
 23 of August. So you've got that, have you?
 24 MAJOR-GENERAL MPEMBE: Chairperson, the
 25 other one it's – oh, I could see that it's number 25 on the

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1 list.

2 CHAIRPERSON: I haven't got those

3 numbers. I just want to make sure, and I don't know

4 whether that's right, but I just want to make sure that you

5 and the witness are talking about the exhibits that I've

6 marked, so that when we read the record later, or other

7 people later read the record, they will be able to follow

8 the cross-examination and your answers.

9 MAJOR-GENERAL MPEMBE: Correct,

10 Chairperson.

11 MR NGALWANA: Chair, if it's of any

12 assistance to the, hopefully not unduly assistance to the

13 Major-General, HHH43 is similar to slide 181 in exhibit L.

14 The only difference –

15 CHAIRPERSON: Slide 181?

16 MR NGALWANA: 181. The only difference

17 is the annotations in 181 are not reflected in HHH3, and of

18 course 181 has blue arrows that show the direction of the

19 dispersion, and HHH3 does not.

20 CHAIRPERSON: Yes, I see, and of course

21 slide 181 also has got sort of legend, as it were, boxes

22 with typing and so on.

23 MR NGALWANA: Correct, Chair.

24 CHAIRPERSON: So it's probably best that

25 he shouldn't be distracted by those, just concentrate on

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1 the - thank you, I've made a note of the correspondence

2 between that slide and this exhibit.

3 MS LE ROUX: Thank you, Chair. And now,

4 Major-General, to orientate you, I'm dealing with the issue

5 of the change in the plan where Nyala 6 was moved back,

6 changing the shape of the Nyala line and therefore the

7 barbed wire deployment. So if you could look at HHH42,

8 which is the aerial photograph taken by Lieutenant-Colonel

9 Vermaak

10 MAJOR-GENERAL MPEMBE: I got it,

11 Chairperson.

12 MS LE ROUX: Right, and Nyala 6 that we

13 are talking about is the Nyala that's in the top left-hand

14 corner with its trailer of barbed wire behind it, so as at

15 11:22AM the Nyala 6 is in the line of Nyalas. It is then

16 moved back. Now Major-General Mpembe, I also understand

17 your testimony to have been that you did not authorise the

18 change in the plan. You said that it was in the

19 operational commander's discretion to do so. Is that an

20 accurate summary of your evidence regarding authorising

21 this change in the plan?

22 MAJOR-GENERAL MPEMBE: No, Chairperson.

23 MS LE ROUX: Major-General, could you

24 then summarise your testimony?

25 MAJOR-GENERAL MPEMBE: I said that the

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1 commanders –

2 MR NGALWANA: Chair, before the witness

3 answers, I don't want to be obstructive, but our learned

4 friend has a knack of inviting this kind of objection.

5 This issue was dealt with extensively by Mr Madlanga, and I

6 can refer to the transcript. It's day 108, page 11635. It

7 begins at lines 1 and following.

8 MS LE ROUX: Chair, I prefaced –

9 MR NGALWANA: Sorry, day 109, and he was

10 there dealing with slides 148 and 149.

11 MS LE ROUX: Chair, I prefaced this

12 introduction, this line of cross-examination by saying I

13 was going to lead Major-General Mpembe, hopefully quite

14 quickly, through the summary of what we've heard already as

15 to the change in the plan. That is where I'm at. There is

16 a new point which relates to –

17 CHAIRPERSON: You said it's a new point –

18 MS LE ROUX: - to Mr White.

19 CHAIRPERSON: A new point is in order to

20 get to the new point. You've got to refer in summary form

21 and as briefly as you can to something that's gone before.

22 MS LE ROUX: Yes, I'm trying to orientate

23 Major-General Mpembe. We're dealing with the change in the

24 plan. I understand he's given evidence relating to the

25 authorisation of the plan that he said it was up to the

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1 operational commander's discretion to do so. That's what

2 I'm just trying to get him to confirm. He said I didn't

3 summarise his evidence correctly, so I'm inviting him now

4 to repeat that evidence, but that's what I'm trying to do

5 so that I can get on to a new point.

6 CHAIRPERSON: Let's hope it's done very

7 briefly, because I understand the force of what Mr Ngalwana

8 says and I sympathise with the attitude he's adopted.

9 Major-General, a summary was put to you by Ms Le Roux of

10 what you said on this particular point, and you said you

11 didn't quite agree with it. So can you give us short, one-

12 sentence summary of what you did say?

13 MAJOR-GENERAL MPEMBE: Chairperson, in my

14 evidence I said that it was relayed to the JOC, and I was

15 specific even to say Major-General Annandale authorised

16 that.

17 CHAIRPERSON: I must confess that was my

18 recollection also.

19 MS LE ROUX: Major-General, I just want

20 to establish, you were aware of the change though on the

21 16th, correct?

22 MAJOR-GENERAL MPEMBE: No, Chairperson.

23 MS LE ROUX: When did you become aware of

24 the change in the plan that moved Nyala 6 back?

25 MAJOR-GENERAL MPEMBE: Chairperson, I did

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1 testify that I knew thereafter.

2 CHAIRPERSON: "Thereafter" is a vague

3 expression. What Ms Le Roux wants to know from you is when

4 did you become – you obviously became aware of it. The

5 question is it happened at about 11:20, I think, is that

6 right? How soon after 11:20 did you learn about the change

7 and the fact that it's been authorised? Was it on the 16th?

8 I mean it must have been on the 16th. So when on the 16th

9 did you learn about it?

10 MAJOR-GENERAL MPEMBE: Chairperson, I

11 knew late on the 16th when we, when Major Annandale was also

12 discussing what was reported to the JOC before the tragedy,

13 but it was on the 16th.

14 CHAIRPERSON: So did you know about it

15 before the tragedy? Or you only learned after the tragedy?

16 MAJOR-GENERAL MPEMBE: I said,

17 Chairperson, I learned about the changes after the tragedy.

18 CHAIRPERSON: I see, thank you.

19 MAJOR-GENERAL MPEMBE: Yes.

20 MS LE ROUX: And Major-General, just so

21 we're clear, you learned of it from Major-General Annandale

22 in the JOC after the shooting in the late afternoon of the

23 16th?

24 CHAIRPERSON: That's what he said.

25 MS LE ROUX: Major-General, when you came

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1 to know that there'd been a change in the plan, and if I

2 could ask you to look at HHH43, which is the document that

3 reflects that change, was what is now exhibit HHH43

4 explained to you? Were you briefed on how the change, how

5 the plan had been changed?

6 MR NGALWANA: With respect, this was

7 precisely the issue that was covered by Mr Madlanga with

8 this same witness.

9 CHAIRPERSON: Yes, Ms Le Roux, that's

10 right, isn't it? Ms Le Roux, that's correct, isn't it?

11 That was debated by Mr Madlanga with the witness.

12 MS LE ROUX: Yes, Chair, and –

13 CHAIRPERSON: So the question is, you

14 know, if you've got a new point, let's have it. Now I

15 understand you've got to have a preliminary matter on

16 record so that the new point can be understood, but perhaps

17 you can tell us what the new point is before you – because

18 there is a fear that we're just going to have a repetition

19 of what we've had before.

20 MS LE ROUX: Chair, in light of Major-

21 General Mpeembe clarifying now that he only knew of the

22 change after the tragedy, the Human Rights Commission will

23 submit in due course that he should have known of the

24 changes as the overall commander, but with respect to Mr

25 White's point I'll have to preserve it for a future

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1 witness. I won't be able to put it to the Major-General in

2 light of this testimony. So I'll move on to the next

3 topic. Major-General, staying on the 16th, I'd like to

4 understand what you – I'd like to establish what you saw

5 and knew during the operation on the 16th, and I want to

6 establish your whereabouts at different points that

7 afternoon. So am I correct that you were in the JOC when

8 the barbed wire was first rolled out?

9 MAJOR-GENERAL MPEMBE: Chairperson, I did

10 testify it was not immediately, and I need just maybe to be

11 referred to my evidence in terms of saying when the barbed

12 wire was, I was in the JOC, because as far as I remember

13 what I testified, I said I was busy with many other things

14 and then while I was still on my way, and then not exactly

15 knowing whether I have flown or not, and then that's when

16 then I heard of –

17 CHAIRPERSON: Yes, Major-General, I think

18 this may help you. According to the evidence the barbed

19 wire started being uncoiled just after Mr Mathunjwa left

20 the scene after his second speech, or second address to the

21 strikers, and that's covered in really slide 193 of exhibit

22 L, and the time given is 15:43. According to slide 192

23 Brigadier Calitz gave the command to Colonel Makhubela to

24 start with the uncoiling of the barbed wire at about 15:40

25 and we see this in the photograph at slide 193 and we see

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1 in the distance the motor car, the vehicle of Mr Mathunjwa

2 leaving the area. So that's, as appears from that

3 photograph, that the time according to exhibit L is 15:43.

4 So that's what's being talked about. So the first question

5 therefore that counsel is asking you is can you remember

6 where you were at that moment when Mr Mathunjwa was driving

7 away, having just left the scene, and when, just after

8 Brigadier Calitz had given the command to Colonel Makhubela

9 to start with the uncoiling of the wire? Were you in the

10 JOC at that stage, or were you outside attending to

11 something else at that particular time? Is that your

12 question?

13 MS LE ROUX: Yes, Chair.

14 MAJOR-GENERAL MPEMBE: Chairperson, I was

15 not in the JOC. I was attending to other matters and

16 during attending that other matters, I, that's the time

17 when I also went to the chopper, but I don't remember

18 precisely where I was –

19 CHAIRPERSON: Yes, I don't know that it

20 really matters. I think she wants to know if you were in

21 the JOC. So if I'm wrong, she'll correct me. And then did

22 you go straight from this other place where you were to the

23 helicopter, or did you go back to the JOC first?

24 MAJOR-GENERAL MPEMBE: No, I didn't go

25 back to the JOC first because by the time when I left the

<p style="text-align: right;">Page 12831</p> <p>1 JOC I already informed Major-General Annandale that I will, 2 from where I will be leaving, that's when then I was 3 already walking with Brigadier Tsiloane. 4 CHAIRPERSON: Yes, and I think you told 5 us that as you were walking towards the helicopter you 6 heard on the radio a particular report that had been 7 received, which enables us by reference to the timeline 8 prepared by the evidence leaders to work out what the time 9 was. What time was that, Mr Chaskalson, approximately, 10 when he was walking to the helicopter and he heard that 11 report about TRT members being attacked? 12 MR CHASKALSON SC: Bear with me for a 13 moment, Chair. In fact we don't have an accurate timeline 14 on the radio transcript. We can give you an accurate 15 timeline on what it was happening. 16 CHAIRPERSON: Alright, well that's the 17 same thing. What time is that? Presumably roughly the 18 same time. 19 MR CHASKALSON SC: It's approximately, we 20 would put it probably round about 15:53. 21 CHAIRPERSON: Ja, alright, so round about 22 15:53 you were walking towards the helicopter. You heard 23 something on the radio. You then got in the helicopter and 24 the helicopter went up in the air, ascended. Is that 25 right?</p>	<p style="text-align: right;">Page 12833</p> <p>1 [12:08] MR NGALWANA: No, no, no, no – 2 CHAIRPERSON: No, I don't remember him 3 saying that. He just didn't say, and it may be something 4 that it wouldn't be appropriate to ask him about, so I left 5 it. 6 MS LE ROUX: Major-General Mpembe, to the 7 best of your recollection, what were your movements when 8 you left the JOC for the last time before you got in the 9 helicopter? Whereabouts were you? And when in your 10 witness statement at paragraph 48 you say that you were 11 told by Annandale that all the other SAPS helicopters were 12 already deployed and in the air, when did – let me start 13 with that. When were you told that there were no SAPS 14 helicopters available for you and that you would have to 15 use the Protea Coin helicopter? When were you told that? 16 MAJOR-GENERAL MPEMBE: Chairperson, I did 17 testify that it was when I wanted to go and fly and see – 18 CHAIRPERSON: Yes, yes, you told us that 19 you weren't in the JOC at the moment. You phoned General 20 Annandale and told him that, and I take it he then arranged 21 for the Protea Coin helicopter to be available for your 22 use. Is my understanding correct? 23 MAJOR-GENERAL MPEMBE: That's correct, 24 Chairperson. 25 CHAIRPERSON: And did that happen quite</p>
<p style="text-align: right;">Page 12832</p> <p>1 MR CHASKALSON SC: Make it 15:54, Chair, 2 because I'd forgotten what the precise – I've just seen my 3 note of the precise – 4 CHAIRPERSON: Alright, we'll settle for 5 15:54 for the moment. How long roughly were you in the 6 helicopter for? Can you remember, or can you tell us or 7 perhaps Mr Chaskalson can tell us when the helicopter came 8 back and you went back to the JOC? 9 MR CHASKALSON SC: That we can tell you 10 exactly, but I understand that the Human Rights Commission 11 has that at their fingertips, and that's part of the cross- 12 examination, Mr Chair. 13 CHAIRPERSON: Well, let me not then 14 interfere. I was trying to shorten proceedings and get us 15 to the anticipated point of arrival, as it were, fairly 16 quickly. 17 MS LE ROUX: Major-General Mpembe, I will 18 undertake an exercise using the video footage that we have 19 from the helicopters to try to establish with more 20 precision this timing question, but if I could just return 21 to your testimony a moment ago that you were attending to 22 other matters and then went to the helicopter, you didn't 23 return to the JOC first, and you said you don't remember 24 where you were before you went to the chopper. Is that 25 your –</p>	<p style="text-align: right;">Page 12834</p> <p>1 quickly, or did you speak to General Annandale at some time 2 before you went to the helicopter? Or was it all done 3 fairly quickly? 4 MAJOR-GENERAL MPEMBE: Chairperson, when 5 I was in the JOC, when I spoke to him to say I will attend 6 to this matter and then I will fly, then that's when he 7 advised me that the choppers are now deployed, but he has a 8 chopper of Coin which can assist, and at that time he 9 arranged the chopper already. 10 CHAIRPERSON: I understood you to say you 11 telephoned him. Was the conversation you now just told us 12 about, was that a telephonic conversation or did it take 13 place in the JOC with you and the Major-General Annandale 14 close to each other? 15 MAJOR-GENERAL MPEMBE: Close to each 16 other, before I leave. 17 MS LE ROUX: And Major-General, how long 18 did it take you from when you finished your conversation 19 regarding the availability of helicopters to when you 20 actually got into the helicopter? How long did it take you 21 from when you left the JOC to when you got to the 22 helicopter? 23 MAJOR-GENERAL MPEMBE: Chairperson, I 24 don't remember because we don't normally write in the, in 25 our diary what time, because we were busy with very serious</p>

<p style="text-align: right;">Page 12835</p> <p>1 matters.</p> <p>2 MS LE ROUX: Major-General, I understand</p> <p>3 you may not have a diary entry that assists you, but are we</p> <p>4 talking about less than 10 minutes, more than 10 minutes,</p> <p>5 from when you leave the JOC to when you get into the</p> <p>6 helicopter?</p> <p>7 MAJOR-GENERAL MPEMBE: No, Chairperson, I</p> <p>8 don't remember very well, but I think taking into account</p> <p>9 the time when I flew, and then we checked back what then</p> <p>10 one can estimate precisely.</p> <p>11 CHAIRPERSON: What's your estimate?</p> <p>12 MAJOR-GENERAL MPEMBE: I just wanted to</p> <p>13 check according to my previous evidence when I testified to</p> <p>14 the Commission the time was checked, approximately when did</p> <p>15 I fly, I flew, and I think I can check it from there.</p> <p>16 CHAIRPERSON: Have you got that at your</p> <p>17 fingertips?</p> <p>18 MR CHASKALSON SC: The helicopter flight</p> <p>19 ends at 16:17:45. It starts some time before the video</p> <p>20 starts, and the video starts at 15:57:30.</p> <p>21 CHAIRPERSON: You said earlier you</p> <p>22 thought the helicopter left at about 15:54, I think you</p> <p>23 said.</p> <p>24 MR CHASKALSON SC: No, that was the time</p> <p>25 of the report that the –</p>	<p style="text-align: right;">Page 12837</p> <p>1 MR CHASKALSON SC: Well, we have a shot</p> <p>2 of the helicopter on the ground at 15:54:37. That's the</p> <p>3 last, so it's between 15:54:37 and when the video starts,</p> <p>4 which is at 15:57:30. It's in a three-minute interval.</p> <p>5 CHAIRPERSON: Alright, so you understand</p> <p>6 that. It can't be determined with absolute Greenwich Mean</p> <p>7 Time accuracy, but we know more or less when it was. Now</p> <p>8 the question you were asked is can you, based on that</p> <p>9 information, give us an estimate, obviously no more than</p> <p>10 that, as to what the time lapse was between your leaving</p> <p>11 the JOC and your getting into the helicopter?</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>13 would like to check maybe to say at what time did I leave</p> <p>14 the JOC, and then it will also having that, it will assist</p> <p>15 me precisely to say at what time.</p> <p>16 CHAIRPERSON: You see that is what we're</p> <p>17 trying to find out. Anyway, if you can't tell us, then we</p> <p>18 just have to leave it there, but perhaps Ms Le Roux, you</p> <p>19 can proceed. The witness tells us he's not able to answer</p> <p>20 that question with any accuracy, and obviously he doesn't</p> <p>21 want to answer it inaccurately, which is fair enough in the</p> <p>22 circumstances. So I suggest we carry on.</p> <p>23 MS LE ROUX: Yes, Chair, and actually</p> <p>24 what I intend to do is what the South African Human Rights</p> <p>25 Commission will in due course request from the Commission,</p>
<p style="text-align: right;">Page 12836</p> <p>1 CHAIRPERSON: Of the report, I</p> <p>2 understand.</p> <p>3 MR CHASKALSON SC: - that the General</p> <p>4 received. It would have taken some time for the helicopter</p> <p>5 to get going after that report.</p> <p>6 CHAIRPERSON: Yes, and he heard that</p> <p>7 report, according to his evidence, as he was walking</p> <p>8 towards the helicopter. So the helicopter must have left</p> <p>9 some time after 11:54, presumably not very long after.</p> <p>10 MS LE ROUX: Chair, if I could take the</p> <p>11 Commission to the video now, because we've done an analysis</p> <p>12 of both the Nel video and the Protea Coin video, and then</p> <p>13 used the evidence leaders' time presentation to try to</p> <p>14 isolate when the different helicopters take off. If I</p> <p>15 could now go through that clear analysis –</p> <p>16 CHAIRPERSON: Yes, so before we get</p> <p>17 there, you understand we're on a different exercise, and</p> <p>18 that is the witness wants to know, or is trying to estimate</p> <p>19 the answer to the question you asked him before, namely the</p> <p>20 time lapse between his leaving the JOC and his getting into</p> <p>21 the helicopter, and he says he'd like to know what – he</p> <p>22 can't remember precisely what he said - and you can</p> <p>23 understand that - before about when the helicopter left.</p> <p>24 Now it seems that must have been round about 11:55 – sorry,</p> <p>25 15:55.</p>	<p style="text-align: right;">Page 12838</p> <p>1 is an opportunity to present the time analysis using the</p> <p>2 two helicopters to try to give more precision to when</p> <p>3 Major-General Mpeembe took off. We, based on that analysis,</p> <p>4 just to give you the headline point, we believe he took off</p> <p>5 the earliest 15:55, but I think I should do this as a</p> <p>6 presentation to the Commission rather than try to cross-</p> <p>7 examine the Major-General on it.</p> <p>8 CHAIRPERSON: Okay, all I'm concerned is</p> <p>9 that the questions you're asking should not be unfair, not</p> <p>10 put him at a disadvantage. He quite properly said, I can't</p> <p>11 give you an accurate answer of the time lapse, and so in</p> <p>12 effect he's saying, don't press me to give an inaccurate</p> <p>13 answer, and that's a fair approach, isn't it? So let's</p> <p>14 carry on.</p> <p>15 MS LE ROUX: Yes, Chair, and I won't, as</p> <p>16 I said I won't detain the Major-General by trying to do the</p> <p>17 analysis through cross-examination time. Hopefully we can</p> <p>18 do a presentation on that at a later date. Major-General,</p> <p>19 I'd now like to turn to the question of the radios on the</p> <p>20 16th.</p> <p>21 CHAIRPERSON: [Microphone off, inaudible]</p> <p>22 radios. What Mr Chaskalson has told us, and perhaps we</p> <p>23 should ask the witness for his comments - Mr Chaskalson,</p> <p>24 what time do you say the helicopter landed, came back?</p> <p>25 MR CHASKALSON SC: Well, that we can</p>

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1 prove, Mr Chairperson, because we have video footage of
 2 that.
 3 CHAIRPERSON: Alright, what time?
 4 MR CHASKALSON SC: That was –
 5 CHAIRPERSON: I thought you said
 6 something like 16:17.
 7 MR CHASKALSON SC: I've got to find my
 8 note again.
 9 CHAIRPERSON: I think you said –
 10 MR CHASKALSON SC: 16:17:45.
 11 CHAIRPERSON: That's right. So you hear
 12 that, Major-General, the evidence leaders say they can
 13 prove by reference to videos and so on that your helicopter
 14 came back at 16:47:45. I don't think we need to –
 15 MR CHASKALSON SC: 16:17. 17.
 16 CHAIRPERSON: 16:17:45.
 17 MR CHASKALSON SC: 4:17.
 18 CHAIRPERSON: Yes, yes. 4:17PM. Now are
 19 you prepared to accept that?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I
 21 will accept it if it is also demonstrated to me, because
 22 this –
 23 CHAIRPERSON: Very well, okay –
 24 MAJOR-GENERAL MPEMBE: As I've said – I'm
 25 sorry?

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1 CHAIRPERSON: You accept it provisionally
 2 then?
 3 MAJOR-GENERAL MPEMBE: Chairperson, I
 4 will accept because the helicopter, as I've said before, by
 5 the time when I heard that on the radio, I asked the pilot
 6 to take me to the JOC.
 7 CHAIRPERSON: Yes.
 8 MAJOR-GENERAL MPEMBE: It left again, so
 9 I just wanted to check whether was it the landing which I
 10 wanted it should be done or it was the second one, then –
 11 MR CHASKALSON SC: It is the first
 12 landing, Mr Chairperson. It's where the helicopter drops
 13 Major-General Mpeembe and then departs again.
 14 CHAIRPERSON: Alright, and that you say
 15 is 17 minutes past 4 in the afternoon?
 16 MR CHASKALSON SC: That's correct.
 17 CHAIRPERSON: Right.
 18 MAJOR-GENERAL MPEMBE: I will accept it,
 19 Chairperson.
 20 CHAIRPERSON: So you provisionally accept
 21 that, alright.
 22 MAJOR-GENERAL MPEMBE: Yes.
 23 CHAIRPERSON: Now the next question is,
 24 how long did it take you to get from the helicopter back –
 25 did you go straight back to the JOC?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson. It landed – maybe we can check that distance
 3 from where –
 4 CHAIRPERSON: Ja, probably –
 5 MAJOR-GENERAL MPEMBE: - and then going
 6 to the JOC.
 7 CHAIRPERSON: Yes, how long did it take
 8 you? A couple of minutes to get –
 9 MAJOR-GENERAL MPEMBE: It will take me
 10 couple of minutes.
 11 CHAIRPERSON: Alright, okay. So now
 12 we've ascertained with probably as much accuracy as we'll
 13 ever be able to when you were away from the JOC, and when
 14 you went back. So Ms Le Roux, having established those
 15 facts, where do we go from here?
 16 MS LE ROUX: Chair, as I said, we'll do a
 17 presentation to the Commission using the evidence leaders'
 18 timing, which we think will clarify in greater detail –
 19 CHAIRPERSON: I understand that, but –
 20 MS LE ROUX: And now we're moving to, on
 21 the 16th, the question of radios.
 22 CHAIRPERSON: And the reason I wanted to
 23 clear this other point up is the radios you're talking
 24 about, are you going to talk about how they were working,
 25 or you're going to talk about things that were heard on the

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1 radio, and if so, what time are you dealing with? Are you
 2 dealing with the time when he was in the helicopter, when
 3 he was in the JOC, or what precisely are you dealing with?
 4 Because I think in fairness to him, he's entitled to know
 5 before he answers your question.
 6 MS LE ROUX: Yes, Chair. Major-General
 7 Mpeembe, I'm talking about radios on the afternoon of the
 8 16th of August, and specifically, as I understand it you had
 9 a radio with you when you left the JOC, when you were in
 10 the helicopter, and then you returned to the JOC. For that
 11 entire period you had a handheld radio, correct?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson, it was also played here to this Commission.
 14 MS LE ROUX: And Major-General, as I
 15 understand your evidence, because you've talked about how
 16 you heard things on the radio about the TRT before you got
 17 into the helicopter, when you'd left the JOC your radio was
 18 working, it was on, you could hear things on the radio,
 19 correct?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 MS LE ROUX: Major-General, does the JOC
 23 receive any radio communication that you would not have
 24 received on your handheld radio?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson,

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1 if we were in the same channel.

2 MS LE ROUX: Major-General, I'd like to

3 go through a series of statements from other SAPS members,

4 some of whom were in the JOC, spoke to the JOC, just to

5 clarify what they say in their statements about what they

6 heard on the radio, so if we could start with the statement

7 of Masinya, this is exhibit HHH8, and Major-General, if you

8 could turn – there are a number of statements filed by

9 Warrant-Officer Masinya, if you could turn to one that has

10 pagination stamped at the top of it, it commences at stamp

11 184, and particularly if you could turn to stamped page 186

12 and there's paragraph 12 at the top of that page.

13 MR NGALWANA: Perhaps if we're given the

14 date of the statement it might assist.

15 MS LE ROUX: The 6th of May 2013.

16 CHAIRPERSON: Sorry, is this one of the

17 statements you gave us?

18 MS LE ROUX: Yes, Chair.

19 CHAIRPERSON: So let me find it first.

20 We obviously have to mark it as an exhibit, won't we? Is

21 it handwritten or typed?

22 MS LE ROUX: Sorry, Chair, it's already

23 exhibit HHH8, so –

24 CHAIRPERSON: Oh, I see. Thank you.

25 MS LE ROUX: I'm now told it was not

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1 included in your bundle for that reason.

2 CHAIRPERSON: I had forgotten that.

3 Thank you for reminding me.

4 MAJOR-GENERAL MPEMBE: Chairperson, I

5 would like to be asked, told whether maybe, what number is

6 it on the bundle of documents?

7 MS LE ROUX: It is one of the documents

8 in item 6, which lists all of the exhibits under the HHH

9 identification. It's in that, it's HHH8.

10 MAJOR-GENERAL MPEMBE: Item 6, I only

11 have HHH3 and HHH15.1. That's the only one that I do have,

12 those two documents. I don't have the one of Masinya.

13 MS LE ROUX: Chair, if I could ask my

14 learned friend –

15 CHAIRPERSON: HHH8, statement of Masinya

16 that I have before me deals with the events of the 13th,

17 which you're not cross-examining about at the moment. Is

18 that right?

19 MS LE ROUX: Chair, my instructions are

20 that the consolidated statement was marked as the exhibit,

21 which has all of his statements.

22 CHAIRPERSON: Then are you now referring

23 to the document that's headed OOO182? That's the second

24 Masinya statement which is part of exhibit HHH8.

25 MS LE ROUX: No, Chair, that's a

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1 handwritten document. If you turn two more pages to the

2 stamp 184 –

3 CHAIRPERSON: I see.

4 MS LE ROUX: - there's another statement

5 from May this year.

6 CHAIRPERSON: Alright, I see that.

7 That's –

8 MS LE ROUX: And then it –

9 CHAIRPERSON: That's the statement you're

10 referring to?

11 MS LE ROUX: Yes, and then it's the

12 stamped page 186 of that statement, which has paragraph 12

13 at the top of the page.

14 MR NGALWANA: We are definitely not on

15 the same page. For one thing, Masinya, we don't have a

16 consolidated statement of Warrant-Officer Masinya.

17 CHAIRPERSON: Well, I'm sorry, Mr

18 Ngalwana, what I've been given as exhibit HHH8 contains

19 what we'll call an assemblage, or collection of Masinya's

20 statements, and there are, I think I'm correct in thinking

21 there are four statements. So if you've got the whole of

22 HHH8 then you're on the same page as we are. If you

23 haven't, you'll have to look at the police hard drive at

24 page OOO186, which is the last page of a document which is

25 simply headed, a typed document which is simply headed

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1 "Statement." It's followed in the exhibit by OOO187, which

2 is headed "Second supplementary statement." So it's the

3 page before second supplementary statement.

4 MR NGALWANA: We'll borrow from the

5 evidence leaders, Chair. We don't have that.

6 MS LE ROUX: And Chair, if I could

7 request my learned friend for the SAPS to assist the

8 witness, since he didn't seem to be provided with the

9 statement. I don't know if he has a set of exhibits that

10 he can access.

11 CHAIRPERSON: Commissioner Hemraj is

12 making her copy available.

13 MS LE ROUX: Thank you, Commissioner.

14 Major-General, do you have the page stamped 186, headed by

15 paragraph 12, which for the record reads, "We then went

16 back to the JOC. The shooting started. We heard this

17 because we were listening through the radio at this" –

18 [12:27] CHAIRPERSON: Ms Le Roux, that's an

19 unfair way of putting it. What the witness had said

20 earlier was he was one of the video operators who was on

21 the koppie and who left the koppie after there was a

22 warning that he and his colleague were regarded as spies,

23 and that appears to have taken place round, just after

24 noon, as far as I can see, on the 16th. What he then deals

25 with in the paragraph to which you've referred, which is

<p style="text-align: right;">Page 12847</p> <p>1 paragraph 12, he says, "We then went back to the JOC." 2 He's referring to what happened shortly after noon, I 3 think, 12 noon, when he received this warning about the 4 police spies, and then if you put it in the context like 5 that, then the witness could understand it. 6 MS LE ROUX: Yes, Major-General. 7 MAJOR-GENERAL MPEMBE: Chairperson, this 8 statement which I have, and it's the same as Commissioner 9 Hemraj, but what you read I don't see it here. 10 CHAIRPERSON: In fact the previous page 11 he talks about 12h00 in paragraph 10, and then in paragraph 12 11 he talks about the warning from Captain Adriaio. I see 13 if one refers to exhibit L, that statement by Captain 14 Adriaio to the video operators that they'd been identified 15 as police spies, which led to their leaving the koppie, 16 that is stated as having happened at 13:25. So it looks as 17 if, if that's correct, as if the statement in para 12 18 effectively refers shortly after 13:25, so what Masinya is 19 saying is, "We then went back to the JOC." It's just after 20 13:25. "The shooting started. We heard this because we 21 were listening to the radio at the JOC." Now that 22 obviously involved a big time lapse because if he went back 23 to the JOC just after 13:25 and the shooting only started 24 some time just before 4 o'clock, he can't say he heard any 25 shooting at that stage. So this statement, taken out of</p>	<p style="text-align: right;">Page 12849</p> <p>1 considerable amount of time before the shooting started. 2 That's the point I'm making. So they would have got back 3 to the JOC, various things happened. The shooting, as we 4 know, only started shortly before 4 o'clock. I don't think 5 we can accept that they got back to the JOC just before 4 6 o'clock. 7 MR CHASKALSON SC: Well, that again will 8 depend on further evidence. Earlier in the cross- 9 examination of Major-General Mpeembe I intervened to point 10 out that the evidence will be that the command to go back 11 to the JOC, or the instruction to go back to the JOC didn't 12 come from Captain Adriaio; Captain Adriaio conveyed a message 13 to, we think Brigadier Calitz, who in turn conveyed the 14 message to Colonel Mere, who in turn in due course 15 instructed the members to go back to the JOC. They may or 16 may not have gone back to the JOC shortly before 4 o'clock. 17 At this stage we don't know. 18 CHAIRPERSON: Let me try to solve the 19 problem before Adv Hemraj asks her question. Did you see 20 the videographers back at the JOC at some stage during the 21 course of the afternoon? 22 MAJOR-GENERAL MPEMBE: No, Chairperson. 23 CHAIRPERSON: So you can't help us. 24 COMMISSIONER HEMRAJ: Ms Le Roux, your 25 question is that there is an officer who says he was in the</p>
<p style="text-align: right;">Page 12848</p> <p>1 context, is very misleading. 2 MR CHASKALSON SC: Sorry, Mr Chairperson, 3 I wonder if I might interject there? I have a real concern 4 about the Commission treating exhibit L as evidence. It 5 wasn't presented as evidence and there are major flaws, 6 particularly in the times in exhibit L, which will be dealt 7 with in cross-examination of Colonel Scott, and I want to 8 emphasise that exhibit L should not be treated as evidence. 9 It was expressly allowed in on the basis that it was not 10 evidence. 11 CHAIRPERSON: I take your cautionary 12 note, but it's not relevant to the point I'm making, and 13 that is – 14 MR CHASKALSON SC: With respect, 15 Chairman, it is, Chairperson – 16 CHAIRPERSON: No, no – 17 MR CHASKALSON SC: - because you are 18 putting a time gap between the radio and what exhibit L 19 says the time is when the cameramen left the koppie. My 20 concern is that that time might be completely unreliable 21 and isn't evidence, and shouldn't – 22 CHAIRPERSON: No, no, I understand, but 23 the point I was trying to make was that whether it appears 24 that the departure of the video operators from the koppie 25 and their going to the JOC took place as a fair amount, a</p>	<p style="text-align: right;">Page 12850</p> <p>1 JOC and he heard the shooting over the radio. 2 MS LE ROUX: Correct, Commissioner. 3 COMMISSIONER HEMRAJ: Yes, and what 4 follows upon that? I didn't quite catch the question after 5 that to the witness. 6 MS LE ROUX: Commissioner, I then intend 7 to move to the next statement of the next officer who says 8 he heard about the shooting on the radio that Major-General 9 Mpeembe had access to on that channel, that's where I'm 10 going. 11 CHAIRPERSON: Alright, so – 12 MS LE ROUX: So there are a series of 13 statements of other members who report radio communication 14 relating to the shooting. I'm trying to establish that 15 Major-General Mpeembe, if indeed he had his handheld radio 16 with him, would have been in a position to know about the 17 shooting. 18 CHAIRPERSON: Major-General, you 19 understand the point being put to you? A number of people 20 say that they heard about the shooting on the radio, 21 including Masinya, whose statement we just looked at. What 22 time he got to the JOC is neither here nor there. The 23 point that is relevant is that he says the shooting started 24 and he heard about it on the radio, and you said you had 25 access to a radio, handheld radio, and you therefore heard</p>

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1 what the people in the JOC were hearing on their radio.
 2 That's the basis upon which these questions are being
 3 asked, and I think she's going to put a series of other
 4 statements of other people who spoke about the shooting and
 5 what they heard on the radio. Is that correct?
 6 MS LE ROUX: Yes, Chair.
 7 CHAIRPERSON: So perhaps you should put
 8 them all to him and then he can comment.
 9 MS LE ROUX: Let me do that, Chair.
 10 MR NGALWANA: Yes, Chair, before he does
 11 that, the time is very important of course because my
 12 learned friend started off by talking about when he went to
 13 the chopper, which is around 4 in the afternoon – I'm just
 14 stating broadly. This doesn't suggest that it happened
 15 around 4. It's all, regardless of what exhibit L says, the
 16 sequence of the statement itself, it cannot be said that
 17 this relates to 4 in the afternoon. It relates to a much
 18 earlier time, it appears.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 shooting to hear earlier in the afternoon. So I can
 21 understand it being heard about later, but it couldn't have
 22 been heard about before it happened, and as far as we can
 23 make out, the shooting only started, the tragedy only
 24 occurred some time after Mathunjwa left and the barbed wire
 25 was uncoiled. So that's the point – anyway, Ms Le Roux can

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1 put her bits of information from the various statements to
 2 the General, and the General now wants to say something.
 3 So tell us what you want to say, General.
 4 MAJOR-GENERAL MPEMBE: Chairperson, I
 5 would like the clarification. What I said, it was precise
 6 that was in the radio, that I heard in the radio. The
 7 statement that I've referred to that I heard the shooting,
 8 it doesn't specify what who heard on the radio. So maybe
 9 if the words of the people that heard the radio could also
 10 be put to me?
 11 CHAIRPERSON: Ja, ja, well she put the
 12 paragraph to you. That one's rather vague, Masinya, so
 13 let's – she's got some more. Let's see how specific they
 14 are. I've asked her to put them all to you. Listen to
 15 them all and then you can comment. I think that's the
 16 quickest way forward, don't you think?
 17 MAJOR-GENERAL MPEMBE: Okay, Chairperson.
 18 CHAIRPERSON: I take your point. Some of
 19 these statements are rather vague and it's difficult for
 20 you to comment directly on them. Let's see them as a
 21 collection, as it were, in totality, and then you can
 22 comment.
 23 MAJOR-GENERAL MPEMBE: No, thanks,
 24 Chairperson.
 25 MS LE ROUX: Thank you, Chair. So the

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1 first of the five statements that we have is Warrant-
 2 Officer Masinya, paragraph 12, who states, "We then went
 3 back to the JOC. The shooting started. We heard this
 4 because we were listening through the radio at the JOC."
 5 The second statement is that of Captain Loest, and at
 6 paragraph 8 –
 7 CHAIRPERSON: Give us the reference,
 8 please. Is that an exhibit, or is that a new document?
 9 There was a new document of Loest which I read last night,
 10 but –
 11 MS LE ROUX: Chair, it's item 13 on the
 12 index. I believe it is a new – it needs to be exhibited.
 13 CHAIRPERSON: Ja well, it doesn't help to
 14 give me item numbers because I wasn't given an index, but I
 15 was given a bundle of statements which I read through last
 16 night. So let me find it. Here it is; it's a document
 17 headed "Further statement, I, Captain Paul Bismark Loest."
 18 MS LE ROUX: Correct, Chair, and it was
 19 signed on the 7th of November 2012.
 20 CHAIRPERSON: Right, so we will mark that
 21 HHH44. It's further statement, Captain Loest, dated
 22 7/11/2012.
 23 MS LE ROUX: Chair, perhaps if we could
 24 deal with exhibit numbers and then we'll go to the
 25 substance of the statement. The next statement is that –

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1 CHAIRPERSON: No, no, wait, wait. What
 2 paragraph – if I've got the right Loest statement in front
 3 of me, he refers to having made two earlier statements.
 4 Now we're busy with the 7 November one, are we? And what
 5 paragraph in that?
 6 MS LE ROUX: Paragraph 8, Chair. He
 7 states, "After the shooting a large group of the TRT" –
 8 CHAIRPERSON: Wait, wait, wait, let's
 9 make sure the witness has got it. Have you got that
 10 statement?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson, I have the statement, paragraph 8.
 13 CHAIRPERSON: Right, look at para 8. Now
 14 she's now going to read you the passage that she relies on,
 15 so listen carefully –
 16 MS LE ROUX: Chair, perhaps could I
 17 introduce all of the statements as exhibits, if we could
 18 get that housekeeping out of the way –
 19 CHAIRPERSON: Yes, alright.
 20 MS LE ROUX: - and then we could go
 21 statement by statement. So –
 22 CHAIRPERSON: Yes, okay, let's do that.
 23 MS LE ROUX: So the statement by Captain
 24 Loest –
 25 CHAIRPERSON: This one I'm going to mark

<p style="text-align: right;">Page 12855</p> <p>1 as exhibit HHH44. That's the Loest statement of November.</p> <p>2 MS LE ROUX: Thank you, Chair.</p> <p>3 CHAIRPERSON: What's the next one?</p> <p>4 MS LE ROUX: The next one is that of</p> <p>5 Major-General Naidoo, which I'm advised is, I'm instructed</p> <p>6 is exhibit DD.</p> <p>7 CHAIRPERSON: Exhibit?</p> <p>8 MS LE ROUX: DD.</p> <p>9 CHAIRPERSON: [Microphone off, inaudible]</p> <p>10 you going to refer to there?</p> <p>11 MS LE ROUX: In the Loest statement it's</p> <p>12 paragraph 8 –</p> <p>13 CHAIRPERSON: Yes. No, you've given us</p> <p>14 that. I see that the, whoever was responsible for</p> <p>15 preparing General Naidoo's statement didn't believe in</p> <p>16 paragraph numbers, which is a –</p> <p>17 MS LE ROUX: Yes, Chair.</p> <p>18 CHAIRPERSON: - an interesting but</p> <p>19 foolish attitude, but what page must we look at?</p> <p>20 MS LE ROUX: Page 4, and it's the</p> <p>21 paragraph at the bottom of that page, the second paragraph</p> <p>22 on the page.</p> <p>23 CHAIRPERSON: It looks like –</p> <p>24 MS LE ROUX: It commences, "I briefed all</p> <p>25 my commanders" –</p>	<p style="text-align: right;">Page 12857</p> <p>1 MS LE ROUX: Yes, that is a handwritten</p> <p>2 two-page statement.</p> <p>3 CHAIRPERSON: That Tsiloane statement, is</p> <p>4 that Sello Stephen Tsiloane?</p> <p>5 MS LE ROUX: Correct, Chair.</p> <p>6 CHAIRPERSON: And that's exhibit HHH45,</p> <p>7 statement by –</p> <p>8 MS LE ROUX: I don't know his rank.</p> <p>9 CHAIRPERSON: Yes, he seems a bit shy</p> <p>10 about telling us what his rank is. Is he perhaps a</p> <p>11 Lieutenant-Colonel? It looks at the end of his signature</p> <p>12 is Lieutenant-Colonel. Perhaps Mr Ngalwana can tell us.</p> <p>13 Tsiloane, is he – or perhaps the General can. Sello</p> <p>14 Tsiloane, is he a Lieutenant-Colonel?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct,</p> <p>16 Chairperson.</p> <p>17 CHAIRPERSON: Alright, so it's a</p> <p>18 statement by Lieutenant-Colonel Tsiloane. That's exhibit</p> <p>19 HHH45. So have you got all the statements now, Major-</p> <p>20 General?</p> <p>21 MAJOR-GENERAL MPEMBE: Correct,</p> <p>22 Chairperson.</p> <p>23 MS LE ROUX: Thank you, Chair. So we</p> <p>24 have those five statements, and then if the witness could</p> <p>25 also have access to exhibit FFF25, the occurrence book.</p>
<p style="text-align: right;">Page 12856</p> <p>1 CHAIRPERSON: It looks like the fifth –</p> <p>2 oh, that paragraph.</p> <p>3 MS LE ROUX: Yes.</p> <p>4 CHAIRPERSON: Paragraph, "I briefed all</p> <p>5 my commanders," and then the paragraph about the radio</p> <p>6 appears to be the fifth line of that para, "At between</p> <p>7 15:40 and 15:45 we heard on the radio," is that right?</p> <p>8 MS LE ROUX: Correct, Chair.</p> <p>9 CHAIRPERSON: Alright, that's the next</p> <p>10 one. And then?</p> <p>11 MS LE ROUX: Then the statement of</p> <p>12 Brigadier Fritz, which I'm instructed is already exhibit</p> <p>13 GGG8.</p> <p>14 CHAIRPERSON: Yes, paragraph?</p> <p>15 MS LE ROUX: And within that statement,</p> <p>16 paragraph 4.</p> <p>17 CHAIRPERSON: Have you got that, Major-</p> <p>18 General?</p> <p>19 MAJOR-GENERAL MPEMBE: Correct,</p> <p>20 Chairperson.</p> <p>21 MS LE ROUX: And then the final statement</p> <p>22 is that by Sello Tsiloane, which I'm instructed is not yet</p> <p>23 an exhibit.</p> <p>24 CHAIRPERSON: That was the one that you</p> <p>25 gave us?</p>	<p style="text-align: right;">Page 12858</p> <p>1 MR NGALWANA: Perhaps if the witness</p> <p>2 could be told to which paragraph he's going to be referred</p> <p>3 in the Tsiloane statement.</p> <p>4 MS LE ROUX: Entry 1017.</p> <p>5 MAJOR-GENERAL MPEMBE: I'm sorry,</p> <p>6 Chairperson, on Colonel Tsiloane's statement, which</p> <p>7 paragraph?</p> <p>8 MS LE ROUX: Paragraph 8 on the second</p> <p>9 page. It records the Lieutenant-Colonel's use of the radio</p> <p>10 to report the statistic of fatally wounded and the people</p> <p>11 who were already dead.</p> <p>12 CHAIRPERSON: Where does it say he gave</p> <p>13 it – I suppose if he gave the statistics from chopper 21 he</p> <p>14 could only have done that by radio. That's your point. So</p> <p>15 it's an implied reference to the radio.</p> <p>16 MS LE ROUX: Correct, Chair, and that is</p> <p>17 a reference, it's chopper 2, not 21. Apparently that's an</p> <p>18 overzealous full stop.</p> <p>19 CHAIRPERSON: Alright, now that we've</p> <p>20 done the housekeeping, we've referred to the statements –</p> <p>21 MS LE ROUX: Chair, can I now go –</p> <p>22 CHAIRPERSON: Now you're going to take</p> <p>23 the witness through them?</p> <p>24 MS LE ROUX: Yes, can I now go through</p> <p>25 each of those statements and the paragraphs identified for</p>

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1 the record. Major-General, if you could start with the
 2 Masinya statement, and paragraph 12 that appears on stamped
 3 page 186, there it states, "We then went back to the JOC.
 4 The shooting started. We heard this because we were
 5 listening through the radio at the JOC." If you could then
 6 pick up the statement of Captain Loest, which has now been
 7 marked as HHH44, turning to paragraph 8 of that, it states,
 8 "After the shooting a large group of the TRT members in
 9 line moved forward toward the north, but still within the
 10 area of the first incident."
 11 CHAIRPERSON: [Microphone off,
 12 inaudible]. I'm misbehaving too. My microphone wasn't on.
 13 Do me a favour, look at the witness, make sure he's got the
 14 document in front of him before you start reading, because
 15 it's obviously only fair he should follow. I'm not
 16 suggesting you're being deliberately unfair, but just in
 17 future do that because it will save time, really.
 18 MAJOR-GENERAL MPEMBE: I got the
 19 statement.
 20 MS LE ROUX: Thank you, Major-General,
 21 and if you could turn to paragraph 8 of the statement.
 22 MAJOR-GENERAL MPEMBE: I have it.
 23 MS LE ROUX: Okay. For the record, it
 24 states, "After the shooting a large group of the TRT
 25 members in line moved forward toward the north, but still

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1 within the area of the first incident. I remained behind.
 2 I called to JOC, requesting medical people to be brought in
 3 to assist the injured protesters." That's the relevant
 4 portion of that paragraph. Major-General, if you could
 5 turn to the statement of Lieutenant-Colonel Naidoo, which
 6 is exhibit DD – sorry, Major-General –
 7 CHAIRPERSON: DD, is it?
 8 MS LE ROUX: Yes.
 9 [12:47] CHAIRPERSON: Yes, I've got it. This is
 10 page 4, is it?
 11 MS LE ROUX: Yes. Major-General, if you
 12 can turn to page 4 of that statement –
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson, I've got it.
 15 MS LE ROUX: And the paragraph that
 16 appears at the bottom of that page, it commences, "I
 17 briefed all my commanders," but if I could ask you to pay
 18 attention to the fifth line which states, "At between 15:40
 19 and 15:45 we heard on the radio that the negotiation group
 20 report that they were under attack by the crowd, and
 21 thereafter the sound of gunfire erupted. At approximately
 22 15:45 I heard a call for medical assistance at koppie 1, as
 23 well as that the veld was set alight by the strikers."
 24 Chair, if I can just note for the benefit of the
 25 Commissioners that in the statement it's recorded that he

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1 heard the call for medical assistance over the radio; we
 2 assume that must be the call made by Captain Loest in the
 3 statement I've just referred to, and that's why he
 4 proceeded from forward holding area 1 to scene 2. If I can
 5 also just assist the Commissioners that we know from the
 6 video evidence in terms of the timing question that Naidoo
 7 proceeds from forward holding area 1 less than two minutes
 8 after the shooting at scene 1. I don't intend to take the
 9 Commission to that video, but from the Lonmin FLIR camera,
 10 the F-L-I-R camera, we see there, we see General Naidoo and
 11 his members travelling along the road there. It's
 12 obviously some distance from forward holding area 1 and
 13 we've managed to calculate that it will take approximately
 14 30 seconds to get to that point in the FLIR camera, and we
 15 can see them travelling from forward holding area 1 as at
 16 16:01:43.
 17 MR NGALWANA: Chair, we don't accept –
 18 MS LE ROUX: I don't intend to go through
 19 the video evidence. If my learned friend needs to correct
 20 that or clarify that with me, I'm happy to take that up
 21 with him in the lunch adjournment –
 22 CHAIRPERSON: I don't know that the exact
 23 times are relevant for this witness. I mean you're
 24 basically trying to establish a general principle, aren't
 25 you? Now the detailed times, which may be the subject of

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1 debate, they can come up later, I would have thought. Am I
 2 correct?
 3 MS LE ROUX: That's fine, Chair. If I
 4 can then, Major-General, ask you to turn to exhibit GGG8,
 5 which is the statement by Brigadier Fritz –
 6 MR NGALWANA: For the record, Chair, we
 7 do not accept any of the timelines to which my learned
 8 friend has referred.
 9 CHAIRPERSON: You know, I understand
 10 there's going to be some evidence given, or presentation
 11 made in respect of timelines and the police or will not
 12 have the opportunity to deal with it. Mr Chaskalson may
 13 have some comments –
 14 MR CHASKALSON SC: Mr Chairperson, that
 15 presentation was made several months ago and is accepted by
 16 the parties. I mean no-one has objected to it. Colonel
 17 Scott communicated to me on the day that he accepted it.
 18 There has been no-one taking issue with that.
 19 CHAIRPERSON: We don't have to deal with
 20 that problem now.
 21 MR NGALWANA: Chair, that's not what I'm
 22 talking about –
 23 CHAIRPERSON: The shoe is now pinching
 24 and there's some complaint. We'll deal with it at the
 25 appropriate time.

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1 MS LE ROUX: Thank you, Chair. If I can
 2 then continue –
 3 CHAIRPERSON: Where are we going to now?
 4 G?
 5 MS LE ROUX: GGG8, the statement by
 6 Brigadier Fritz.
 7 CHAIRPERSON: Ja.
 8 MS LE ROUX: And Major-General, could I
 9 ask you to turn to paragraph 4 of that statement on its
 10 second page. Do you have that?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MS LE ROUX: For the record it reads,
 14 "While I was at the JOC, General Annandale informed me that
 15 a shooting had taken place at the koppie. I was instructed
 16 by General Annandale to climb into a chopper and fly to the
 17 area and give a situational report (sit-rep). I climbed on
 18 the SAPS Squirrel chopper. The chopper had no fixed video
 19 and camera recording equipment," and then he goes into who
 20 else was with him in the chopper. Chair, the point with
 21 respect to the statement by Brigadier Fritz is that
 22 Annandale, who was in the JOC, had clearly heard of the
 23 shooting and would have done so through the radio. I can
 24 then –
 25 MR NGALWANA: No, Chair, no.

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1 CHAIRPERSON: It sounds as if Mr Ngalwana
 2 doesn't agree with you, and he's not a witness at the
 3 moment, but he's entitled to say that the inference you
 4 draw may not be correct. I mean he might for example have
 5 received a cell phone message about that, for all we know.
 6 You assume he got it from the radio. You may be right, but
 7 it's not self-evident. There may be a cell phone message
 8 as well, but anyway, your point is that he knew in the JOC
 9 that shooting had taken place and he despatched Brigadier
 10 Fritz and Lieutenant-Colonel Botha and a lady, whose name
 11 I've forgotten, to go into the air to see what was going
 12 on, from the helicopter, and I think Fritz also had to give
 13 instructions, if necessary. But anyway, you've made the
 14 point, so –
 15 MS LE ROUX: Correct, Chair, and I'll
 16 move on now to exhibit HHH45, the statement by Lieutenant-
 17 Colonel Tsiloane.
 18 MR NGALWANA: Chair, I'm sorry, the
 19 Chairperson says she's made the point. I'm struggling to
 20 understand what point is it that is made.
 21 CHAIRPERSON: Well, I don't know that you
 22 have to – I don't know whether you're raising an objection
 23 or your inability to understand the point –
 24 MR NGALWANA: It's not an objection; I
 25 just want to –

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1 CHAIRPERSON: But I'll try to help you.
 2 The point that she makes is that according to Brigadier
 3 Fritz he was told by Major-General Annandale that there had
 4 been shooting and he was please to get into the helicopter
 5 and go up, give a situation report. That's the point she's
 6 made. From that it appears that Major-General Annandale
 7 knew there had been a shooting and he despatched Brigadier
 8 Fritz and Lieutenant-Colonel Botha and others into the air.
 9 That's the point she's made. I hope you now understand it.
 10 Can we carry on, please Ms Le Roux?
 11 MS LE ROUX: Thank you, Chair. Major-
 12 General, do you have exhibit HHH45, the statement by
 13 Lieutenant-Colonel Tsiloane?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 MS LE ROUX: And if you could turn to the
 17 second page of that statement, paragraph 8, do you have
 18 that?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 MS LE ROUX: For the record, it states,
 22 "I deployed members of Nyala 5 to disarm the fatal wounded
 23 strikers, which we did, and count the fatal wounded and the
 24 people who were already dead and give this statistic for
 25 chopper 2." From that we infer that Lieutenant-Colonel

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1 Tsiloane used the radio to communicate with chopper 2.
 2 MR NGALWANA: We don't accept the
 3 inference –
 4 CHAIRPERSON: I take it, it's possible to
 5 communicate – I don't know whether it happened or not, but
 6 it's possible also for Lieutenant-Colonel Tsiloane to have
 7 communicated with chopper 2 by cell phone. It's possible.
 8 MS LE ROUX: Yes, Chair, that would be
 9 possible. I now intend to turn to the occurrence book
 10 though, which records specifically bodies are down, and
 11 then give the number, 18 bodies are down. We think that is
 12 Tsiloane's statistics.
 13 CHAIRPERSON: I understand that, but
 14 you're giving us individual items of evidence, as it were,
 15 and your commentary on them sometimes goes further than one
 16 is entitled to go on the basis of individual items standing
 17 alone. That's the point taken by Mr Ngalwana. It's a good
 18 point, but you say you're now going to bring all these
 19 things together by referring to the occurrence book.
 20 MS LE ROUX: Yes, Chair, the occurrence
 21 book is the next aspect of the evidence, because these –
 22 CHAIRPERSON: Remind me of the exhibit
 23 number.
 24 MS LE ROUX: FFF25, and specifically
 25 entry 1017 and 1018, and I'll identify the times when we

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1 get there.

2 CHAIRPERSON: Have you got that, Major-

3 General? It's page 25 of the typed version of the

4 occurrence book.

5 MAJOR-GENERAL MPEMBE: I have it,

6 Chairperson.

7 MS LE ROUX: Thank you, Chair, and Major-

8 General, if you could direct your attention to the entry

9 1017 at 15:55, it states, "Situation report, Papa1

10 reporting the group are moving to TRT members and they try

11 to attack them. Papa1 reporting that the people are moving

12 around and some are down." Major-General, if you could

13 then look at the next entry, which is entry 1018 at 15:56,

14 "Situation report," do you have that, Major-General?

15 MAJOR-GENERAL MPEMBE: Correct,

16 Chairperson.

17 MS LE ROUX: It states, "Situation

18 report, Papa1 reporting the people are running towards the

19 houses, running to the western side of the koppie. 18

20 bodies are down. Chopper 1 reporting that is at the back

21 of the koppie. Other people are running towards Karee

22 Hostel," and then in the same entry, if you could go next

23 to the time stamp 16:05, "Instruction given to the medics

24 to go and assist at holding area; there are 30

25 people/bodies lying down." Major-General, do you see that

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1 entry?

2 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

3 I do see.

4 MS LE ROUX: Major-General, to pull this

5 all together before we take the lunch adjournment, we see –

6 well the South African Human Rights Commission will submit

7 to this Commission that from the five statements of

8 Masinya, Loest, Naidoo, Fritz, and Tsiloane, it is clear

9 that the radio was being used to announce that there had

10 been shooting, that medical assistance was needed, that

11 people were injured or already dead. The occurrence book,

12 we will submit, records those communications on the radio.

13 So again returning to your evidence that you only knew of

14 the shooting much later once you were in the helicopter,

15 the question to you is in light of all of these statements

16 and the recording in the occurrence book of radio

17 communications announcing that there had been a shooting

18 and that people had been injured and killed, how is it that

19 you didn't hear this on the radio?

20 MR NGALWANA: Chair, I object to the

21 basis for the question, the factual basis for the question.

22 There is no evidence – I can understand my learned friend

23 saying this is going to be their argument, but to put as a

24 factual proposition that from the five statements it shows

25 that information was received by radio is factually

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1 incorrect from the statements themselves. Secondly, as

2 regards timelines and relying on FFF25 for that, we've had

3 numerous debates about the accuracy or otherwise, and in

4 fact the manner in which entries are made in FFF25. An

5 example was specifically made with reference to entry 1018,

6 that this couldn't possibly have been a contemporaneous

7 recording in FFF25. I object to the factual foundation.

8 CHAIRPERSON: Ms Le Roux, I think it

9 seems, I think it's common cause, is it not, that the times

10 in the occurrence book can't be relied on; they require

11 adjustment and so on. The second point that emerged in the

12 evidence is that series of entries under 1018, particularly

13 the one at 15:56 does look like a whole series of entries

14 had been run together and the evidence, you'll remember, of

15 Major-General Annandale was that various reports were being

16 received and they had been written down on pieces of paper

17 and eventually they were then entered into the occurrence

18 book. So to that extent Mr Ngalwana is right. I seem to

19 remember, however, that what we were told was that what is

20 in the occurrence book is a record of reports received by

21 radio, do not include reports received by individuals on

22 their cell phones. I think that's correct; I could be

23 wrong.

24 MS LE ROUX: That is my recollection as

25 well, Chair.

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1 CHAIRPERSON: Anyway, I wasn't sure about

2 the last statement I made. Adv Hemraj seems to think that

3 she doesn't remember it that way, but presumably in due

4 course we will have to ascertain from other people at the

5 JOC whether what was being recorded on the pieces of paper

6 and then transferred into the book was only material

7 received by radio, or whether it also included possible

8 cell phone messages, but that really is the substance of

9 the objection raised at the moment. Is that correct, Mr

10 Ngalwana?

11 MR NGALWANA: Correct, Chair, and I can

12 make reference to three of the statements on which our

13 learned friend has relied. It says nothing of the kind

14 that she's putting to the witness.

15 CHAIRPERSON: Okay, the only concern at

16 the moment is the occurrence book. It was quite clear – we

17 covered that before – that a number of the statements

18 referred to communications with people which were not

19 necessarily by radio; the statements didn't say so. I

20 think that point has to be accepted. We haven't got a

21 problem with that. The real issue is whether the notes in

22 the occurrence book were made only on the basis of radio

23 reports received, or possibly cell phone reports received

24 as well, and Adv Hemraj, and I think Adv Tokota agrees that

25 there is no evidence one way or the other on that. It's my

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1 impression it was radio reports, but my impression could be
 2 erroneous, but in any event, at some stage we will find out
 3 from a witness who was in the JOC what exactly happened in
 4 that regard.

5 MR NGALWANA: Chair, correct, with
 6 respect, but I'm making a slightly different point. I'm
 7 saying the statements on which my learned friend relies for
 8 the proposition that information was learned by radio is
 9 incorrect, on the paragraphs on which she herself relies.
 10 For example, if one looks at the statement of the 6th of
 11 May, HHH8, the paragraph to which she pointed us – no, no,
 12 that's not the one, sorry.

13 CHAIRPERSON: I think I've accepted that
 14 the statements themselves, she infers that the reports were
 15 by radio; the statements don't say that. They may be by
 16 radio, they may not be by radio. We don't know. We can't
 17 accept that without more at this stage. So you don't have
 18 to address me on that. I'm with you on it.

19 MR NGALWANA: Thank you. I'm indebted to
 20 the Chair.

21 CHAIRPERSON: The answer is you'll have
 22 to rephrase your question. The point you were making was
 23 that – and you can possibly make the point again with the
 24 necessary qualification. The point you were making is the
 25 Human Rights Commission is going to contend at the end of

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1 the day that those in the JOC, as I understand you, must
 2 have known what was happening because they will contend
 3 that these entries in all the circumstances were received
 4 by radio. Of course if that last section isn't
 5 established, then the point will fall away. But that's
 6 basically your argument, isn't it? That's what you're
 7 going to contend, and the further point is that this
 8 witness, because he was on the radio, would have known
 9 these things as well. Is that your point?

10 MS LE ROUX: Yes, Chair. The point is
 11 that when Major-General Mpembe says he only knew of the
 12 shootings and the fact that people had been injured and the
 13 fact that medical personnel were required much later in the
 14 afternoon, that this Commission should not accept that
 15 testimony in light of the cumulative weight of other
 16 statements, which it is true are insufficiently detailed as
 17 to time. They are insufficiently detailed, but that should
 18 not be to the benefit of the SAPS that they have failed to
 19 provide sufficiently specific statements on this point.
 20 The South African Human Rights Commission will submit in
 21 due course that when you read those five statements
 22 together with the occurrence book, it is clear that had
 23 Major-General Mpembe been listening on the radio, he would
 24 have learned of the shooting a lot sooner than his evidence
 25 suggests. That is the point.

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1 CHAIRPERSON: I understand the simple
 2 point being made, there are a number of hurdles they've got
 3 to get over in order to establish the point, that they say
 4 that they will set out to prove that a number of these
 5 communications were made by radio. It's not quite clear at
 6 this stage they were, but they're going to try to prove
 7 that, and they say they will also try to prove that what
 8 was recorded in the occurrence book was material that had
 9 been received by radio. Now if they establish those
 10 things, they will then argue to us at the end that you as
 11 someone with a handheld radio, who was listening on the
 12 radio, must have known at an earlier stage than you admit
 13 that there had been shootings and bodies were down on so
 14 on. That's your point?

15 MS LE ROUX: Correct, Chair.

16 CHAIRPERSON: Now how do you answer that?

17 MR NGALWANA: Chair, with respect, she's
 18 also relying on statements, not just FFF25, and I'm saying
 19 it's misleading to say these statements show that the
 20 communication was done by radio.

21 CHAIRPERSON: I reformulated her
 22 question. I deliberately made it clear that she hadn't
 23 established these facts. I said she hopes to establish
 24 them in due course. If she establishes them, this is what
 25 she's going to argue. I covered all those points, and then

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1 I said to the witness is he prepared to comment on it.
 2 There are various comments he can make, but she's going to
 3 argue that. It's only fair that she should say this is how
 4 we propose to establish it; would you like to comment.
 5 [13:07] He can either say it's true or he can say it's
 6 not true, or he can say I don't think you've established
 7 those points. But anyway, I mustn't suggest things he can
 8 say. Let's hear what his answer is.

9 MS LE ROUX: Chair, if I could –

10 CHAIRPERSON: You understand the point
 11 being made? They say that you are not being truthful when
 12 you say that you didn't know until much later that there
 13 had been shootings, and they're going to endeavour to
 14 establish – whether they'll succeed or not is another
 15 matter, but they will endeavour to establish that there was
 16 a lot of radio traffic which indicated that you should have
 17 known that there were shootings. So that's their argument.
 18 They're going to raise that at the end. Would you like to
 19 comment on it now, or it's for you to decide what answer
 20 you give.

21 MAJOR-GENERAL MPEMBE: Chairperson, in my
 22 statement, and also maybe I'll have to check my evidence to
 23 the Commission, and I will have to deal with each statement
 24 and check exactly what I said and compare with what they,
 25 the Advocate is saying and to establish what she's saying

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1 is correct in terms of what I'm saying. So –

2 CHAIRPERSON: Surely you can remember

3 whether you heard on the radio that there was shooting. If

4 you didn't hear on the radio there was shooting, and that's

5 why you didn't know there was shooting till much later,

6 than that's your answer. If she wants to disprove it,

7 she's going to have to prove a number of things that she

8 hasn't proved yet, but the simple question is, did you hear

9 on the radio reports which made it clear to you that there

10 had been shootings and the people had been shot?

11 MAJOR-GENERAL MPEMBE: I said no,

12 Chairperson, but the communications of the line of TRT is

13 being attacked, I heard it. But that was not a conclusive

14 proof that there was a shooting, and there are a number of

15 statements, Chairperson, and including Major Annandale that

16 he has referred to, that he also said – so that's why I

17 wanted maybe I should go in terms of details, as she did,

18 with those statements and also give my version so that it

19 could be clearly. But if that is sufficient for the

20 Commission, that is correct.

21 CHAIRPERSON: For myself I would have

22 thought it's enough for the time being. Can we take the

23 lunch adjournment now, Ms Le Roux?

24 MS LE ROUX: Yes, Chair, I must just

25 request guidance from the Commissioners, however, because

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1 my learned friend from the SAPS is making objection, saying

2 there's a failure to establish particular times with

3 specificity; there's a failure to establish whether it's

4 radio or cell phone message; there's a failure to establish

5 this, that, and the other thing. The reason nobody in this

6 room can establish that is because the SAPS have provided

7 inadequate statements. In addition, we don't know whether

8 these witnesses will be called in due course. So to now

9 have an objection ruled because we are unable to establish

10 facts because it's in the SAPS' power to provide or

11 withhold that information –

12 CHAIRPERSON: That may be. Maybe it's in

13 their power to give the information; they didn't give it to

14 you, and maybe you're at a disadvantage, but you can't then

15 turn that around and then say that you're therefore

16 entitled to say this was radio material. As far as the

17 timelines are concerned, I understood there was a special

18 meeting of the parties at which the timelines were

19 discussed and apparently, according to what Mr Chaskalson

20 tells us, accepted by the police representative at the

21 meeting, Colonel Scott. Perhaps when he comes as a next

22 witness that matter can be dealt with briefly.

23 As far as the other points are concerned, if the

24 statements are inadequate, it doesn't matter whose fault it

25 is. You can't rely upon what you say the statement should

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1 have said in order to establish a fact that may not be

2 correct, but anyway, the point's been covered –

3 MS LE ROUX: But the difficulty is this;

4 for my client in its participation and attempt to assist

5 the Commission in finding out what happened on that day,

6 we're provided with inadequate statements by the SAPS. We

7 are then prevented in the progress of our cross-examination

8 because of the inadequacy of those statements. We are told

9 that there will be supplementary statements to come who

10 knows when, hence the evidence leaders requested a ruling

11 this morning following engagement so that we have a

12 deadline to that, because the cross-examination is severely

13 undermined and handicapped if we don't have the full body

14 of the SAPS case.

15 CHAIRPERSON: Yes, the short point is

16 this; the police at the very beginning when the Commission

17 was appointed promised their full cooperation with the

18 Commission, and what has happened is from time to time

19 queries have been addressed to the police, asking for extra

20 information, and to be fair, it's been given – I'm not

21 sure, I think some of it may still be outstanding, but

22 certainly as far as we can tell, endeavours have been made

23 to provide the information sought. So what I suggest you

24 do is very simple - and you yourselves have written letters

25 to the police asking for information – what you can do, I

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1 think there are five items we're busy with, you can ask the

2 police to confirm whether the communications referred to in

3 the various statements to which you have referred were made

4 by radio or some other way, and when you get the answer

5 back you can then take the point further, and –

6 MS LE ROUX: Chair, one final point –

7 CHAIRPERSON: Sorry, can I finish?

8 MS LE ROUX: Yes.

9 CHAIRPERSON: What you've done, in fact

10 you've assumed that the communications were by radio, and

11 they weren't necessarily by radio, and you've built your

12 cross-examination on an assumption which may be erroneous.

13 But never mind, let's not worry about that. Ask them for

14 the full information you need and then come back and deal

15 with it, and that way we can save time. I understand how

16 the problem arose, but that's water under the bridge.

17 Let's not look back. We don't want to have the fate of

18 Lot's wife. Let's just move forward and when you get the

19 information that you're going to ask for, you can return to

20 the point. If the General is out of the witness box by

21 then, we can possibly get him back later so you can put it

22 to him shortly, alright?

23 MS LE ROUX: Chair, I must just make two

24 final points. The first is that we will certainly engaged

25 with our Chair friends for the SAPS to try to get even

<p style="text-align: right;">Page 12879</p> <p>1 more clarity, but it is the SAPS' obligation to provide 2 this Commission with sufficient detail and as much of a 3 record as is possible, so the obligation is not necessarily 4 on the other parties to chase the SAPS for the SAPS to 5 provide that information, but we will engage with them and 6 attempt to clarify.</p> <p>7 But the final point that I must make is that the 8 reason this is all the more problematic is because the only 9 version that will now be put in person before this 10 Commission is that of the SAPS. The other eyewitnesses are 11 no longer present. They are no participating, and we don't 12 know whether they will be able to come and provide that 13 evidence.</p> <p>14 CHAIRPERSON: I'm sorry, I don't 15 understand what you're talking about. At the moment the 16 issue is whether the people, as I understand you, the 17 people in the JOC and this witness in the helicopter knew 18 that there had been shootings and when they knew it. 19 That's an issue. I don't know who the eyewitnesses are who 20 you are referring to –</p> <p>21 MS LE ROUX: Chair, I'm referring to the 22 injured and arrested miners. They're making a broader 23 point which is that given the lack of specificity in what 24 we have from the SAPS, the fact that we don't know what 25 will come in the supplementary statements, given that we</p>	<p style="text-align: right;">Page 12881</p> <p>1 important to know whether the communications were by radio 2 or otherwise, so we can't say their failure to provide that 3 information is somehow an inadequacy which gives rise to 4 criticism. They had an enormous amount of statements to 5 prepare. There were all sorts of topics they had to 6 discuss. Whether their minds were focussed on the question 7 whether communication was by radio or not, is not clear to 8 me, and I don't think we can assume that to be the case. 9 But we've thrashed the matter out. I'm sure you'll get the 10 cooperation that you want from the police. They promised 11 it from the very beginning. Let's rely on that.</p> <p>12 I'm reminded of the fact that you said the only 13 voice we'll get will be the evidence of the police. The 14 rulings that you sought us to make, and which we made, 15 provided that the persons who are now absent, their 16 versions will be presented to the Commission by the 17 evidence leaders. They will have the power to call these 18 people if they wish. We've got the two statements that 19 were filed by Mr Mpofu of witnesses he was proposing to 20 call. We can subpoena them if necessary. There are 21 something like 300 IPID statements of persons who were 22 interviewed by IPID. The evidence leaders have, I'm 23 informed, gone through all those statements and if 24 necessary, they can lead further witnesses in order to 25 ensure that the version of the survivors, the injured and</p>
<p style="text-align: right;">Page 12880</p> <p>1 don't have the other eyewitnesses, we have the SAPS and we 2 have injured and arrested miners, those are the two groups 3 of eyewitnesses that could assist this Commission. We only 4 have one of those groups now present.</p> <p>5 CHAIRPERSON: Yes, Ms Le Roux –</p> <p>6 MS LE ROUX: It's a broader point that 7 I'm making –</p> <p>8 CHAIRPERSON: Ms Le Roux, I –</p> <p>9 MS LE ROUX: - not relating to the 10 precise question.</p> <p>11 CHAIRPERSON: Ms Le Roux, on the issue as 12 to whether the people in the JOC and/or the Major-General 13 in the helicopter knew when the shootings took place, 14 that's not an issue on which the injured and arrested 15 miners can give any direct evidence of their own at all. 16 So the fact that they're not here to tell us this takes the 17 matter no further. The information that we have may well, 18 if supplemented in the way I've suggested, indicate the 19 answer to the question because the extra information you 20 get in response to the queries you've asked may well 21 provide what is missing. So that's the point to be raised 22 there.</p> <p>23 The further point is in relation to your 24 criticism of the police, I don't think we can say that the 25 police knew when these statements were drafted that it was</p>	<p style="text-align: right;">Page 12882</p> <p>1 arrested miners, that those versions are before the 2 Commission, so that the Commission will be able at the end 3 of the day to present a report which is not one-sided, 4 based solely on what the police say, but is based on 5 evidence from the people who are currently absent as well, 6 as also – you must not forget – we're not dependent in this 7 Commission only on direct testimony, there's also 8 circumstantial evidence which may well be in some ways more 9 powerful than the evidence of witnesses whose credibility 10 may be under attack, and furthermore there's a mass of 11 video material which is being carefully analysed, and also, 12 I think there's also audio material as well. All that 13 material, and there are also photographs that were taken, 14 all that material will be before the Commission. So to 15 suggest that our report will be one-sided, will be based 16 only on the version of the police, is in the circumstances 17 of the particular issue we're concerned with, not correct, 18 and I think it's important that I make that clear so that 19 everybody understands what the position is. I'm not 20 suggesting that you went so far as to suggest that, but it 21 is a belief that's held in certain quarters and the sooner 22 the correct position in that regard is made clear, the 23 better. At this point we'll take the lunch adjournment.</p> <p>24 MR NGALWANA: Chair, can I – no, no, I'm 25 not responding, Chair. I just want to clarify –</p>

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1 CHAIRPERSON: I've adjourned for lunch.
 2 You can say what you want to me after lunch.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [14:08] CHAIRPERSON: The Commission resumes.
 5 Major-General, you're still under oath.
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 CHAIRPERSON: Ms Le Roux, are you still
 9 going to proceed to some extent with the topic that you
 10 were busy with before we adjourned or -
 11 MS LE ROUX: Chair, it's related, it's a
 12 new point.
 13 CHAIRPERSON: Oh sorry, I beg your
 14 pardon, I'd forgotten. Before we adjourned you wanted to
 15 say something and I said we'd adjourn and you could raise
 16 it again when we resumed. I'd forgotten that, I apologise,
 17 please raise the matter now that you wanted to raise.
 18 MR NGALWANA: Thank you, Chair. It's
 19 really a matter of clarity, hopefully it will assist our
 20 learned friend. The suggestion it seems to me that is
 21 being made is that the General may have not told the entire
 22 truth about not having heard on the radio about the death
 23 or the shooting of people. Chair, if our learned friend
 24 had read the General's statement, GGG12, she would have
 25 seen at page 21, paragraph 49 that the General says and I

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1 quote, paragraph 49. It starts with, "Both Brigadier
 2 Tsiloane and I took along our hand-held radios then we
 3 could follow the communication of the SAPS radio. The
 4 Protea Coin helicopter flew above the three SAPS
 5 helicopters. I could see groups of people dispersing from
 6 the koppie and moving in a north and north-westerly
 7 direction. I could also see the arrival of and engagement
 8 by water canons at koppie 3. As the helicopter flew around
 9 the area I looked out for protesters who may have been
 10 regrouping. I then heard Lieutenant-Colonel Vermaak
 11 reporting over the radio that there were bodies down. It
 12 was not clear where." Then he goes on in paragraph 50 to
 13 say he immediately instructed the pilot to take him back to
 14 the JOC and that's when he learnt that the reference to
 15 "bodies down" may have been people who had been shot.
 16 CHAIRPERSON: Sorry no, it's even better
 17 for the witness than that to be fair, you know. If you
 18 look at the foot of page 21, in Para 50 where he says he
 19 instructed the pilot to take him back to the JOC. He says
 20 to make sure that the medical personnel at hand were enough
 21 to attend to those said to be lying on the ground and to
 22 prepare the process. So in other words, he already
 23 suspected that were people who had been shot, who were in
 24 need of medical attention and that is why, well one of the
 25 two main reasons why he told the pilot to take him back to

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1 the JOC so that he could arrange for the necessary medical
 2 personnel.
 3 MR NGALWANA: Correct, Chair
 4 CHAIRPERSON: So that's also a factor -
 5 MR NGALWANA: Yes, absolutely.
 6 CHAIRPERSON: I think Ms Le Roux suggests
 7 that he knew more, he knew it earlier but that's a matter
 8 which she will come back to if and when she's able to
 9 establish the facts upon which she based her cross-
 10 examination which - in the statement in the document she
 11 relied on. I take it she's moved on from that for the
 12 moment and she's going to move to another point. Is that
 13 correct Ms le Roux?
 14 MS LE ROUX: That's correct, Chair. And
 15 my learned friend's quotation from Major-General Mpeembe's
 16 witness statement in fact keys up precisely where I now
 17 intend to go in my cross-examination. And, Chair, if we
 18 could have the Lonmin chopper video which is exhibit CC24?
 19 I'm advised it's 22 not 25, my apologies and this is a
 20 video that has previously been seen. I have asked for it
 21 to commence at 11:40 in the video, time stamp 11:40.
 22 CHAIRPERSON: Sorry, forgive me
 23 interrupting you, you say this is Lonmin chopper, is this
 24 not the Protea Coin chopper?
 25 MS LE ROUX: The Protea Coin chopper, yes

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1 correct.
 2 CHAIRPERSON: Remember we had a bit of a
 3 thing about that.
 4 MS LE ROUX: The Lonmin chopper is a
 5 Protea Coin chopper -
 6 CHAIRPERSON: This is a Protea Coin
 7 chopper which was actually leased at the time or made
 8 available under some kind of contract to Lonmin. That's
 9 the helicopter you're referring to.
 10 MS LE ROUX: Correct, Chairperson.
 11 CHAIRPERSON: And that's the one in which
 12 the witness was at the relevant time.
 13 MS LE ROUX: Correct, Chair.
 14 CHAIRPERSON: So where are you starting?
 15 MS LE ROUX: I'm starting at 11:40 in
 16 that video. Chair, to orientate with respect to Major-
 17 General Mpeembe's statement this is when - we assume that
 18 this correlates with when in paragraph 49 of his statement
 19 he says "I then heard Lieutenant-Colonel Vermaak reporting
 20 over the radio that there were bodies down." So if we
 21 could just hear that short clip and then pause again at
 22 11:45.
 23 [VIDEO SHOWN]
 24 Major-General Mpeembe, two questions. The first
 25 is I want to understand your evidence clearly. Are you

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1 saying that that is the first time you heard of bodies
 2 down, that until that point when you were in the helicopter
 3 you had not heard anything on the radio relating to bodies
 4 down, people down, people lying down, the need for medical
 5 personnel?
 6 MR NGALWANA: Chair, perhaps in fairness
 7 to the witness, we don't know what our learned friend,
 8 where our learned friend, in terms of time, places this
 9 recording. I heard something in the audio, but I don't
 10 want to testify from the bar which suggests a different
 11 time from what she may have had in mind. So perhaps if she
 12 can clarify time-wise when does she place this.
 13 CHAIRPERSON: Perhaps we can have the
 14 Advocate play it again so we can then concentrate very
 15 carefully on the point that's being raised.
 16 MR NGALWANA: We might have to have
 17 audio.
 18 [VIDEO SHOWN]
 19 MS LE ROUX: Again, Major-General Mpembe,
 20 in your witness statement at paragraph 49 where you say "I
 21 then heard Lieutenant -
 22 CHAIRPERSON: I'm sorry, Ms Le Roux, Mr
 23 Ngalwana did ask you to indicate for the benefit of the
 24 witness what time you say this happened, what we've now
 25 seen and heard on the video clip. I think that's the

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1 question -
 2 MS LE ROUX: That was at 11:40 of that -
 3 CHAIRPERSON: That's not the time, 11:40,
 4 that's the place on the clip which indicates where you'll
 5 find it, it wasn't 11:40, it was sometime around about 4
 6 o'clock in the afternoon wasn't it?
 7 MR NGALWANA: In fact two questions,
 8 Chair. At what time and where?
 9 CHAIRPERSON: Perhaps Mr Chaskalson can
 10 help us. You've spent an enormous amount of time, as I
 11 understand, in correlating these videos and trying to
 12 ascertain a time line -
 13 MS LE ROUX: Sorry, Mr Chair, I'm advised
 14 that it correlates to 16:09:10. So 11:40 when "JOC, JOC
 15 chopper two bodies down", is heard on the audio using the
 16 evidence leader's time presentation correlates to 16:09:10.
 17 CHAIRPERSON: Well -
 18 MR CHASKALSON SC: I do have it at 16:09
 19 but, Mr Chairperson, I think that my learned friend's clip,
 20 the time is probably where that clip starts, where the
 21 voice first says, "JOC, JOC chopper," as opposed to where
 22 it then says, "JOC, JOC chopper, two bodies down." I have
 23 16:09:32 for JOC, JOC chopper two bodies down.
 24 MS LE ROUX: That's correct, Chair, my
 25 correlation to 16:09:10 is the start of that audio, not the

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1 particular point where two bodies are mentioned.
 2 CHAIRPERSON: If one looks at exhibit
 3 FFF25, page 25, that's the passage we referred to earlier
 4 one sees two things. We'll see a number of things, two
 5 things I'm referring to. The one is just above the
 6 reference 16:05 which is - I think it is agreed, everyone
 7 agrees that you can't rely on the time but just above the
 8 16:05 which is parts of entry 1018, there's a note, chopper
 9 reporting two bodies down. Is this chopper regarded as
 10 Chopper 2 or this a reference to two other bodies that were
 11 down?
 12 MR CHASKALSON SC: This may be another
 13 inaccuracy in the occurrence book, Chair. This chopper is
 14 Chopper 1, sorry not this chopper. This chopper is a Coin
 15 chopper. Colonel Vermaak's chopper from which we
 16 understand that communication to have emanated was Chopper
 17 1. Brigadier Fritz' chopper was Chopper 2 and Brigadier
 18 Fritz did not make that report. We're of the view that
 19 Brigadier Fritz did -
 20 CHAIRPERSON: The other entry that is
 21 relevant, of course, is the one which is 10:17, PAPA 1
 22 reporting the group removing TRT members, they tried to
 23 attack them, PAPA 1 reporting that the people were moving
 24 around and that some are down. Now PAPA 1, whose chopper
 25 is that?

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1 MR CHASKALSON SC: PAPA 1 is Brigadier
 2 Calitz's Nyala.
 3 CHAIRPERSON: Oh sorry that's Brigadier
 4 Calitz's Nyala. So he reports that some are down, so the
 5 witness told us that as he was on his way to his helicopter
 6 he heard a report over the radio that some people are down,
 7 so that's a reference already to people being down. And
 8 then there's a subsequent one which is the one that we've
 9 heard.
 10 MR NGALWANA: Chair, I don't remember the
 11 evidence as the Chairperson remembers it, as regards what
 12 the witness said on his way to the chopper.
 13 CHAIRPERSON: You did tell us, did you
 14 not that when you were on your way to the helicopter, after
 15 you left the JOC, the vicinity of the JOC you had your
 16 hand-held radio in your hand and you heard that report
 17 which I read out from occurrence book. That's correct,
 18 isn't it? Ja.
 19 Ms Le Roux, it's your cross-examination, carry
 20 on.
 21 MS LE ROUX: Thank you, Chair. Major-
 22 General Mpembe, to go back to my question, in paragraph 49
 23 of your witness statement where you say "I then heard
 24 Lieutenant-Colonel Vermaak reporting over the radio that
 25 there were bodies down" are you referring to that clip of

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1 the audio that we've now heard twice?
 2 MAJOR-GENERAL MPEMBE: Chairperson, the
 3 one that I heard it's when Brigadier Calitz said to him why
 4 the vehicles are still at the back, he must check for him,
 5 that's the one that I heard. But in this video I didn't
 6 hear, maybe you can go a little backward, but the one that
 7 made me to understand that there is a problem is when
 8 Brigadier Calitz said why are still people at the back.
 9 That's when then Colonel Vermaak went to check and when he
 10 reports he reported that he sees bodies down.
 11 MS LE ROUX: Major-General, I don't want
 12 to move from this point, I will just note for the record
 13 that in exhibit GGG35, which is the transcript of the
 14 Protea Coin helicopter video prepared by the team for the
 15 South African Human Rights Commission, you're correct.
 16 Before this part of the audio which JOC, JOC chopper two
 17 bodies at the back of the second koppie, two bodies there
 18 is audio from - Major-General Annandale identified some of
 19 those voices as being Calitz, with respect to you know
 20 directing this Nyala to move up, that canter to go there.
 21 So you're correct in the overall audio where this clip is
 22 identified. I'll move on once that's translated. So,
 23 Major-General with that clarification and from the
 24 transcript this is the only time that we hear anybody talk
 25 about two bodies down. Are you comfortable with where we

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1 are in your flight, that this is when Lieutenant-Colonel
 2 Vermaak announces two bodies, two bodies down?
 3 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 4 requesting that may I hear that voice of Brigadier Calitz
 5 because I didn't hear it here.
 6 CHAIRPERSON: I think that's fair because
 7 the section we heard I think started just after that point
 8 and obviously it's important for you to hear the voice just
 9 before the passage we saw and heard and you can then
 10 identify the voice perhaps.
 11 MS LE ROUX: Chair, if we can then go -
 12 it may then just make sense to play from the beginning of
 13 the video because the audio all the way through is water
 14 canon go there and Nyala go there. So perhaps we need to
 15 go all the way back -
 16 CHAIRPERSON: Advocate Hemraj has pointed
 17 out to me that the female voice says, "Brigadier can we
 18 deploy the canters to help you," and that's at 11:25.
 19 Perhaps that - and according to the note that she has made
 20 there's a male voice which is that of Lieutenant-Colonel
 21 Vermaak says, "JOC chopper," and then there's another male
 22 voice which is described as being that of Brigadier Calitz
 23 saying, "small koppie we've made 1,2,3,4, 5,6 arrests."
 24 But that's all from 11:25 so if that's the passage that you
 25 want then perhaps we don't have to have the whole thing if

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1 the relevant section is at 11:25. Is that correct, Ms Le
 2 Roux.
 3 MS LE ROUX: No, Chair, my understanding
 4 is the General wanted earlier where Calitz is directing
 5 Nyalas and water canons, is that correct Major-General,
 6 that's what you wanted?
 7 MAJOR-GENERAL MPEMBE: No, Chairperson.
 8 [14:28] CHAIRPERSON: We start at 11:25 or did
 9 you want an earlier passage?
 10 MS LE ROUX: Chair, we can start at
 11 11:25.
 12 CHAIRPERSON: Alright.
 13 MR NGALWANA: Chair, may I say something
 14 about GGG35 to which my learned friend has intimated.
 15 CHAIRPERSON: Yes.
 16 MR NGALWANA: I understand that this is a
 17 transcript that's been prepared by the South African Human
 18 Rights Commission. It was subject to an agreement, an
 19 agreed version being presented. I'm not aware of us being
 20 approached.
 21 CHAIRPERSON: No, I understand.
 22 MR NGALWANA: But I'm not going to object
 23 to it being -
 24 CHAIRPERSON: No, the point you make is
 25 reminding them that there's supposed to be agreement still

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1 but we're only using it as a kind of index to find the
 2 relevant passage for the moment.
 3 MR CHASKALSON SC: Mr Chairperson, if I
 4 might come in there. It is of crucial importance that we
 5 get agreement on this transcript and SAPS have now had this
 6 draft for several months, I wonder if they might come back
 7 to us with the specific problems that they have with this
 8 transcript.
 9 CHAIRPERSON: I take it what you've said
 10 has been heard and noted and we will have a reply
 11 reasonably soon.
 12 MR NGALWANA: In due course, thank you,
 13 Chair.
 14 CHAIRPERSON: Reasonably soon.
 15 MR CHASKALSON SC: And if I might ask a
 16 favour from SAPS in this regard. SAPS are particularly
 17 well placed to identify the voices, so instead of male
 18 voice, female voice where SAPS can say Colonel Vermaak,
 19 Brigadier Calitz, etcetera we would welcome that too.
 20 COMMISSIONER HEMRAJ: That's already in
 21 evidence - sorry.
 22 CHAIRPERSON: According to what Advocate
 23 Hemraj told me a moment ago her recollection is that this
 24 was shown while General Annandale was in the box and he
 25 identified the voices but -

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1 MR CHASKALSON SC: Not all of them and
 2 not exhaustively.
 3 CHAIRPERSON: Alright. I'm sure that
 4 point's also been noted by your learned friends from SAPS.
 5 MS LE ROUX: Thank you, Chair, so if we
 6 could play the clip from 11:25.
 7 [VIDEO SHOWN]
 8 MS LE ROUX: Thank you, Chair. So,
 9 Major-General Mpenbe, having heard more audio to orientate
 10 yourself, again my question. In your statement at
 11 paragraph 49 where you say "I then heard Lieutenant-Colonel
 12 Vermaak reporting over the radio that there were bodies
 13 down" does that accord with the audio clip that we've just
 14 heard?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MS LE ROUX: And, Major-General, your
 18 witness statement and it is the portion that my learned
 19 friend and the Chair have already read out, your witness
 20 statement then goes on essentially to say that immediately
 21 when you heard this you instructed the pilot to fly you
 22 back to the JOC to ascertain what was happening and ensure
 23 that medical personnel were sent. I'd like us to watch the
 24 video with respect to that return to the JOC.
 25 MR NGALWANA: Chair, our learned friend

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1 should learn, with respect to put the witness's own words
 2 and not use her own words to paraphrase what the witness
 3 says. The paragraph doesn't say "Immediately I instructed
 4 the chopper to take me back." He starts off by saying soon
 5 thereafter he heard Brigadier Calitz, then the next
 6 sentence says "I instructed the pilot to return me" there's
 7 no "immediately" there.
 8 MS LE ROUX: Chair, if he continues the
 9 paragraph it states "Immediately when I heard this I
 10 instructed the pilot to fly me back to the JOC in order to
 11 ascertain what was actually happening on the ground."
 12 CHAIRPERSON: It sounds as if - Alright,
 13 anyway let's move on. Have you given the reading to those
 14 responsible for showing us the clip, the sections that you
 15 want shown?
 16 MS LE ROUX: Chair, in addition to the
 17 witness statement, under cross-examination by my learned
 18 friend, Advocate Shoji, the Major-General again on the 18th
 19 of July this year said that immediately I heard there were
 20 bodies down I went to the JOC. What I'd now like us to do
 21 is watch the video and see that return.
 22 [VIDEO SHOWN]
 23 MS LE ROUX: Major-General Mpenbe, in
 24 light of what the video evidence tells us you didn't
 25 immediately instruct the pilot to return to the JOC did

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1 you?
 2 MR NGALWANA: No, no, Chair, you can't
 3 see that on the video.
 4 MS LE ROUX: Chair, that's precisely what
 5 you can see. Six and a half minutes Major-General Mpenbe
 6 circles the area and only then returns to the JOC. He did
 7 not immediately issue an instruction, from the audio, we
 8 hear no audio that he instructs the pilot to return to the
 9 JOC and the behaviour of the helicopter indicates that he
 10 did not immediately instruct to move back to the JOC. And,
 11 Chair, this is not a cheap point. The point is this, the
 12 South African Human Rights Commission, based on the
 13 evidence that we covered before lunch, the five statements
 14 in the occurrence book will submit that Major-General
 15 Mpenbe knew that there bodies down, that something had
 16 happened. That's why he went up in the helicopter in the
 17 first place. So it's not a cheap point that he says
 18 "immediately" and that's not six and a half minutes, it
 19 will say -
 20 CHAIRPERSON: I -
 21 MS LE ROUX: If I could just finish -
 22 CHAIRPERSON: I don't think he was
 23 suggesting it was a cheap point, that's what I'm saying,
 24 you don't have to deal with a cheap point, you're
 25 explaining the point you're making, that's fine and Mr

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1 Ngalwana isn't suggesting it's a cheap point, he says that
 2 what you say is factually not correct and you're answering
 3 him. So carry on with your answer.
 4 MS LE ROUX: Thank you, Chair. The point
 5 is this, that from the statements from the occurrence book
 6 Major-General Mpenbe knew that something had happened and
 7 that's why he went up in the helicopter, to get a better
 8 view. And let me be clear, the South African Human Rights
 9 Commission does not criticise Major-General Mpenbe for
 10 wanting to get a better sense of what was happening. The
 11 point is that his statement creates the impression that he
 12 discovers there are two bodies down and then he immediately
 13 returns to the JOC. He continues to assess the situation
 14 for six and a half minutes from his helicopter because he
 15 already knew that something had happened.
 16 COMMISSIONER HEMRAJ: Is it known what
 17 the flying time would be from where the chopper was to
 18 where they landed if they did go immediately?
 19 MR CHASKALSON SC: Commissioner, if I
 20 might interrupt there. If one plays the video forward one
 21 sees the video stop circling and then go to the JOC. I can
 22 give you an exact time difference, it's about two minutes.
 23 MS LE ROUX: Chair, perhaps if we just
 24 play the video which indicates it is about a two minute
 25 flight from where the chopper was which is where it starts,

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1 its circling and then returning to the JOC. So perhaps if
 2 we just play the remainder of the video until Major-General
 3 Mpmembe alight at the JOC.
 4 CHAIRPERSON: If there's no reason to
 5 reject it we can accept Advocate Chaskalson's time line.
 6 We don't have to spend time on that. It does appear that
 7 after the radio report that was referred to was heard the
 8 helicopter appears to have circled several times because
 9 one sees the kraal coming back at regular intervals. Now I
 10 don't know whether it's possible for a helicopter to come
 11 down without circling, that's something that perhaps - but
 12 I take it we can accept what Mr Chaskalson says. Anyway
 13 isn't it time to get the witness's answer?
 14 MS LE ROUX: Chair, the remainder of the
 15 video will indicate that the helicopter can just descend.
 16 In addition -
 17 CHAIRPERSON: Well let's carry on, let's
 18 carry on as you suggest.
 19 MS LE ROUX: In addition I'm advised that
 20 in any event the Protea Coin helicopter, because it's a
 21 civilian helicopter, cannot fly below a certain level that
 22 the SAPS choppers can. So it doesn't descend in circles as
 23 you'll see in the remainder of the video.
 24 CHAIRPERSON: Fine, okay. You've asked
 25 for the remainder of the video to be shown, let's see it.

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1 [VIDEO SHOWN]
 2 MS LE ROUX: Thank you, Chair, and that
 3 is then when Major-General Mpmembe alights and as you will
 4 recall from seeing the video before the chopper then takes
 5 off again. So Major-General to return to my question when
 6 your statement creates the impression that you immediately
 7 instructed the pilot to return to the JOC and did so that
 8 is incorrect.
 9 [14:48] MAJOR-GENERAL MPEMBE: Chairperson, I
 10 still stick to my statement. The chopper went back to the
 11 JOC because of my instruction. And immediately after I
 12 have alighted the chopper went back again. And I still
 13 stated that when I went to the chopper and fly I did not
 14 know at that time that there were people dead, and it is
 15 not true that I knew at that time that people were dead,
 16 and why the chopper made many turns, I hope that the pilot
 17 is the one that can answer that question. I did state that
 18 I was with the occupants of the pilot, they can testify to,
 19 they can corroborate my evidence, the chopper took me there
 20 because of my instruction.
 21 CHAIRPERSON: What actually turns on this
 22 point? He said immediately it appears max, to be the few
 23 minutes interval, if you are right the immediately was
 24 inaccurate, if he is right, he gave an instruction which we
 25 can't hear, perhaps because he wasn't near a microphone and

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1 the pilot reacted to it, but is it a point that's going to
 2 help us one way or the other to make any findings of the
 3 matter we're called upon to make findings on? Is there a
 4 point you want to make, if you say it would help us
 5 regarding the findings then you can carry on, but I'm a bit
 6 puzzled at the moment to see how this point is going to
 7 help us.
 8 MS LE ROUX: Chair, we'll make
 9 submissions in due course in light of the Major-General's
 10 testimony.
 11 CHAIRPERSON: Do you want to move on to
 12 another point?
 13 MS LE ROUX: Yes. Major-General, I would
 14 like to move on now to the question of radio problems on
 15 the 16th and confirm that your original statement says
 16 nothing about their being radio problems and confirm with
 17 you again that your original statement says nothing about
 18 trying to contact Calitz on the radio in particular and
 19 being unable to do so.
 20 CHAIRPERSON: No, Ms Le Roux, didn't Mr
 21 Mahlangu deal with this extensively when he cross-examined
 22 the witness? I don't want to stop you if you've got a new
 23 point, but I don't want to encourage you to plough over
 24 fields that had been ploughed already.
 25 MS LE ROUX: Chair, I hope I've

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1 demonstrated in the last day and a half that while I have
 2 to introduce a point by identifying it with something that
 3 has come previously, I generally do try to move on to a new
 4 point.
 5 CHAIRPERSON: No, no, I just -
 6 MS LE ROUX: And I have one, it relates
 7 to Mr White -
 8 CHAIRPERSON: If this is a new point then
 9 you can make it.
 10 MS LE ROUX: Thank you, Chair. Major-
 11 General, I'm just trying to orientate you that your
 12 original statement is silent on the question of any radio
 13 problems or any difficulties in contacting your fellow
 14 commanders and on the audio of the Protea Coin helicopter
 15 that we've just heard, there is no audio that we can
 16 discern that indicates you attempting to use the radio and
 17 having difficulty in doing that and indeed at paragraph 51
 18 of your original statement you state, "At all times while I
 19 was in the helicopter, which was a period of about 20
 20 minutes or less, I was accessible by radio both to the
 21 operational commander, Brigadier Calitz and to the JOC. As
 22 overall commander I could only give direction when
 23 direction was sought, either from the JOC or from the
 24 operational commander, and neither sought direction. So
 25 just to orientate you, that's the topic we're dealing with,

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1 and what I want to clarify is your testimony around radio
 2 difficulties. As I understand the evidence so far and if
 3 you can please confirm this or clarify it for me, you had
 4 difficulty getting on the radio, getting airtime on the
 5 radio because it was in use and as you indicated in
 6 paragraph 51 of your statement, no one sought direction
 7 from you, so you didn't need to get on the radio, is that
 8 correct?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I
 10 just wanted clarity with the airtime, what is meant by air
 11 time?
 12 MS LE ROUX: Major-General, what I mean
 13 by air time is that the radio was in use by other people
 14 and there wasn't a gap in the radio communication that you
 15 could start using the radio.
 16 MAJOR-GENERAL MPEMBE: Chairperson,
 17 mechanically speaking with the radio that we used on that
 18 day, while other people are speaking you are unable to
 19 speak because you have to press and you have to ask
 20 permission from the JOC. So if there are people who are
 21 still talking, it is not able to talk or maybe to ask
 22 permission to talk. Chairperson, it is not only myself
 23 that says that, there are numerous also, other witnesses
 24 that spoke about the radio.
 25 MR NGALWANA: Chair, for the sake of

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1 progress may I make this request, because it appears we
 2 repeat things that had been said and we traverse territory
 3 that has already been traversed, and the reason that's been
 4 given for that by our learned friend is that, well, it is a
 5 precursor to a new point. Can the convention be that our
 6 learned friend says what her new point is and then do this
 7 precursor exercise that she does, because we're never
 8 getting to this new point.
 9 CHAIRPERSON: Sometimes the cross-
 10 examiner doesn't like to reveal the point until the
 11 question is being asked and answered, but if it is
 12 possible, I take it you will do that in future, Ms Le Roux,
 13 will you, but it is not compulsory because I can remember
 14 the good reasons why cross-examiners sometime conceal the
 15 point until it is made, but you've been doing quite a lot
 16 of traversing on your previous material, so can we now, are
 17 you now in a position to get to the new point?
 18 MS LE ROUX: Chair, perhaps I should seek
 19 guidance from you in light of your rulings before lunch,
 20 because Mr White is in the process of preparing a final
 21 statement, given the fact that further supplementary
 22 statements and information keeps coming in he hasn't been
 23 able to complete that exercise. The point goes to whether
 24 the SAPS anticipated this difficulty and what contingency
 25 planning they made because this happens all the time. This

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1 is not unusual in police operations that there are
 2 difficulties with radio channel access.
 3 CHAIRPERSON: I must say I thought that
 4 was dealt with quite extensively with General Annandale and
 5 he explained problems with expense and so forth.
 6 MS LE ROUX: Chair, it was not being
 7 dealt with, with this witness.
 8 CHAIRPERSON: No, no, no, that's correct.
 9 If you've got something new that you want to put please go
 10 ahead.
 11 MS LE ROUX: Chair, my difficulty is that
 12 this is an entirely new point from what was covered with
 13 Annandale, the difficulty is this morning's ruling says I
 14 must put a short statement together from Mr White provided
 15 to the witness and have him comment on it, so –
 16 CHAIRPERSON: Yes –
 17 MS LE ROUX: - if I could have some
 18 guidance on how to proceed with this questioning.
 19 CHAIRPERSON: Well, let's see –
 20 MS LE ROUX: Must I do a short statement
 21 like the earlier point –
 22 CHAIRPERSON: The problem is, okay, the
 23 problem is this, where you are putting opinions which Mr
 24 White is going to state in his evidence, we have a
 25 statement from him, I know it is a provisional statement

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1 and I know why it was provisional, but we worked out a
 2 procedure at the beginning of the Commission with the hope
 3 that we shorten the proceedings and help everybody to make
 4 a contribution, and that was that the parties should file
 5 statements so that when other party's witnesses give
 6 evidence they know what it is they have to answer. Now I
 7 understand the practical difficulties with the Human Rights
 8 Commission and Mr White, but if you have a witness who you
 9 wish to cross-examine on something Mr White is going to
 10 say, it is only fair that the witness should be put in a
 11 position to know, with reasonable notice, what the point is
 12 that is going to be put.
 13 So if you're going to put something that Mr White
 14 is going to say which is not in his written report, then
 15 what I suggest we do is, you compile a short little
 16 document, the opinion he is going to express, which is not
 17 in his previous statement, and the reason shortly so that
 18 the witness is able to deal with it, otherwise the witness
 19 is taken by surprise, he doesn't have a chance to think
 20 about it and we get answers which are ill considered and
 21 which may sometimes may have to be withdrawn. So it is a
 22 mechanism that we devised originally when we said people
 23 should file statements in advance to expedite the
 24 proceedings and it is really just an elaboration of that.
 25 I hope that that is the clarity which you seek,

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1 and what you said so far is, the witness' earlier statement
 2 says nothing about the radio problems and that is a
 3 criticism which has been made, but I don't think that
 4 that's the point that Mr White wants to make, at least I
 5 would be surprised if that's the sole point he wants to
 6 make. I take it there is something more substantial that
 7 he wants to make, a point he wants to make about the radio
 8 problems, am I correct?
 9 MS LE ROUX: Yes, Chair, as I indicated
 10 Mr White, in light of the evidence that is coming in,
 11 relating to the SAPS reliance on radio difficulties to
 12 explain some of the events of the 16th, Mr White intends to,
 13 in a final statement, place opinions before this Commission
 14 relating to how those could have been anticipated, should
 15 have been anticipated because these type of difficulties
 16 are a routine in these type of operations. Chair, the
 17 difficulty –
 18 CHAIRPERSON: The difficulty I have is,
 19 I'm not sure this is the right witness to ask about that.
 20 This seems to me to be more head office problem relating to
 21 the way the police work generally with the equipment they
 22 have and so on. I'm not sure that this witness is able to
 23 deal meaningfully with it. I won't stop you but I just
 24 express my concern that, you know he may not really help
 25 us. The witness who can help us on this initially, I

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1 suppose, it would have been Major-General Annandale. If
 2 there are substantially points that Mr White wants to make
 3 it may be necessary for the general to be recalled to deal
 4 with them, but that is presumably is a bridge we will cross
 5 when we get there, but is this the right witness to deal
 6 with this kind of thing, because you're the cross-examiner,
 7 I don't want to hamper you but I have this problem.
 8 MS LE ROUX: Chair, it is appropriately
 9 put to the overall commander of the operation, it goes to
 10 planning, briefing, the equipment that was requested and
 11 the like, but in the light of the fact that we need to get
 12 a final instruction from Mr White as to what he wants put,
 13 I do think I should move on, but –
 14 CHAIRPERSON: Yes –
 15 MS LE ROUX: - it is likely that the
 16 major-general will have to be recalled to deal with that
 17 because I don't know how long Mr White is going to need to
 18 formulate that –
 19 CHAIRPERSON: Okay, I understand that –
 20 MS LE ROUX: - final position.
 21 CHAIRPERSON: You can then move on to
 22 another point, may I suggest we do so after we take tea?
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:24] CHAIRPERSON: The Commission resumes.
 25 You're still under oath, Major-General. Advocate Le Roux.

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1 MS LE ROUX: Thank you, Chair. Major-
 2 General, if we can turn to a new topic which is that of the
 3 use of cell phones on the 16th. I'm correct that in the
 4 period leading up to the 16th the SAPS had difficulties with
 5 radio interference, correct?
 6 MAJOR-GENERAL MPEMBE: Chairperson, it
 7 was a specific commander, that is Brigadier Calitz who
 8 reported that but not all members and that time it was when
 9 he was working under the electric pole.
 10 MS LE ROUX: Major-General, am I correct
 11 that the SAPS planned for any difficulties around radio
 12 interference by indicating that they would use cell phones
 13 instead?
 14 MAJOR-GENERAL MPEMBE: Not correct,
 15 Chairperson.
 16 MS LE ROUX: What role was cell phones
 17 going to play on the 16th?
 18 MAJOR-GENERAL MPEMBE: Chairperson, we
 19 have personal cell phones not only to use it on the 16th but
 20 you can use it at all times.
 21 MS LE ROUX: And, Major-General, what
 22 role did you think the cell phones would play on the 16th in
 23 particular?
 24 MAJOR-GENERAL MPEMBE: You could use the
 25 cell phone to report to the JOC or to communicate to

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1 somebody else.
 2 MS LE ROUX: Major-General, are you aware
 3 of anyone who used their cell phone to communicate either
 4 with the JOC or with any other member during the operation
 5 on the 16th?
 6 MAJOR-GENERAL MPEMBE: Chairperson, I
 7 cannot confirm or deny that because each member,
 8 particularly commanders and senior officers are issued with
 9 a cell phone. I didn't check thereafter who did use it,
 10 who did not use it.
 11 MS LE ROUX: I understand that, Major-
 12 General, my question was whether you know of anyone who
 13 used their cell phone on the day.
 14 MAJOR-GENERAL MPEMBE: No, Chairperson.
 15 MS LE ROUX: Major-General, if I could
 16 ask you to turn to two photographs that -
 17 CHAIRPERSON: Are you moving away from
 18 the photograph point, sorry are you moving away from the
 19 cell phone point?
 20 MS LE ROUX: No, it concludes the cell
 21 phone point.
 22 CHAIRPERSON: You say you are moving away
 23 from it.
 24 MS LE ROUX: No, the photographs
 25 concluded the cell phone point.

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1 CHAIRPERSON: Oh I see, I beg your
 2 pardon. Please carry on.
 3 MS LE ROUX: Major-General, if you could
 4 find photo 1020199 and 1020204 which have not previously
 5 been exhibited. They're in the - on the -
 6 CHAIRPERSON: Is this a photograph we saw
 7 before or is it just a clearer version, something we saw
 8 before or is this a different one?
 9 MS LE ROUX: This is a different
 10 photograph.
 11 CHAIRPERSON: Alright, do you want this
 12 to be given an exhibit number?
 13 MS LE ROUX: Yes please, Chair.
 14 CHAIRPERSON: Let me see if I can find my
 15 -
 16 MS LE ROUX: Chair, I believe this would
 17 be, exhibit 46 would be the next number.
 18 CHAIRPERSON: [Inaudible, microphone
 19 off].
 20 MS LE ROUX: Of the JOC. And Major-
 21 General, if I could ask you to consider - we've zoomed in
 22 on the screen to the two large pieces of paper that are
 23 displayed in the JOC and they display the cell phone
 24 numbers for Annandale, Calitz, Naidoo, Pitsi, Gaffley,
 25 Tsiloane and McIntosh.

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1 CHAIRPERSON: It looks like Mr Botes,
 2 whom I think was the Lonmin representative of the JOC also.
 3 MS LE ROUX: That's correct, Chair. So
 4 Major-General in the JOC were displayed cell phone numbers
 5 that could be used to contact members during the course of
 6 the operation if need arose, correct?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 CHAIRPERSON: But it goes beyond that
 10 because on the left-hand side of the page unless you've
 11 referred to it, we also have under Operational you've got
 12 Brigadier Calitz who's already on the right-hand side and
 13 then under Holding Area, this must be Holding Area 1, we
 14 have Naidoo's number which is also, of course, on the other
 15 side of the page. And then Colonel Pitsi is there as well,
 16 so that's also - so I see all the numbers on the left are
 17 also repeated on the right. But they've specifically
 18 indicated if you want to phone someone in the Holding Area
 19 2 you can ring Lieutenant Pitsi, there his number is given,
 20 is that correct?
 21 MS LE ROUX: Yes, Chair, as I understand
 22 it the seven cell phone numbers of the different commanders
 23 were accessible to anyone in the JOC. And then, Major-
 24 General, if I could ask you to turn to the second
 25 photograph identified, it's 1020204, that's a close-up of a

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1 flipchart and on that we see the cell phone numbers for
 2 Captain Ntoyi, Lieutenant-Colonel Nkebe and Lieutenant-
 3 Colonel Modiba as well as at the bottom of the page the
 4 Coin chopper, a Henry Swanepoel contact number is provided.
 5 Chair, this would be exhibit 47.
 6 CHAIRPERSON: You want an exhibit number
 7 for this too? 47?
 8 MS LE ROUX: Yes, Chair.
 9 CHAIRPERSON: - about this flipchart?
 10 MS LE ROUX: Yes, Chair.
 11 CHAIRPERSON: Thank you, 47. Do you
 12 confirm, Major-General that this was also in the JOC? It's
 13 on the screen.
 14 MAJOR-GENERAL MPEMBE: Ja, Chairperson, I
 15 confirm that it is in the JOC. They were in the JOC, yes.
 16 MS LE ROUX: Thank you, Major-General, in
 17 light of your answers we will be following up with our
 18 learned friends for the SAPS regarding the production of
 19 the cell phone records for those cell phones that have not
 20 yet been provided.
 21 CHAIRPERSON: Ms Le Roux, you did ask the
 22 witness I think yesterday about an SMS, so has that been
 23 provided yet?
 24 MS LE ROUX: Chair, I haven't received it
 25 yet.

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1 MAJOR-GENERAL MPEMBE: Chairperson, the
 2 SMS as well as my diary is handed over to Attorney Frikkie
 3 and that's why maybe it's not here, maybe he's still doing
 4 the - but I did provide it this morning.
 5 CHAIRPERSON: What is Attorney Frikkie's
 6 surname? I don't think we should refer to him so
 7 disrespectfully. We all know he's Attorney Pretorius.
 8 He's been given the SMS and diary and presumably with his
 9 customary efficiency he will make it available to us as
 10 soon as he can. He's up to now been very good - well we
 11 won't waste time now but once we adjourn you can hand it to
 12 us and particularly to Ms Le Roux because she wanted to
 13 prepare on it for tomorrow I think.
 14 MR MPEMBE: I'm sorry, Chairperson, not
 15 to mention his surname, to mention by name.
 16 CHAIRPERSON: It's alright, we now have
 17 all learnt his surname which is useful information that we
 18 have.
 19 MR NGALWANA: Chair, just for the record
 20 and we're still checking with the JOC, certainly the legal
 21 team is not aware of any cell phone records. These that
 22 are on screen haven't been sought by the South African
 23 Human Rights Commission but we'll check with the people at
 24 the back room.
 25 CHAIRPERSON: Well if it hasn't been

<p style="text-align: right;">Page 12915</p> <p>1 sorted, I'm sure Mr Fischer or Advocate Le Roux's attorney 2 will send off an email and we'll get it before close of 3 business today. Shall we carry on, Ms le Roux? 4 MS LE ROUX: Thank you, Chair. Major- 5 General, I want to take you back to when you were in the 6 Protea Coin Helicopter and in your statement at paragraph 7 49 you said "I could see groups of people dispersing from 8 the koppie and moving in a north and north-westerly 9 direction. I could see the arrival of and engagement by 10 the water canons at koppie 3." Major-General, you've got 11 the paragraph in front of you, correct? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson. 14 MS LE ROUX: Now, Major-General, turning 15 to consider scene 2, am I correct that from the helicopter 16 you did or did not see any groups of people moving around 17 at what became scene 2? Did you see any groups from the 18 helicopter? 19 MAJOR-GENERAL MPEMBE: Chairperson, I did 20 many times testify that I couldn't see the people but I 21 could see the Nyalas, the vehicles and the only group that 22 I saw it was when they were regrouping but that's the only 23 one that I could see. But I couldn't see a person that was 24 moving along except if he was in - or if it was not Nyala 25 or a water canon.</p>	<p style="text-align: right;">Page 12917</p> <p>1 General Naidoo and Brigadier Calitz who might know exactly 2 what happened on scene 2. 3 MS LE ROUX: Thank you, Major-General, I 4 don't want to cross-examine you on the evidence that will 5 come from Mr De Rover, of the SAPS expert, but I do need to 6 understand some of what he's concluded and I wonder if you 7 could help me in that exercise. Have you met with Mr De 8 Rover? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 MS LE ROUX: When did you meet with him? 12 MAJOR-GENERAL MPEMBE: I was only 13 introduced to him when he arrived. That was the time that 14 I met him. 15 CHAIRPERSON: When was that? 16 MAJOR-GENERAL MPEMBE: Chairperson, it 17 was way back, while the Commission was still in Rustenburg, 18 I don't know precisely the date but I can establish that. 19 CHAIRPERSON: Was it this year or last 20 year? 21 MAJOR-GENERAL MPEMBE: It was last year, 22 Chairperson. 23 CHAIRPERSON: November or December 24 thereabouts? 25 MAJOR-GENERAL MPEMBE: I just want to</p>
<p style="text-align: right;">Page 12916</p> <p>1 MS LE ROUX: Major-General, you say you 2 could see them if they were in a group, did you see any 3 charging group at scene 2? Did you see any charging mob of 4 protesters at scene 2 from the helicopter? 5 MAJOR-GENERAL MPEMBE: No, Chairperson. 6 MS LE ROUX: Now, Major-General, I 7 understand that you weren't on the ground at scene 2 and 8 you've testified again this afternoon that you could see 9 very little from the helicopter as to the movement of 10 people at scene 2, but I'd now like to ask you some 11 questions about what you found out about scene 2 since the 12 16th of August. And to specifically ask you what steps have 13 you taken as the overall commander of the operation in 14 which 34 people died to establish what happened at scene 2? 15 MR NGALWANA: For what it's worth, that 16 question has been asked and answered numerous times by 17 numerous witnesses. 18 CHAIRPERSON: I don't know that this 19 witness has been asked what steps he took, so let's carry 20 on. 21 MAJOR-GENERAL MPEMBE: Chairperson, all 22 what I can say about scene 2 is what I heard about the 23 members and the members did say what has happened on scene 24 2 through statements. I was not personally there on scene 25 2 but there were and I did testify that there was Major-</p>	<p style="text-align: right;">Page 12918</p> <p>1 establish but it was last year while the Commission is 2 still - 3 CHAIRPERSON: I'm sure that's enough for 4 Ms Le Roux' purposes. 5 MS LE ROUX: Major-General, my 6 instructions are that Mr De Rover was only instructed on 7 the 28th of February this year, so you must have only met 8 him this year. 9 CHAIRPERSON: He did say Rustenburg, so I 10 think I put last year in his mouth. So perhaps - but we 11 were still at Rustenburg in February. In the light of 12 what's been put to you, Ms Le Roux's instructions are he 13 was only instructed, Mr De Rover - is it possible that you 14 met him for the first time this year? 15 MAJOR-GENERAL MPEMBE: No, Chairperson, I 16 only met him when he arrived, when we were introduced that 17 this was going to be a police expert and then that's all. 18 When was he instructed, how he has to do the work I don't 19 have any knowledge of that. 20 MS LE ROUX: Thank you, Major-General. 21 Now Mr De Rover, at paragraph 60 and 61 of his statement 22 which is exhibit FFF11A, states that of the 13 people found 23 dead at scene 2 nine were shot by what he calls incidental 24 rather than intentional fire. Let me read those paragraphs 25 so that I don't misrepresent Mr De Rover.</p>

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1 CHAIRPERSON: I'm sorry, Ms Le Roux, what
 2 is the paragraph number? You did tell us but I can't
 3 remember what it was, in Mr De Rover's statement?
 4 MS LE ROUX: I'll commence with paragraph
 5 59.
 6 CHAIRPERSON: Thank you.
 7 MS LE ROUX: And for the record -
 8 [15:43] CHAIRPERSON: Have you got it, Major-
 9 General? It's page 14 of the statement.
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, I did get it.
 12 MS LE ROUX: For the record, it states,
 13 paragraph 59, "In the geography of koppie 3 there is an
 14 area appearing to provide optimum sight and fire cover."
 15 CHAIRPERSON: It's not 59, unless you've
 16 got a different 59 from mine. Mr De Rover's statement,
 17 FFF11 -
 18 MS LE ROUX: FFF11A.
 19 CHAIRPERSON: Oh, 11A, I see. We haven't
 20 got 11A, hey. We'll listen patiently, but as long as the
 21 witness has got the statement to which you are referring -
 22 you understand, there's a statement of Mr De Rover which is
 23 marked, according to Ms Le Roux, exhibit FFF11A. I haven't
 24 got that, but have you got?
 25 MAJOR-GENERAL MPEMBE: Chairperson, the

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1 one that I have is not marked, but it's indicated as a
 2 further statement. I just wanted to check which paragraph
 3 is Advocate reading.
 4 CHAIRPERSON: Alright, read the first
 5 couple of words of para 59 so that the witness can then
 6 ascertain whether he has the correct document in front of
 7 him.
 8 MS LE ROUX: "In the geography of koppie
 9 3 there is an area" -
 10 CHAIRPERSON: That should be enough, yes.
 11 MAJOR-GENERAL MPEMBE: Yes, it's correct,
 12 Chairperson.
 13 CHAIRPERSON: Have you got it, okay.
 14 MAJOR-GENERAL MPEMBE: It's the one that
 15 I have.
 16 CHAIRPERSON: Carry on.
 17 MS LE ROUX: So to complete for the
 18 record, "In the geography of koppie 3 there is an area
 19 appearing to provide optimum sight and fire cover. It is
 20 in this area that most of the protesters were and from
 21 where they mounted their attacks in various directions
 22 against approaching police. This relatively small area was
 23 where most of almost 280 people congregated for most of the
 24 time."
 25 Paragraph 80 then states, "It is in this" -

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1 sorry, paragraph 60 then states, "It is in this area that
 2 nine people lost their lives. I believe that loss of life
 3 was not a consequence of fire aimed directly at them, but
 4 rather as a consequence of them being struck by rounds
 5 fired for other reasons, travelling through that area,
 6 rounds fired by members of POP from the north, NIU from the
 7 east, TRT and K9 from the south, and TRT from the west.
 8 Possibly as many as half of all 325 rounds fired, both
 9 5.56mm and 9mm, maybe more, may have travelled through this
 10 area, although the exact number is hard to calculate. As a
 11 consequence, this apparently safe area was in fact the most
 12 dangerous location within koppie 3."
 13 Then at paragraph 62 he states under the heading,
 14 "Conclusion on koppie 3 deaths - On the basis of all the
 15 data that has been placed before me, and through
 16 application of my professional policing experience to that
 17 evidence, I believe that the deaths of nine protesters at
 18 koppie 3 referred to above were incidental and not
 19 intentional."
 20 Now Major-General, of course to complete this for
 21 the record, it's important to understand that your expert
 22 has not reached a conclusion on the cause of death of the
 23 four individuals who died in hospital after being shot at
 24 scene 2. He's concluded that of the 13 who died at the
 25 scene, only five were shot intentionally, possibly in self-

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1 defence, and that the remaining nine were shot by what he
 2 calls incidental fire. Now Major-General, what do you
 3 understand "incidental fire" to refer to?
 4 CHAIRPERSON: If I can ask another
 5 question first; do you understand what Mr De Rover is
 6 saying here when he talks about "incidental fire"? In the
 7 police language of yours, if you understand what it means -
 8 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 9 don't understand.
 10 MS LE ROUX: Major-General, when you've
 11 interacted with your fellow SAPS members around the events
 12 at scene 2 when they've told you what happened, did any of
 13 them mention "incidental fire" to you?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson.
 15 MS LE ROUX: Major-General, when you
 16 discussed scene 2 with your fellow members, did any of them
 17 mention that people were shot by bullets that were not
 18 aimed at them intentionally, but that they were otherwise,
 19 you know they were shot, but they weren't, it wasn't aimed
 20 at them?
 21 MAJOR-GENERAL MPEMBE: Chairperson, as I
 22 have said how we were participating at Potchefstroom, I was
 23 not with that group that was on scene 2 because I was not
 24 there. I was on scene 13 - on the 13th. So it would be
 25 better, as I've indicated that the only way to assist the

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1 Commission is to say Major-General Naidoo was there and
 2 Brigadier Calitz, and they might shed light on this matter.
 3 CHAIRPERSON: Colonel Gaffley was there
 4 when quite a lot of shots were fired by members of the K9
 5 unit, which may have been incidental, whatever that means,
 6 as opposed to intentional, but he can perhaps help us as
 7 well, but it sounds as if you can't. Am I right?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MS LE ROUX: Major-General, one final
 11 question before I move on from this topic; is it your
 12 understanding that the SAPS case before this Commission is
 13 that nine of the deaths at scene 2 were incidental?
 14 CHAIRPERSON: He said, I think, he
 15 doesn't know what the word "incidental" means, so I don't
 16 know if you're likely to get a helpful answer from him on
 17 that. I think if you mean non-intentional, you might get
 18 an answer.
 19 MS LE ROUX: Major-General, do you
 20 understand the SAPS case before this Commission to be that
 21 nine people who died at scene 2 were not intended to be
 22 shot?
 23 CHAIRPERSON: Or to put it differently,
 24 are you familiar with the details of the SAPS case in
 25 respect of the people who died at scene 2? Are you

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1 therefore able to give us an opinion, or even to explain
 2 what your understanding is as to the details of how many
 3 people were shot intentionally, how many people weren't
 4 shot intentionally, and so on, and so on, at scene 2? Or
 5 are these questions we should be directing to someone else?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson.
 7 MR BUDLENDER SC: Chair, I don't want to
 8 interject and interfere, but this is the operational
 9 commander, the overall commander of everything that
 10 happened on the 16th of – of the conduct of the police on
 11 the 16th of August 2012. It seems to me it must surely be
 12 legitimate for the cross-examiner to ask –
 13 CHAIRPERSON: I'm not suggesting the
 14 question can't be asked. I just thought we might not be
 15 able to get meaningful answers, but I'm certainly not
 16 stopping the cross-examination at all. I understand he was
 17 the overall commander, but even the overall commander
 18 sometimes doesn't know what's going on in every corner of
 19 the battlefield, but anyway, carry on, Ms Le Roux.
 20 MS LE ROUX: Chair, the point of this
 21 cross-examination is not – and these are questions of
 22 course that we'll cover with other witnesses, but the point
 23 is that Major-General Mpembe as the overall commander has
 24 been decidedly unhelpful to the Commission with respect to
 25 what happened at scene 1 or scene 2. That's the point that

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1 I'm putting.
 2 CHAIRPERSON: I don't know that that
 3 phrase "decidedly unhelpful" is necessarily appropriate. I
 4 know what you mean, but the fact is he seems to be saying
 5 he doesn't know. Now you may argue later he should know.
 6 There are all sorts of arguments you can advance in that
 7 regard, but if he doesn't know you can't expect him to tell
 8 you something that he doesn't know about, and that to some
 9 extent is an unhelpful answer. But it's more helpful than
 10 a guess by somebody who doesn't really know but he pretends
 11 that he does know. But anyway, I think we understand each
 12 other. Please carry on.
 13 MS LE ROUX: Major-General, could I ask
 14 you to turn to the pocketbook of Captain Cebekhulu. It's
 15 item 29A on the index that was given to you, and Chair, I
 16 believe it has been provided to you. It would need to
 17 become an exhibit.
 18 CHAIRPERSON: HHH48.
 19 MR NGALWANA: For the record, Chair, for
 20 those of us who are conversant in the Nguni language, we
 21 may be looking for Cebekhulu all over the record and can't
 22 find it, it's actually Cebekhulu, which is spelt C-E-B for
 23 Bravo, E for Echo, K for Khulu, H, U for Uruguay, L for
 24 Lima, and U for Uruguay.
 25 CHAIRPERSON: He's a Zulu, he's stationed

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1 in Durban. What was his rank?
 2 MS LE ROUX: Captain.
 3 CHAIRPERSON: Are you sure he's a
 4 captain? Because this looks like a pocketbook to me. I
 5 thought we were told that the distinction between officers
 6 and non-officers is officers have diaries and non-officers
 7 have pocketbooks. It looks like a pocketbook to me, unless
 8 he's been promoted since then. Oh, Cebekhulu is described
 9 as a sergeant, actually. He's a sergeant – from the NIU.
 10 What page – I haven't marked the exhibit yet. What page
 11 are you going to refer to?
 12 MS LE ROUX: Chair, I don't have the
 13 document in front of me right now. I just have the excerpt
 14 from it, which is – I know it's at the top of a right-hand
 15 page. I know you have a double-sided copy, but it's at the
 16 top of that page, it states, "Debriefing at JOC by head
 17 office members and by commanders."
 18 CHAIRPERSON: I'm sorry, there may be a
 19 problem here. I've got a document before me which I've
 20 marked exhibit HHH48. It's extracts from the pocketbook of
 21 Sergeant SN Cebekhulu from the NIU in Durban, and I've
 22 looked at the right-hand side, is it the top line?
 23 MS LE ROUX: Chair, I've now been
 24 provided with it. It's page 62, it's got a stamped 62.
 25 It's the last page of the pocketbook exhibit.

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1 CHAIRPERSON: Yes, I don't see any
 2 reference to debriefing on it.
 3 MS LE ROUX: Sorry, it commences at the
 4 bottom of the previous page 61, "Debriefing at JOC by," and
 5 then continues above, "head office members and by
 6 commanders."
 7 CHAIRPERSON: Yes, I see. That's page
 8 61, and at the foot of page 61 and the top of page 62.
 9 MS LE ROUX: Yes, Chair. Major-General,
 10 do you have the document?
 11 MAJOR-GENERAL MPEMBE: Not yet,
 12 Chairperson. I do have pocketbooks that are not marked. I
 13 only see the one of Sergeant SN Cebekhulu.
 14 CHAIRPERSON: Apparently we're told by Mr
 15 Ngalwana, who claims to be better at pronouncing these
 16 names than I am, he says is Cebekhulu.
 17 MAJOR-GENERAL MPEMBE: I've got it,
 18 Chairperson.
 19 MS LE ROUX: Major-General, if you could
 20 turn to the last page of that document, you should have a
 21 copy of two pages marked 60 and 61. Do you have that?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MS LE ROUX: And at the bottom of page 61
 25 and then continuing at the top of page 62 it states,

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1 "Debriefing at JOC by head office members and by
 2 commanders." Do you see that?
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson, I see that entry there.
 5 MS LE ROUX: Major-General, did you
 6 participate in any debriefing at the JOC on the evening of
 7 the 16th of August that included members of the Durban NIU
 8 unit?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I
 10 already testified that members did talk to their
 11 commanders, but we only spoke to the commanders, and what
 12 happened actually also on scene 2 is what I heard from the
 13 commanders themselves.
 14 MS LE ROUX: Major-General, do you know
 15 who "head office members" would refer to?
 16 MAJOR-GENERAL MPEMBE: The specialised
 17 units that were coming from head office were falling under
 18 Major-General Annandale, and for the National Intervention
 19 Unit it was Brigadier Tsiloane. For the NIU members, not
 20 knowing whether it's from Durban or what, I know that it
 21 was – now he's Colonel Modiba, by then he was Lieutenant-
 22 Colonel Modiba, and then the STF, it was Brigadier Fritz.
 23 There were also other officers that were falling under
 24 those officers. There might be other officers that I have
 25 not mentioned.

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1 MS LE ROUX: Major-General, with respect
 2 to the people you've identified as being in charge of the
 3 specialist units, Annandale, Tsiloane, Modiba, or Fritz, do
 4 you know if any of them held a debriefing at the JOC on the
 5 evening of the 16th of August?
 6 MAJOR-GENERAL MPEMBE: I did say that
 7 during that day we were doing different work, but what I
 8 know is that section commanders and commanders did meet
 9 their members.
 10 MS LE ROUX: I recall your testimony,
 11 Major-General. My question was whether with respect to the
 12 four that you've just identified, Annandale, Tsiloane,
 13 Modiba, or Fritz, do you know if they held a debriefing at
 14 the JOC on the evening of 16 August?
 15 MAJOR-GENERAL MPEMBE: Chairperson, with
 16 regard to Major-General Annandale, because he was working
 17 in the JOC, as I've indicated, I can say that he did not
 18 meet also the members on the ground.
 19 [16:03] But with regard to Brigadier Fritz and the other
 20 officers, I don't know. But what I do know is that,
 21 Chairperson, we have, I have received the report of scene 2
 22 through those commanders, which I do believe that that has
 23 been obtained from their members.
 24 CHAIRPERSON: Are you moving -
 25 MS LE ROUX: Chair, I'm mindful of the

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1 time and I will be moving to a new topic, so perhaps -
 2 CHAIRPERSON: If you're moving to another
 3 point, perhaps we can adjourn till tomorrow morning, if
 4 that's convenient for you.
 5 MS LE ROUX: Yes, Chair.
 6 CHAIRPERSON: Alright. We'll adjourn now
 7 until 9 o'clock tomorrow morning.
 8 [COMMISSION ADJOURNED]
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